

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

IN THE MATTER OF APPLICATION 42977 FILED)
TO APPROPRIATE THE PUBLIC WATERS FROM)
AN UNNAMED SPRING SOURCE WITHIN THE)
DIAMOND VALLEY HYDROGRAPHIC BASIN (153),)
EUREKA COUNTY, NEVADA.)

RULING

4861

GENERAL

I.

Richard Gerish and Lee Britton filed Application 42977, on December 18, 1980, to appropriate 0.25 cubic feet per second (c.f.s) of water from an unnamed spring source (Fera Well Spring) for mining, milling and domestic purposes. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.26N., R.53E., M.D.B.&M. The proposed place of use is described as being a portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and a portion of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29, T.26N., R.53E., M.D.B.&M.¹ Application 42977 became ready for action on June 20, 1981.¹

FINDINGS OF FACT

I.

The State Engineer requested mining justification information from the applicant by certified letter dated October 24, 1985.¹ The letter was mailed to current addresses on file for both the applicants and their agent. A properly endorsed receipt is also on file for the letter to the agent.¹ The letter to the applicant was returned by the U.S. Postal Service marked "Moved left no address", however, a new address was obtained and the letter subsequently resent on October 29, 1985. A properly endorsed receipt is on file for the October 29, 1985, letter to the applicant. The office of the State Engineer received no informational response. An additional request for updated mining justification information was sent to the applicant by certified letter dated November 18, 1996. The U.S. Postal Service returned the letter sent to the applicant marked "Forwarding Order Expired". The letter was subsequently re-sent to the applicants'

¹ File No. 42977, official records in the office of the State Engineer.

agent on January 16, 1997. A properly endorsed receipt is on file for the letter to the agent.¹

II.

An office memorandum dated February 21, 1997, indicated that co-applicant Britton was still interested in pursuing Application 42977 and would submit the justification information.¹ At the applicant's request, the letter dated January 16, 1997, was sent to a new address. The letter assigned a 30-day time limit from February 26, 1997, to submit the information. A properly endorsed receipt is on file for this letter to the applicants. When no submittal of information was received, one last information request was sent by certified mail to both the applicants and their agent dated August 11, 1997. Properly endorsed receipts are on file for both the applicants and their agent. The State Engineer finds that the required information has never been submitted despite multiple requests. The State Engineer further finds that the applicants and their agent were properly noticed of the request for additional information and that to date no information has been received in response.

III.

A review of assignment of ownership records on file in the office of the State Engineer indicates that no transfer of ownership documents have been received to date to change the ownership of Application 42977. The State Engineer finds that Richard Gerish and Lee Britton remain the owners of record of the said application and as the current owner of record they have been properly noticed for the requirement for additional information.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:³

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

III.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

IV.

The applicants and their agent were properly notified of the requirement for additional information concerning this application and have failed to submit the information requested to the State Engineer. The State Engineer concludes that without the information requested sufficient information is not available for the State Engineer to properly guard the public interest.

RULING

Application 42977 is hereby denied on the grounds that the applicants have not submitted the information requested by the State Engineer and that without this information the approval of Application 42977 would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/cl

Dated this 2nd day of
March, 2000.

² NRS Chapter 533.

³ NRS § 533.370(3).

⁴ NRS § 533.375.