

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

IN THE MATTER OF APPLICATION 64470)
FILED TO APPROPRIATE THE PUBLIC)
WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE JEAN LAKE)
VALLEY HYDROGRAPHIC BASIN (165),)
CLARK COUNTY, NEVADA.)

RULING
#5413

GENERAL

I.

Application 64470 was filed on September 22, 1998, by Southern Nevada Liteweight, Inc., to appropriate 0.2 cubic feet per second of water from an underground source for milling (gravel plant) purposes within the W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15 and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, T.24S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T.24S., R.60E., M.D.B.&M.¹

FINDINGS OF FACT

I.

When an application is received in the Office of the State Engineer requesting an appropriation of water for mining and milling purposes, additional requirements for the contents of the application apply.² The State Engineer may also request additional information about the project to properly guard the public interest.³ Before either approving or rejecting the application, the proper information must be received from the applicant. The applicant was first requested to send additional information regarding their milling (gravel plant) project on March 31, 1999. When the applicant failed to respond, a second letter was sent on September 9, 1999, with a warning that failure to respond within 30 days may result in denial of the application. The applicant responded to the second letter on July 11, 2000, and appeared to provide the information requested. The applicant also submitted additional information describing their project in a packet dated August 4, 2000. This packet included photographs of the operation, a copy of an operating permit from the Clark County Health District, an operating permit from the

¹ File No. 64470, official records in the Office of the State Engineer.

² NRS § 533.340 (4).

³ NRS § 533.375.

Bureau of Mining Regulation and Reclamation, and a letter from consultant Dennis Bryan. When the application came up for review, an examination of the information provided by the applicant raised more questions than answers.

The applicant indicated that the gravel plant was already in operation and consuming 220,000 gallons of water annually. The photographs and permits also showed an existing mining project. The Bryan letter mentions, "...SNL is a legitimate company who has a long-term commitment to mining in Hidden Valley." A thorough review by our office showed that the justification information submitted on July 11 and August 8, 2000, was for an existing gravel plant operation in the Hidden Valley (South) Hydrographic Basin and did not pertain to the proposed project in Jean Lake Valley under the place of use identified in Application 64470.

A certified letter was sent to the applicant on January 18, 2002, discussing Application 64470 and requesting that the applicant express a continued interest in pursuing said application. The applicant was also contacted by phone in January 2002, August 2003, December 2003, and January 2004 regarding Application 64470.¹ Ultimately, another certified letter was sent on March 17, 2004, to the applicant and its agents, formally requesting additional information for the proposed project. On March 25, 2004, the applicant's agent, requesting changes to Application 64470, sent an amended application to the Office of the State Engineer. The amended application proposed to change the point of diversion and place of use of the application to a project in Section 28, T.25S., R.60E., M.D.B.&M. Records in the Office of the State Engineer showed that the amended point of diversion and place of use was the same as the point of diversion and place of use as under Application 70008, filed by Four Star Aggregates on May 8, 2003. A letter from the applicant's agent that accompanied the amended application explained that this was an attempt to allow Four Star Aggregates to get an earlier priority.¹

Enclosed you will find an amended application to appropriate water for underground source for mining purposes, in the Jean Lake Basin.

Southern Nevada Liteweights intent is to replace their original application under 64470, with the amended application. They would like to hold their current priority filing, for it is in the same basin, and should not have to be readvertised. Southern Nevada Liteweights has entered into an agreement with Four Star Aggregates. If our request is granted and a permit is issued, Southern Nevada Liteweight will release its rights to

Four Star. This will make application 70008 for Four Star unnecessary, and it could be withdrawn.⁴

This amended application was rejected and returned along with a letter explaining why our office could not accept this amended application. The agent was informed that the change application process could not be circumvented and the only way to change the point of diversion, place of use and/or manner of use of Application 64470 was to file an application to change, associated filing fee and probably a supporting map.¹

On July 6, 2004, the applicant filed change Application 71409 to change the point of diversion and place of use of Application 64470. Under Item #15 Remarks on Application 71409, the applicant states, "If this Application is approved, Southern Nevada Liteweight, Inc. will release these rights to Four Star Aggregates as part of an ongoing Business Transaction. Please use supporting map filed under Application 70008 for proposed place of use to support this Application." As indicated by the letter from the applicant's agent and the remarks in Application 71409, the applicant's have made clear their intention to attempt to convey the early priority date of Application 64470 to Four Star Aggregates.

The State Engineer finds that the justification data submitted on July 11 and August 8, 2004, was for an existing project in a different location and has no relation to the proposed project in Jean Lake Valley under Application 64470. The State Engineer finds that the applicant then attempted to amend this application for water use at a different operation, in a different location, contrary to the change application process. The State Engineer finds that to approve a permit for milling (gravel plant) purposes, when the applicant did not provide satisfactory information to support the application, would threaten to prove detrimental to the public interest.

II.

By letter, received in the Office of the State Engineer on May 21, 2004, the applicant submitted additional information regarding details of the proposed gravel plant project in Jean Lake Valley. In part, the applicant was responding to a request of the State Engineer by letter dated March 17, 2004, to update the State Engineer on any contract for sale of mineral material with the United States Department of Interior, Bureau of Land Management, and any other authorizations to mine within the place of

⁴ See, letter by agent Robert Fulstone, date stamped March 25, 2004, within File No. 64470, official records in the Office of the State Engineer.

use under Application 64470. In response, the applicant stated, that it owns the land. This statement conflicts with land ownership information researched through the Clark County Assessor's Office. The Clark County Assessor's Office shows the land described under the place of use of Application 64470 as vacant and owned by the United States. In addition, the U.S.D.I. Bureau of Land Management (BLM) was contacted by telephone and they indicated that there are no Southern Nevada Liteweight mining claims in Section 15 and Section 22, T.24S., R.60E., M.D.B.&M.¹ Subsequently, the BLM was again contacted by phone and they further indicated that there are no mineral contracts and no plan of operations in the name of Southern Nevada Liteweight in the Jean Lake area.¹

The State Engineer finds that the United States owns the land described under the place of use and point of diversion of Application 64470. The State Engineer finds to approve a permit for milling purposes, when the applicant has provided erroneous information regarding land ownership to the State Engineer's Office, would threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁶

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights; or
- C. 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.

The applicant originally filed Application 64470 to support a proposed gravel plant operation in the Jean Lake Valley hydrographic basin, Sections 15 and 22, T.24S., R.60E., M.D.B.&M. The applicant then submitted information from an existing gravel

⁵ NRS chapters 533 and 534.

⁶ NRS § 533.370(4).

plant operation in Hidden Valley in an attempt to satisfy the State Engineer's request for information on the proposed project in Jean Lake Valley under Application 64470. The State Engineer's office discovered the applicant's attempt to use this information to satisfy the State Engineer's requirements under Application 64470 and therefore, could not process the application. Next, the applicant tried to amend the point of diversion and place of use of Application 64470 in an attempt to allow Four Star Aggregates to change their priority under Application 70008 to the earlier priority of Application 64470. The State Engineer's office rejected and returned the amended application and informed the applicant's agent that the change application process could not be circumvented. Subsequently, the applicant submitted additional information in support of Application 64470; however, the State Engineer's office found part of the information regarding land ownership to be erroneous. Finally, the applicant filed change Application 71409 for the purpose of conveying their priority date to Four Star Aggregates.

The State Engineer concludes that the applicant does not own or control the land described in the place of use of Application 64470. The State Engineer further concludes that to grant an application to appropriate the public waters under these circumstances would threaten to prove detrimental to the public interest.

RULING

Application 64470 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 27th day of

August, 2004.