

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

IN THE MATTER OF APPLICATION 42918 FILED)
TO APPROPRIATE THE PUBLIC WATERS FROM)
DEER TRACK SPRING WITHIN THE RAILROAD)
VALLEY (NORTHERN PART) GROUNDWATER BASIN)
(173B), WHITE PINE COUNTY, NEVADA.)

RULING

4477

GENERAL

I.

Application 42918 was filed on December 5, 1980, by Jay P. Mackenzie to appropriate 0.15 cubic feet per second (cfs) of water from Deer Track Spring for mining, milling and domestic purposes within Lot 3 and Lot 4, Section 3, T.15N., R.57E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.16N., R.57E., M.D.B.&M.¹

Application 42918 was timely protested by Richard W. Forman, as agent for Halstead-Forsgren Ranches, Inc. on the grounds that:

The granting of this application will conflict and interfere with existing prior rights.¹

The current owner-of-record of Application 42918 is Great West Land and Mining Company.¹

FINDINGS OF FACT

I.

The State Engineer conducted a field investigation into the matter of protested Application 42918 on September 18, 1984. The Report of the Field Investigation mentioned the possibility that an agreement between the applicant and protestant would be reached, and in the event an agreement was not reached, the report recommended additional review at the point of diversion to assess the impact on the protestant's existing water right.

¹File No. 42918, official records in the Office of the State Engineer.

II.

In an attempt to resolve any usage conflict with the protestant's existing water right, the applicant and its agents were notified by certified mail dated September 4, 1996, to submit additional justification data and information to the State Engineer's Office concerning the annual consumptive use of water for mining and milling purposes. Properly endorsed return receipts were received from the addressees, Mr. Copenhaver and Mr. Lewis. Notice to Great West Land and Mining Company and Mr. Wood were returned by the United States Postal Service both labelled "Attempted Not Known".¹

A 30-day time limit was assigned for the submission of a response or the application would be subject to denial. The State Engineer finds that the applicant was properly notified of the request for additional information and that to date no information has been received in response to the request for information. The State Engineer further finds that the September 4, 1996, letter requesting the additional information established that failure to comply within 30 days would result in the denial of the application.¹

III.

The State Engineer finds it is the responsibility of the applicant to keep this office informed as to a current mailing address.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.²

²NRS Chapters 533 and 534.

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the owner-of-record as will enable him to properly guard the public interest.³

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁴

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

IV.

The applicant has failed to submit the information requested to the State Engineer's Office. The State Engineer concludes that without the information requested, sufficient information is not available for the State Engineer to properly guard the public interest.

V.

It is the responsibility of any subsequent purchaser of the property or interest in this application to file a report of conveyance with the State Engineer.⁵ The State Engineer concludes that the applicant was properly noticed based on the addresses currently on file in the Office of the State Engineer.

³NRS 533.375.

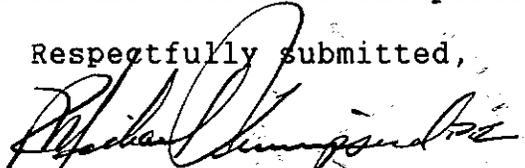
⁴NRS 533.370(3).

⁵NRS 533.384.

RULING

Application 42918 is hereby denied on the grounds that the applicant failed to submit the data and information requested by the State Engineer's Office and that without this information the granting of the application would be detrimental to the public interest. No finding is made on the merits of the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/ab

Dated this 17th day of
December, 1996.