

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

IN THE MATTER OF APPLICATIONS)
60179, 60180, 60181, 60182, 60189,)
60190, 60192, AND 60193 DRY LAKE)
VALLEY GROUNDWATER BASIN (181),)
AND APPLICATIONS 60183, 60184,)
60185, 60186, 60187, 60188, 60191,)
AND 60194 DELAMAR VALLEY)
GROUNDWATER BASIN (182) FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
AN UNDERGROUND SOURCE (SPENCER)
RIVER) LOCATED WITHIN THE ABOVE)
MENTIONED GROUNDWATER BASINS,)
LINCOLN COUNTY, NEVADA.)

RULING

4692

GENERAL

I.

Application 60179 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cubic feet per second (cfs) of water for municipal purposes from a source described as the Spencer River, an underground river flowing in distinct channels. The proposed point of diversion is described as being located within the NW¼ SW¼ of Section 5, T.4S., R.64E., M.D.B.&M. The proposed place of use is described as being within Lincoln County as defined under NRS § 243.210 through NRS § 243.225, and Clark County as defined in NRS § 243.035 through NRS § 243.040.¹

II.

Application 60180 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion

¹ File No. 60179, official records in the office of the State Engineer.

is described as being located within the SE¼ SE¼ of Section 6, T.4S., R.64E., M.D.B.&M. The proposed place of use is identical to those described under Application 60179.²

III.

Application 60181 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 7, T.4S., R.64E., M.D.B.&M. The proposed place of use is identical to those described under Applications 60179 and 60180.³

IV.

Application 60182 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 8, T.4S., R.64E., M.D.B.&M. The proposed place of use is identical to those described under Applications 60179, 60180 and 60181.⁴

V.

Application 60183 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 13, T.4S., R.63E., M.D.B.&M. The proposed place of use is identical

² File No. 60180, official records in the office of the State Engineer.

³ File No. 60181, official records in the office of the State Engineer.

⁴ File No. 60182, official records in the office of the State Engineer.

to those described under Applications 60179, 60180, 60181, and 60182.⁵

VI.

Application 60184 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 18, T.4S., R.64E., M.D.B.&M. The proposed place of use is identical to those described under Applications 60179, 60180, 60181, 60182, and 60183.⁶

VII.

Application 60185 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the SE¼ SW¼ of Section 24, T.4S., R.63E., M.D.B.&M. The proposed place of use is identical to those described under Applications 60179, 60180, 60181, 60182, 60183, and 60184.⁷

VIII.

Application 60186 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for municipal purposes from the Spencer River. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 25, T.4S., R.63E., M.D.B.&M. The proposed place of use is identical

⁵ File No. 60183, official records in the office of the State Engineer.

⁶ File No. 60184, official records in the office of the State Engineer.

⁷ File No. 60185, official records in the office of the State Engineer.

to those described under Applications 60179, 60180, 60181, 60182, 60183, 60184, and 60185.⁸

IX.

Application 60187 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T.4S., R.64E., M.D.B.&M. The proposed place of use is within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 18.⁹

X.

Application 60188 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.4S., R.63E., M.D.B.&M. The proposed place of use is within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.¹⁰

XI.

Application 60189 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, T.4S., R.64E., M.D.B.&M. The proposed place of use is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 5.¹¹

⁸ File No. 60186, official records in the office of the State Engineer.

⁹ File No. 60187, official records in the office of the State Engineer.

¹⁰ File No. 60188, official records in the office of the State Engineer.

¹¹ File No. 60189, official records in the office of the State Engineer.

XII.

Application 60190 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, T.4S., R.64E., M.D.B.&M. The proposed place of use is within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 6.¹²

XIII.

Application 60191 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25, T.4S., R.63E., M.D.B.&M. The proposed place of use is within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 25.¹³

XIV.

Application 60192 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T.4S., R.64E., M.D.B.&M. The proposed place of use is within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 7.¹⁴

XV.

Application 60193 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River.

¹² File No. 60190, official records in the office of the State Engineer.

¹³ File No. 60191, official records in the office of the State Engineer.

¹⁴ File No. 60192, official records in the office of the State Engineer.

The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 8, T.4S., R.64E., M.D.B.&M. The proposed place of use is within the NW¼ NW¼ of said Section 8.¹⁵

XVI.

Application 60194 was filed on July 1, 1994, by Robert Wallace Spencer to appropriate 27,627 cfs of water for hydroelectric power generation purposes from the Spencer River. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 13, T.4S., R.63E., M.D.B.&M. The proposed place of use is within the SW¼ SE¼ of said Section 13.¹⁶

XVII.

Applications 60179, 60180, 60181, 60182, 60189, 60190, 60192, and 60193 describe points of diversion which are located within the hydrographic boundaries of the Dry Lake Valley Groundwater Basin.

XVIII.

Applications 60183 through 60188, inclusive, 60191 and 60194 describe points of diversion which are located within the hydrographic boundaries of the Delamar Valley Groundwater Basin.

XIX.

All of the subject applications together have a combined diversion rate of 27,627 cfs which expanded over the period of use equates to approximately 20,001,119 acre-feet per year.

¹⁵ File No. 60193, official records in the office of the State Engineer.

¹⁶ File No. 60194, official records in the office of the State Engineer.

XX.

All of the subject applications were timely protested by the U.S. Fish and Wildlife Service on the following grounds as summarized:¹⁻¹⁶

1. the requested amount of water is not available;
2. injury to water rights held by the U.S. Fish and Wildlife Service;
3. injury to the public's interest in the protection of fish and wildlife species.

XXI.

All of the subject applications were also protested by the U.S. Bureau of Land Management on the following grounds as summarized:¹⁻¹⁶

1. the requested amount of water is not available;
2. would interfere with the BLM's ability to perform its federal mandate of endangered species and wetland habitat protection;
3. the applications would unreasonably affect existing surface water sources and the BLM's ability to manage grazing and wildlife;
4. the applications would prove damaging to the environment should they be allowed to appropriate the amount of water requested.

FINDINGS OF FACT

I.

Applications 60179 through 60194, inclusive, were all filed on July 1, 1994. The State Engineer finds that more than four years have passed since the applications were filed and that the applicant has had sufficient time to formulate plans for placing the requested water to a beneficial use.

II.

The State Engineer at his discretion may hold hearings and may require the filing of additional information as he may deem necessary for a full understanding of the water rights before him.¹⁷ Applications 60179 through 60194, inclusive, request an appropriation of 27,627 cfs with a combined annual duty of approximately 20,001,119 acre-feet per year from a source which is generally described by Mr. Spencer as an underground river. The State Engineer finds that the magnitude and unique nature of the proposed appropriations necessitates the presentation of additional information to further define the water resource targeted for appropriation and what effects the approval of the subject applications would have on existing water rights and the public interest.

III.

By letter dated September 18, 1998, the applicant was requested by the State Engineer to provide information which would indicate that he was prepared to move forward with an administrative hearing in the matter of Applications 60179 through 60194, inclusive. The applicant was advised before the applications could be acted on he must provide evidence that:¹

1. there is sufficient water available to support the applications;
2. the appropriation of water will not interfere with existing rights;
3. the development of this water does not threaten to prove detrimental to the public interest;

¹⁷ NRS § 533.375.

4. the applicant has the financial capability to develop the water and place it into a beneficial use; and
5. the applications were not filed for a speculative purpose or to monopolize the water resource.

The State Engineer finds that the requested information is required to enable him to gain a full and complete understanding of the applications before him and the applicant's ability to place the water to beneficial use.

IV.

Under the provisions of NRS § 533.335(1), every application for a permit to appropriate water must contain the mailing address of the applicant, who also bears the responsibility of informing the State Engineer of any changes.¹⁸ All of the subject applications list the applicant's address as 816 Glen Molly Drive, Sparks, Nevada. The State Engineer finds that since 1994 the applicant has received and responded to correspondence from the State Engineer mailed to the Glen Molly Drive address.

By letter dated September 18, 1998, the applicant was requested to provide additional information to the State Engineer's office. The applicant was allowed sixty days from the date of the letter to submit the requested information with the understanding that a failure to timely do so would result in a denial of Applications 60179 through 60194, inclusive. To this date, no information has been submitted to the office of the State Engineer. The State Engineer finds that the applicant was properly noticed of the need to provide additional information to

¹⁸ NRS § 533.335(1).

the State Engineer, but has failed to do so, therefore, the subject applications may be considered for denial.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁹

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:²⁰

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

III.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest. The State Engineer concludes that the applicant has failed to provide sufficient information to adequately guard the public interest and that the subject applications must be denied.

¹⁹ NRS Chapters 533 and 534.

²⁰ NRS § 533.370(3).

RULING

Applications 60179, 60180, 60181, 60182, 60183, 60184, 60185, 60186, 60187, 60188, 60189, 60190, 60191, 60192, 60193, and 60194 are hereby denied on the grounds that the granting of these applications would not be in the public interest. No ruling is made regarding the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 27th day of
January, 1999.