

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

IN THE MATTER OF APPLICATION)
52337 FILED TO CHANGE THE)
MANNER OF USE OF THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 43564 WITHIN THE ELKO)
SEGMENT HYDROGRAPHIC BASIN)
(049), ELKO COUNTY, NEVADA.

RULING

#5190

GENERAL

I.

Application 52337 was filed on July 21, 1988, by Donald E. and Arletta G. Sherlock to change the manner of use of 2.0 cubic feet per second of underground water previously appropriated under Permit 43564. The existing manner of use authorized under Permit 43564 is for geothermal industrial purposes, further described as heat extraction (a non-consumptive use for heating 6 trailer spaces). The point of diversion remains unchanged and is represented by an existing well, which is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 28, T.34N., R.55E., M.D.B.&M. The place of use is described as being located within the S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ of said Section 28. The manner of use proposed under Application 52337 is described as heat extraction, but now it is described as a consumptive use, that is for the heating of 160 Units.¹

II.

Application 52337 was timely protested by the Elko Heat Company on the grounds that its approval would adversely impact it's existing geothermal well permits, applied for geothermal rights and would deplete the regions geothermal resource, thereby proving detrimental to the public interest and welfare.¹

¹ File Number 52337, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The change in manner of use requested by Application 52337 goes beyond the transformation of an existing geothermal/ industrial use to a proposed use for heat extraction.¹ Permit 43564, which represents the existing water right requested for change under Application 52337, was permitted by the State Engineer under the condition that its appropriation of underground water would be non-consumptive in nature. Information contained within the remarks section of Permit 43564, indicates that any geothermal water that is pumped for its heat value, will be circulated back to its source. If this process is properly designed and operated, the net loss the geothermal source should approach zero.² The State Engineer finds that Permit 43564 was issued under the condition that the appropriation of water under that permit could not result in any loss of fluid from the geothermal resource.

II.

A water right permit grants the permittee the right to appropriate a specific amount of water for a specific manner of use under a set of terms and conditions that are issued with the permit. These limitations remain in effect, regardless of any abrogation that may occur through the approval of a subsequent change permit. This policy of perpetuating the original permit terms throughout the abrogation tree is applicable to Application 52337, which requests a change in the manner of use originally issued under Permit 43564. The State Engineer finds that any permit issued under Application 52337 would be subject to a set of limitations similar to those which governed the appropriation of water under Permit 43564, including the requirement that its manner of use be non-consumptive.

² File Number 43564, official records in the Office of the State Engineer.

III.

Information contained within the application form indicates that the manner of use requested under Application 52337 involves a consumptive use of water that is estimated by the applicant to be 258.0 acre feet annually.¹ The State Engineer finds that the approval of Application 52337 would replace the non-consumptive use required under Permit 43564 with a manner of use that would consume 258.0 acre feet of underground water annually.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

The State Engineer is prohibited by law from granting an application that requests a change of an existing water right permit where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

Permit 43564 represents the base right permit from which a single abrogation in manner of use is requested under Application 52337. This base right was approved by the State Engineer with a set of permit terms, one of which requires that all fluid removed from the geothermal reservoir be returned to this source. The State Engineer concludes that any proposed abrogations of Permit 43564 must be limited to a non-consumptive manner of use; therefore, no

³ NRS chapter 533.

⁴ NRS § 533.370(3).

consideration can be given to the consumptive use proposed by Application 52337. In addition, the State Engineer concludes that the approval of a manner of use that cannot be perpetuated through the abrogation process would threaten to prove detrimental to the public interest.

RULING

Application 52337 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 10th day of
December, 2002.