

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 41627, 41628,)
41629, 55859, 55860, 55861 AND 55863 FILED)
TO APPROPRIATE THE WATER OF AN UNDERGROUND)
SOURCE WITHIN THE THOUSAND SPRINGS VALLEY)
GROUND WATER BASIN, MONTELLO-CRITTENDEN)
CREEK AREA, ELKO COUNTY NEVADA.)

RULING
4061

GENERAL

I.

Application 41627 was filed on July 3, 1980, by Sierra Pacific Power Company to appropriate 4.0 c.f.s. of underground water for industrial purposes within Section 21, T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 13, T.40N., R.69E., M.D.B.&M.¹

II.

Application 41628 was filed on July 3, 1980, by Sierra Pacific Power Company to appropriate 4.0 c.f.s. of underground water for industrial purposes within Section 21, T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, T.40N., R.69E., M.D.B.&M.¹

III.

Application 41629 was filed on July 3, 1980, by Sierra Pacific Power Company to appropriate 4.0 c.f.s. of underground water for industrial purposes within Section 21, T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, T.40N., R.69E., M.D.B.&M.¹

IV.

Application 55859 was filed on February 21, 1991 by Lands of Sierra, Inc., to appropriate 6.0 c.f.s. of underground water for industrial purposes within Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, all within T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 21, T.41N., R.69E., M.D.B.&M.¹

¹ Public records in the office of the State Engineer.

V.

Application 55860 was filed on February 21, 1991 by Lands of Sierra, Inc., to appropriate 6.0 c.f.s. of underground water for industrial purposes within Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, all within T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 17, T.41N., R.69E., M.D.B.&M.¹

VI.

Application 55861 was filed on February 21, 1991 by Lands of Sierra, Inc., to appropriate 6.0 c.f.s. of underground water for industrial purposes within Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, all within T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 7, T.41N., R.69E., M.D.B.&M.¹

VII.

Application 55863 was filed on February 21, 1991 by Lands of Sierra, Inc., to appropriate 6.0 c.f.s. of underground water for industrial purposes within Sections 16, 17, 18, 19, 20, 21, 28, 29 and 30, all within T.40N., R.66E., M.D.B.&M. The proposed point of diversion is described as being within SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 6, T.41N., R.69E., M.D.B.&M.¹

VIII.

Applications 55862 and 55864 were timely protested on August 23, 1991, by the U.S.D.I., Bureau of Land Management Agency for the following reasons and on the following grounds, to wit:¹

1. The Place of Use for Applications 55860 - 55868 is partially located on BLM lands. Sections 16, 18, 20, 28, and 30, T.40N., R.60E., are all on public land. This application is for industrial use and BLM has not approved any Rights-Of-Way applications on the public land sections listed above. The Thousand Springs Power Plant project which was to be located at the Place of Use listed on Applications 55860 - 55868 was not approved and the entire Environmental Impact Statement process has been terminated. Therefore, Lands of Sierra would not be able to prove beneficial use for industrial purposes at this location.

2. These proposed wells, in combination with the other 55859 Lands of Sierra water rights application in the

Thousand Springs drainage, may have an impact on several resource values. If springs dry up in the area affected by pumping 60 cfs in the basin, there may be a negative impact to paleo-environmental studies. Many organic materials such as pollen that have survived for centuries in a boggy (oxygen-free environment) would rapidly deteriorate if the spring sources dried up, thus limiting our knowledge of the past.

3. A detailed groundwater study needs to be made before the hydrologic impacts can be determined. Impacts that may occur from pumping the proposed wells, in addition to the other Lands of Sierra well proposed in water rights application 55859, would likely be more extensive than those described in the Thousand Springs Power Plant EIS. These possible impacts include: 1) possible minor land surface subsidence in areas of maximum ground water level decline, 2) drying up of existing stockwater wells, 3) springs could dry up, and 4) surface and ground water quality degradation may occur due to increased total dissolved solids from large ground water withdrawals. The total amount of water applied for in these 10 applications is 60 cfs.

4. Water sources on public land in the Thousand Springs Basin that may be affected by this large ground water withdrawal include:

well	SW $\frac{1}{4}$ NW $\frac{1}{4}$	sec. 22, T. 41 N., R. 67 E.
well	NW $\frac{1}{4}$ SE $\frac{1}{4}$	sec. 24, T. 41 N., R. 67 E.
well	NW $\frac{1}{4}$ NE $\frac{1}{4}$	sec. 20, T. 41 N., R. 68 E.
well	SE $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 14, T. 41 N., R. 69 E.
well	NW $\frac{1}{4}$ NE $\frac{1}{4}$	sec. 36, T. 41 N., R. 69 E.
well	SE $\frac{1}{4}$ NE $\frac{1}{4}$	sec. 30, T. 41 N., R. 70 E.
spring	SE $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 6, T. 41 N., R. 70 E.
well	NE $\frac{1}{4}$ NE $\frac{1}{4}$	sec. 26, T. 40 N., R. 68 E.
well		sec. 26, T. 42 N., R. 69 E.
well	NW $\frac{1}{4}$	sec. 24, T. 40 N., R. 65 E.
well	SE $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 8, T. 40 N., R. 66 E.
spring	NE $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 6, T. 42 N., R. 65 E.
well	NE $\frac{1}{4}$	sec. 27, T. 42 N., R. 66 E.
spring	SW $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 32, T. 42 N., R. 65 E.
spring	NW $\frac{1}{4}$ SW $\frac{1}{4}$	sec. 1, T. 41 N., R. 63 E.
well	SE $\frac{1}{4}$ SE $\frac{1}{4}$	sec. 8, T. 41 N., R. 64 E.

There are also many livestock waters on private land that may be affected. This would affect livestock distribution and forage availability on the public lands.

5. There are several wildlife concerns if the wetlands in Thousand Springs Basin dry up. These wetlands provide habitat for Bald Eagles and Peregrine Falcons, both of which are Federally Listed Endangered Species. Other

species which need this wetland habitat include: Long Billed Curlew, White Faced Ibis, Swainson's Hawk, and Ferruginous(sic) Hawk. These last four birds are all Federally Listed Candidate Species.

6. BLM is directed through Executive Order 11990, Protection of Wetlands, to manage federal lands to minimize the loss or degradation of wetlands. Section 1(a) of this Executive Order states the "each agency shall... take action to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands when "(1)...managing federal lands." Although most of the wetlands in the Thousand Springs Basin are on private land, there is some on public land that BLM is mandated to protect. These wetlands are likely to dry up if some or all the proposed Lands of Sierra wells become operational.

FINDINGS OF FACT

I.

The proposed manner and places of use under the subject applications were for industrial uses within Sierra Pacific Resource's proposed coal fired Thousand Springs Electrical Generating project located upon the Winecup Ranch in eastern Elko County.¹

II.

By letter of May 8, 1992 under the signature of Jack S. Ross, Manager, Agricultural Division, Lands of Sierra, the State Engineer was informed that the proposed Thousand Springs Project had been officially cancelled.¹

III.

Documents on file within the office of the State Engineer indicate that Walker-Winecup-Gamble, Inc. acquired Lands of Sierra's interests in the subject applications.¹

IV.

Pursuant to the provisions of NRS 533.375, on September 10, 1993, David L. Walker, President of Walker-Winecup-Gamble, Inc., was requested by letter to provide the office of the State Engineer with information concerning intent to pursue the applications, and with sufficient information to establish that Walker-Winecup-Gamble, Inc., was committed to placing the water under these

applications to a viable beneficial use similar to that initially proposed under the now cancelled Thousand Springs Project, i.e. that Walker-Winecup-Gamble was at least in the planning stage and had the financial capability to construct a project such as the Thousand Springs Project.¹

V.

A written response to the September 10, 1993 letter was sent October 19, 1993 to the office of the State Engineer under the signature of William A. Nisbet, agent for Walker-Winecup-Gamble, Inc. indicating that Walker-Winecup-Gamble, Inc. was not yet in a position to make long-term commitments on the management of its other water rights assets, that Walker-Winecup-Gamble had been in communication with interested parties, including power generation interests, without definite obligations yet determined, and therefore requested an additional 12 months in which to complete its development plans for use of the water requested.¹

VI.

The State Engineer finds that the Nevada Legislature has become increasingly concerned over applications and permits being used for speculation.² The applications that are the subject of this ruling along with those pending applications in Rocky Butte and Toano-Rock Spring groundwater sub basins total 96 c.f.s. of water for a total combined annual volume of approximately 69,000 acre feet. The State Engineer further finds that for the assignee of these applications to have no long term commitments nor any definitive development plan for this large volume of water is by definition, speculation.

²

Prior to 1991, the State Engineer could require financial and corporate information from applicants who filed applications for 10 cubic feet per second (cfs) or more (NRS 533.375). The 1991 Session of the Nevada Legislature amended the law to include multiple applications whose cumulative diversion rate is 10 cfs or more. Also see 1993 Legislative testimony before Senate Natural Resources Committee and Assembly Government Affairs Committee on AB314, AB337 and AB624.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.³

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.⁴

III.

A permit to appropriate water grants the right to develop a certain amount of water from a particular source for a certain purpose to be used at a definite location.⁵ The State Engineer concludes that the certain purpose and definite location proposed under the initial applications was for industrial purposes within the Thousand Springs Electrical Generating Project. However, once the proposed Thousand Springs Project was cancelled the applications no longer contain the required specific information on a certain purpose and definite location for waters requested for appropriation.

³ NRS Chapters 533 and 534.

⁴ NRS Chapter 533.370.

⁵ NRS 533.330 and 533.335.

IV.

When an application is filed within the office of the State Engineer, a necessary part of the application is an intended use.⁶ If that information is not provided, the application is incomplete, defective and must be rejected.⁷

V.

The State Engineer concludes that he cannot approve multiple applications for an amount equivalent to sufficient water to serve 69,000 families, when the applicant has no specific plans for an industrial power plant. Furthermore, it would not be in the public interest to approve multiple applications for all remaining ground water in the basin when the applicant has no immediate plans to put the water to beneficial use.

VI.

The State Engineer concludes that Walker-Winecup-Gamble, Inc. acquired the subject applications for speculation since no project presently exists.

VII.

When the subject applications were filed within the office of the State Engineer, the proposed manner of use was a viable beneficial use. The State Engineer concludes that once the Thousand Springs Electrical Generating Project was cancelled the subject applications became incomplete, unless a similar project was in the planning stages. The State Engineer further concludes, upon examination of the information submitted that at this time no viable project exists.

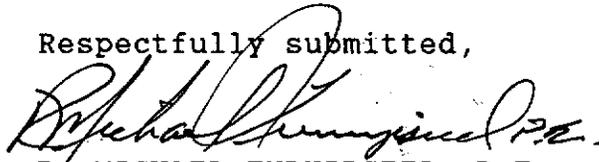
⁶ NRS 533.335 and NRS 533.340. Although there is no specific paragraph for coal fired power production, it is clear that a specific project must be contemplated to meet the requirements of this section. Also see 533.372 dealing with applications filed for industrial purposes of generating energy to be exported out of state.

⁷ NRS 533.355.

RULING

Applications 41627, 41628, 41629, 55859, 55860, 55861 and 55863 are hereby DENIED on the grounds that to approve said applications would threaten to prove detrimental to the public interest and that the assignee of the applications acquired the applications for the purpose of speculation. No ruling is made as to the merits of the protest of the U.S.D.I., Bureau of Land Management.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 17th day of
December, 1993.