

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

IN THE MATTER OF APPLICATIONS 54124, )  
54125 AND 54126 FILED TO APPROPRIATE )  
THE PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN TRACY SEGMENT (6-83) )  
GROUNDWATER BASIN, WASHOE COUNTY, )  
NEVADA. )

RULING  
# 4181

GENERAL

I.

Application 54124 was filed on October 27, 1989, by Tracy Company to appropriate 1.5 C.F.S. of water from an underground source for Quasi-Municipal purposes within all of Section 21; N $\frac{1}{2}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  Section 28; SW $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$  Section 29 and E $\frac{1}{2}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  SE $\frac{1}{4}$  Section 30, T.20N., R.22E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 29, T.20N., R.22E., M.D.B.&M.<sup>1</sup>

II.

Application 54125 was filed on October 27, 1989, by Tracy Company to appropriate 2.5 C.F.S. of water from an underground source for Quasi-Municipal purposes within all of Section 21; N $\frac{1}{2}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  Section 28; SW $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$  Section 29 and E $\frac{1}{2}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  SE $\frac{1}{4}$  Section 30, T.20N., R.22E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 21, T.20N., R.22E., M.D.B.&M.<sup>1</sup>

III.

Application 54126 was filed on October 27, 1989, by Tracy Company to appropriate 2.5 C.F.S. of water from an underground source for Quasi-Municipal purposes within all of Section 21; N $\frac{1}{2}$ , N $\frac{1}{2}$  S $\frac{1}{2}$  Section 28; SW $\frac{1}{4}$ , NW $\frac{1}{4}$ , NE $\frac{1}{4}$  Section 29 and E $\frac{1}{2}$  SE $\frac{1}{4}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  SE $\frac{1}{4}$  Section 30, T.20N., R.22E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 21, T.20N., R.22E., M.D.B.&M.<sup>1</sup>

<sup>1</sup> Public record in the office of the State Engineer.

IV.

Applications 54124, 54125 and 54126 were timely protested on February 9, 1990, by the Truckee Carson Irrigation District on the following grounds:<sup>2</sup>

This application, if granted, will tend to adversely affect existing water rights since the diversion will consumptively use water from a groundwater basin which has been fully appropriated and designated by the State Engineer.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

V.

Truckee Carson Irrigation District (TCID) submitted correspondence to the State Engineer dated April 19, 1990, indicating that Mr. Bill Victor had told TCID he leased the land from the Tracy Co. Accordingly, a change in manner of use from quasi-municipal to stockwater and conditional modification of TCID protest was discussed.<sup>3</sup>

FINDINGS OF FACT

I.

The applicant and agent were notified by certified mail on July, 14, 1994, to submit additional information to the State Engineer's Office specifically requesting (1.) Financial statement, (2.) Land control information, (3.) Existing zoning, (4.) Project or master plan approvals or subdivision map and (5.) Any other information in support of the applications. The applicant was also asked if a change in use was contemplated as mentioned in the TCID letter of April 19, 1994. The certified notice assigned a 60 day time limit to file the required information. The return receipts

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<sup>2</sup> See protest on file in the office of the State Engineer in file Number 54124.

<sup>3</sup> See correspondence from Truckee Carson Irrigation District dated April 19, 1990, on file in the office of the State Engineer in file number 54124.

were received from the addressees on July 18 and July 20, 1994, respectively.<sup>1</sup> To date the information requested has not been received by the State Engineer's Office.<sup>4</sup>

II.

No finding is made on the validity of the grounds of the protest submitted by Truckee Carson Irrigation District.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>5</sup>

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to guard the public interest properly.<sup>6</sup>

III.

Except as otherwise provided in Nevada Revised Statutes, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

(A) The applicant provides proof satisfactory to the State Engineer of:

- (1) His intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and
- (2) If the application proposes to divert 1 or more cubic feet per second of water, his financial ability to construct the work with reasonable diligence.<sup>7</sup>

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<sup>4</sup> A check of the record in the State Engineer's Office indicates that no information has been received.

<sup>5</sup> NRS 533 and 534.

<sup>6</sup> NRS 533.375.

<sup>7</sup> NRS 533.370(1)c.

IV.

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.<sup>8</sup>

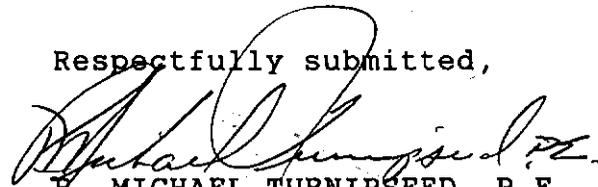
V.

The applicant has failed to submit the information requested by the State Engineer's office. The State Engineer concludes that sufficient information is not available to guard the public interest properly, and that applicant has failed to provide proof satisfactory to the State Engineer of financial ability to construct work with reasonable diligence.

RULING

Applications 54124, 54125 and 54126 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's Office. The granting of said applications without the additional information requested would not be in the public interest. No ruling is made on the protest submitted by Truckee Carson Irrigation District.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/DJL/pm

Dated this 1st day of  
May, 1995.

<sup>8</sup> NRS 533.370(3).