

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

IN THE MATTER OF APPLICATION 66534,)
FILED TO CHANGE THE POINT OF)
DIVERSION AND THE PLACE OF USE OF)
THE WATERS OF AN UNDERGROUND SOURCE.)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 61552, WITHIN THE TRACY)
SEGMENT HYDROGRAPHIC BASIN (083),)
WASHOE COUNTY, NEVADA.)

RULING

5010

GENERAL

I.

Application 66534 was filed on June 30, 2000, by TRI Water and Sewer Company to change the point of diversion and the place of use of 1.68 cubic feet per second (cfs) of water, that being a portion of the underground waters previously appropriated under Permit 61552. The proposed manner and place of use is for quasi-municipal purposes within Sections 1, 2 and the W $\frac{1}{4}$ of Section 11, T.19N, R.21E., M.D.B.&M., Sections 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, N $\frac{1}{2}$ of Section 23, and the N $\frac{1}{2}$ of Section 24, T.19N., R.22E., M.D.B.&M., Sections 5, 6, 7, 8, 17, 18, 19, 20, 21, W $\frac{1}{2}$ of Section 9, W $\frac{1}{2}$ of Section 16 and the W $\frac{1}{2}$ of Section 22, T.19N., R.23E., M.D.B.&M., Section 36, T.20N., R.21E., M.D.B.&M., Sections 31, 32, 36, S $\frac{1}{2}$ of Section 33, S $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 34, T.20N., R.22E., M.D.B.&M., and the S $\frac{1}{2}$ of Section 29 and the S $\frac{1}{2}$ of Section 30, Sections 31 and 32, T.20N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.20N., R.22E., M.D.B.&M.¹

II.

Application 66534 was timely protested by Robert R. Squires, as agent for the Tracy/Pinion Power Plant, on the following grounds:²

¹ File No. 66534, official records in the office of the State Engineer.

² Ibid.

"Withdrawal of over 0.5 c.f.s. of groundwater in the vicinity of the Tracy/Pinion Power Plant may result in lowering of the groundwater levels and depletion of the groundwater aquifer from which the Power Plant depends."

FINDINGS OF FACT

I.

Any interested person may file with the State Engineer a written protest against the granting of an Application. This protest must set forth with reasonable certainty the grounds of the protest.³ The State Engineer may upon review of the protest, request additional information to gain a better understanding of the protestant's contentions.

By letter dated February 21, 2001, the protestant was requested by the office of the State Engineer to provide additional information which would validate his contention that the approval of Application 66534 may result in a depletion and lowering of the local groundwater levels, creating a negative impact on nearby existing water rights.

A report was hand delivered to the Division of Water Resources on March 14, 2001, from Dale E. Ferguson of Woodburn and Wedge, counsel for Sierra Pacific Power Company (Sierra). The report includes information developed by the protestant to support the protest. The cover letter to the report, recognizes that there is limited information on the groundwater basin, making it difficult to quantify the impact on water rights associated with the Tracy/Pinion Power Plant. Sierra requests in the cover letter, that if the State Engineer decides to grant Application 66534, that a monitoring plan be implemented.

Nevada Revised Statute § 533.365 provides that the State Engineer shall consider a protest timely filed, but that it is within his discretion whether or not to hold an administrative

³ NRS § 533.365.

hearing as to any particular water right Application.⁴ The State Engineer finds that he has sufficient information available to review the Application, the protestant has been afforded an opportunity to support his protest and a hearing in this instance is not necessary.

II.

The proposed point of diversion described under Application 66534 consists of an existing well located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T.20N., R.22E., M.D.B.M.,. This well site is separated from the protestant's nearest well by a distance of approximately 2,200 feet.⁵ Although, published detailed geologic mapping of this area is difficult to obtain, the information contained within the applicant's and the Tracy/Pinion well log reports offers some degree of insight into the general lithology of the areas of concern. The lithologic log detailing the well under Application 66534 describes a series of volcanic units ranging from 17 to 247 feet in thickness. Interspaced between these units are clay and gravel zones, none of which exceed 21 feet. The well driller's report (Well Log No. 78390), filed in Application 66534 also shows that a 100 foot cement seal was placed in the well. The State Engineer finds that the well which represents the proposed point of diversion under the subject Application is situated within a geologic setting that is dominated by volcanic units.

III.

The Tracy/Pinion Power Plant wells identified by the protestant are located within the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 33, T.20N., R.22E. south of the main channel of the Truckee River. Numerous well driller's reports have been produced for this immediate area. Information submitted by the protestant prior to February 21, 2001, indicates the Tracy/Pinion Power Plant wells as being

⁴ Ibid.

⁵ Supporting maps filed under Application 28054, 60080 and 66534.

associated with Well Driller's Reports 47423 and 13065.⁶ The lithologic log found under Report 47423 describes a geologic regime that is comprised of alluvial material, with no indication of the presence of any volcanic units. A similar setting is described under Report 13065, with the lithologic log dominated by gravels, the exception being found in two separate zones that are described in general terms as "solid rock". These two zones are reported as having respective thicknesses of 4 feet and 28 feet.⁷ The State Engineer finds that based upon the information found within the subject well logs the geologic setting in which the protestant's wells are constructed is primarily alluvial in nature.

IV.

The geologic settings, which characterize the local aquifers targeted by the Tracy/Pinion Power Plant and the applicant, differ significantly in their composition. The State Engineer finds any hydraulic interaction between the wells of the applicant and the protestant is limited.

V.

Any water right permit issued by the State Engineer must contain a condition that its approval may result in a reasonable lowering of the static water level at the appropriator's point of diversion.⁸ While the protestant has failed to provide conclusive evidence that an excessive lowering of the ground water levels would occur should Application 66534 be approved, the State Engineer finds that the potential for some unknown degree of drawdown may exist.

⁶ Letter from Robert Squires dated January 25, 2001, filed under Application 66534, official records in the office of the State Engineer.

⁷ Well Driller's Report Index Book 32, official records in the office of the State Engineer.

⁸ NRS § 534.110(4).

VI.

The State Engineer is empowered to regulate the manner in which groundwater is appropriated in the State of Nevada.⁹ If it is determined by the State Engineer that the approval of a water right application is creating an unreasonable drawdown effect on existing wells, measures may be taken to alleviate the negative effects. The State Engineer finds that Application 66534 can be issued with specific conditions that will enable the State Engineer to monitor and mitigate any unreasonable drawdown created by the withdrawal of water by Application 66534.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰

II.

The State Engineer is prohibited from granting an Application requesting a change of an existing water where:

- A. The proposed change would conflict with existing rights,
- B. The proposed change would threaten to prove detrimental to the public interest.¹¹

III.

The granting of Application 66534 was protested on the grounds that its approval may result in a lowering of the local ground water level. By letter dated February 21, 2001, the protestant was requested to provide additional information to support this contention. The protestant submitted additional information to further support his protest; however, the State Engineer concludes that the protest to Application 66534 has not been supported to a degree which would demonstrate that the

⁹ NRS chapters 533 and 534.

¹⁰ NRS chapters 533 and 534.

¹¹ NRS § 533.370(3).

approval of Application 66534 would adversely affect existing rights.

IV.

Application 66534 if approved would appropriate underground water from a source that is dominated by volcanic units, as compared to the Tracy/Pinion Power Plant points of diversion that appear to derive their water from an alluvial setting. The State Engineer concludes that the lithology of the applicant's proposed well site differs significantly with those found at the Tracy/Pinion Power Plant wells and that these variations may limit the hydraulic interaction between the aforementioned well sites.

V.

The protestant alleges that the granting of Application 66534 may cause an unreasonable lowering of the water table in their wells; however, they were unable to quantify the magnitude of this drawdown.

The State Engineer concludes that a monitoring plan and quarterly pumpage reports will supply sufficient evidence to determine any unforeseen adverse affect resulting from the pumping of the well described under Application 66534 on existing rights and the public interest.

The State Engineer concludes that if the approval of Application 66534 results in an unreasonable lowering of the static water level in the protestant's wells, mitigation will be required.

RULING

The protest to Application 66534 is hereby overruled.
Application 66534 is approved subject to:

- 1) Existing rights;
- 2) Payment of statutory fees;
- 3) Submittal of a quarterly report of pumpage by month;
- 4) A monitoring plan submitted and approved by the State Engineer prior to any diversion of water under this application. The monitoring plan must be submitted within 60 (sixty) days of the date of this ruling; and
- 5) If any impacts to existing rights are demonstrated the applicant will be required to mitigate the same to the satisfaction of the State Engineer.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer

HR/MDB/hf

Dated this 28th day of

March, 2001.