

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

IN THE MATTER OF APPLICATION 66850)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE AND)
THE CHANGE OF ITS POINT OF)
DIVERSION, PLACE OF USE AND MANNER)
OF USE REQUESTED UNDER APPLICATION)
71225 WITHIN THE MESQUITE VALLEY)
(SANDY VALLEY) HYDROGRAPHIC BASIN)
(163), CLARK COUNTY, NEVADA.)

RULING
5883

GENERAL

I.

Application 66850 was filed in the Office of the State Engineer by North Valley Holdings, LLC, on October 5, 2000. The proposed manner and place of use is described by the Applicant as being for industrial purposes within Lots 1, 2, 3, 4, 5, E½ NW¼, NW¼ NW¼, SW¼ NE¼, N½ SE¼ in addition to the SE¼ SE¼, all being within Section 22, T.25S., R.57E., M.D.B.&M. The Applicant intends to appropriate 3.2 cubic feet per second (cfs) of underground water from a proposed point of diversion that is located within the SE¼ SE¼ of Section 14, T.25S., R.57E., M.D.B.&M.

The Applicant further defines the proposed manner of use as an electric power generating facility that would have an estimated consumptive use of 1,000 acre-feet of underground water annually.¹

II.

Application 71225 was filed on May 17, 2004, by Vidler Water Co., Inc., to change the point of diversion, place of use and manner of use of the 3.2 cfs of the water heretofore requested for appropriation by Application 66850. The proposed changes, if approved would transfer the original point of diversion from the SE¼ SE¼ of Section 14, T.25S., R.57E., M.D.B.&M., to a new wellsite found within the NW¼ NE¼ of Section 14, T.25S., R.57E.,

¹ File No. 66850, official records in the Office of the State Engineer.

M.D.B.&M. It is also the Applicant's intention to change the existing manner of use from industrial to municipal use. The proposed place of use change would also expand the original place of use to a much larger area, described under Application 71225 as the entire Mesquite Valley Hydrographic Basin.²

III.

Title to Application 66850 and Application 71225 was assigned to JV Properties, LLC in the records of the Office of the State Engineer on April 10, 2006.^{1,2}

FINDINGS OF FACT

I.

Application 71225 requests a change in the point of diversion, place of use and manner of use of an earlier water right filing, represented by Application 66850. Prior to any consideration of Application 71225, a decision must be made as to the State Engineer's approval or denial of Application 66850. Should it be concluded that Application 66850 does not meet the criteria necessary for approval, resulting in its denial, the State Engineer finds that a similar action must be taken regarding Application 71225.

II.

After a Notice of Publication had been published in the appropriate public newspaper, the Office of the State Engineer received six timely written protests, all of which sought the denial of Application 66850 on various grounds.¹ A larger response was received when Application 71225 passed through the statutory publication and protest periods with sixty protests filed in opposition to its approval.² While these protests represent an important part of the application review process, the findings and conclusions that will be developed within this ruling will be based on issues that are not related to those set forth by the protestants.

² File No. 71225, official records in the Office of the State Engineer.

Under the provisions found under NRS § 533.365, the State Engineer shall consider a protested application and may at his discretion hold hearings and require the filing of such evidence as he may deem necessary to gain a full understanding of the rights involved. However, in the case of Application 66850, the State Engineer finds that sufficient information is readily available from the records of the State Engineer's office and there is no need to hold a public hearing in this matter.

III.

As with all water right applications, the State Engineer must determine if there is a reasonable expectation that the water requested under Application 66850 can be placed to its intended beneficial use within an acceptable time period. As stated under NRS § 533.375, the State Engineer may require an applicant to submit additional information to supplement the existing record. The intent is to provide the State Engineer with sufficient information to enable him to guard the public interest properly. Accordingly, the Applicant was requested by letter dated June 23, 2006, to provide the Office of the State Engineer with a general outline of the progress that had been made in developing the proposed power plant. Among the subjects that were to be addressed was the progress that had been achieved in obtaining the necessary local, state and federal permits to develop and operate the proposed power plant. In addition, the Applicant was instructed to submit information relating to the transfer of the land comprising the plant site from federal control. The letter sent to the Applicant concluded with the warning that a failure to respond within 30 days would result in Application 66580 being considered for denial.

A review of the record of correspondence that is maintained under Applications 66850 and 71225, indicates that no response to the June 23, 2006, letter has been received in the Office of the State Engineer. The fact that a properly endorsed receipt for the June 23, 2006, certified letter was received, indicates that the Applicant was properly noticed of the need to submit additional information, and was aware of the penalty for failing to timely respond.^{1,2} The State Engineer finds that the Applicant's failure to submit a timely written response to his request for additional information qualifies Application 66850 for denial.

IV.

The denial of Application 66850 would remove the base right that the Applicant intends to change under Application 71225. Without an active water right filing to support the proposed changes, the State Engineer finds that Application 71225 must also be denied.

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 to appropriate the public waters 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.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(5).

III.

More than four years have passed since Application 66850 was filed to provide underground water for a proposed power plant. During this time, the original applicant and its successor have failed to demonstrate a continued interest in completing this project. This lack of interest is illustrated by the Applicant's failure to respond to the State Engineer's request for additional information. The State Engineer concludes that it would not be in the public interest to approve a water right application that the Applicant has no interest in placing to its intended beneficial use.

IV.

The State Engineer concludes that once the denial of Application 66850 occurs, Application 71225 will be subsequently denied, on the grounds that the filing that forms its foundation has been removed.

RULING

Application 66850 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest. Application 71225 is denied on the grounds that its base right filing no longer exists. No ruling is made on the merits of the protests to either application.

Respectfully submitted,


Tracy Taylor, P.E.
State Engineer

TT/MB/jm

Dated this 11th day of
August, 2008.