

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

IN THE MATTER OF APPLICATIONS 66163)
AND 66166 FILED TO CHANGE THE PLACE)
OF USE AND THE MANNER OF USE OF THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE PREVIOUSLY APPROPRIATED)
UNDER PERMITS 64547 AND 64540,)
RESPECTIVELY, WITHIN THE BLACK)
MOUNTAINS AREA HYDROGRAPHIC BASIN)
(215), CLARK COUNTY, NEVADA.)

RULING

4939

GENERAL

I.

Application 66163 was filed on March 17, 2000, by Dry Lake Water Company, LLC to change the manner of use and the place of use of 2.0 cubic feet per second (cfs) not to exceed 592.06 acre feet annually (afa) of the underground water within the Black Mountains Groundwater Basin, previously appropriated under Permit 64547. The proposed manner and place of use is for quasi-municipal purposes within portions of Sections 32 and 33, T.17S., R.63E., M.D.B.&M., portions of Sections 3, 4, 5, 8, 9, 10, 11, 13, 14, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, all within T.18S., R.63E., M.D.B.&M., and portions of Sections 2, 3, 4, 5, 6, 7, 8 and 9, all within T.19S., R.63E., M.D.B.&M. The proposed point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T.19S., R.64E., M.D.B.&M. The existing manner and place of use is for heavy industrial purposes within Section 34, T.18S., R.63E., M.D.B.&M.¹

II.

Application 66166 was filed on March 17, 2000, by Dry Lake Water Company, LLC to change the manner of use and the place of use of 0.165 cfs not to exceed 119.44 afa of the underground water within

¹ File Number 66163, official records in the office of the State Engineer.

the Black Mountains Groundwater Basin previously appropriated under Permit 64540. The proposed manner and place of use is for quasi-municipal purposes within portions of Sections 32 and 33, T.17S., R.63E., M.D.B.&M., portions of Sections 3, 4, 5, 8, 9, 10, 11, 13, 14, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, all within T.18S., R.63E., M.D.B.&M., and portions of Sections 2, 3, 4, 5, 6, 7, 8 and 9, all within T.19S., R.63E., M.D.B.&M. The proposed point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 18, T.19S., R.64E., M.D.B.&M. The existing manner and place of use is for heavy industrial purposes within Section 34, T.18S., R.63E., M.D.B.&M.²

III.

Applications 66163 and 66166 were timely protested by Nevada Power Company (NPC) on the grounds that the existing manner of use was for mining purposes and that Applications 66163 and 66166 disingenuously identify this use as heavy industrial use. It is the protestant's contention that this discrepancy should be considered a fatal error.

FINDINGS OF FACT

I.

Applications 66163 and 66166 represent the most recent request to abrogate water rights that were originally established under Permits 55517 and 52614, respectively. These earlier water rights were filed to appropriate underground water for mining purposes outside of the Apex area. The manner of use of Permit 55517 was changed from mining to heavy industrial purposes with the State Engineer's approval of Permit 64547. The manner of use under Permit 52614 was carried through a series of change permits,³ with the transformation from mining to heavy industrial occurring with the approval of Permit 64540. The State Engineer

² File Number 66166, official records in the office of the State Engineer.

³ File Numbers 52614, 62692, 63312, 64540, official records in the office of the State Engineer.

finds that the permitted manner of use under Permits 64540 and 64547 is for heavy industrial purposes.

II.

It is the protestant's contention that Permits 64540 and 64547 were issued for mining purposes. The State Engineer finds that the manner of use permitted under Permits 64540 and 64547 is heavy industrial. Therefore, the grounds upon which NPC's protest is based can be overruled.

III.

Applications 66163 and 66166 request changes in existing permitted water rights. The State Engineer finds the approval of Applications 66163 and 66166 would not result in additional appropriations of underground water occurring from the Black Mountains Area groundwater basin.

IV.

The NPC timely filed a protest under NRS § 533.365 and the State Engineer considered this protest pursuant to NRS § 533.365. Change Applications 66163 and 66166 seek nothing more than a change in the manner of use from heavy industrial to quasi-municipal and to expand the place of use to a larger area. The State Engineer finds nothing in the protest as to how NPC would be injured by such a change. The State Engineer further finds nothing in the protest on which he could base a denial of Applications 66163 and 66166.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited from granting a permit for an application to change the public waters where:⁵

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(3).

- a. the proposed use conflicts with existing rights; or
- b. the proposed use threatens to prove detrimental to the public interest.

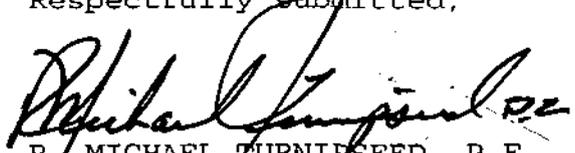
III.

Applications 66163 and 66166 if approved would replace a previous permitted heavy industrial use of water with a quasi-municipal use, without creating any additional appropriations of water from the Black Mountains Groundwater Basin. The State Engineer concludes that the approval of Applications 66163 and 66166 would not conflict with existing water rights, specifically the protestants, nor would it threaten to prove detrimental to the public interest.

RULING

The protest to Applications 66163 and 66166 is hereby overruled and Applications 66163 and 66166 are approved subject to existing rights and the submittal of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 15th day of
June, 2000.