

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

IN THE MATTER OF APPLICATIONS 45304)
AND 45305 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM UNNAMED SPRING)
SOURCES WITHIN THE BIG SMOKY VALLEY)
(TONOPAH FLAT) GROUNDWATER BASIN)
(137A), NYE COUNTY, NEVADA.)

RULING

4478

GENERAL

I.

Application 45304 was filed on February 9, 1982, by G. & S. Mining Company and B. & L. Mining Company to appropriate 0.15 cubic feet per second (cfs) of water from an Unnamed Spring source for mining, milling and domestic purposes within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.8N., R.40E., M.D.B.&M.¹ The point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.8N., R.40E., M.D.B.&M.

II.

Application 45305 was filed on February 9, 1982, by G. & S. Mining Company and B. & L. Mining Company to appropriate 0.15 cfs of water from an Unnamed Spring source for mining, milling and domestic purposes within NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.8N., R.40E., M.D.B.&M.² The point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, T.8N., R.40E., M.D.B.&M.

III.

Applications 45304 and 45305 were timely protested by William L. Johnson for U.S.D.A. Forest Service on the grounds that:

1. The proposed point of diversion is on National Forest land which the applicant does not control by lease, rent, or ownership.

¹File No. 45304, official records in the Office of the State Engineer.

²File No. 45305, official records in the Office of the State Engineer.

2. The source is a spring that has been continuously used to water livestock and wildlife since prior to 1870, which constitutes a vested right of the Forest Service for livestock watering purposes. This application would adversely affect the Forest Service vested right.
3. The applicant would not be able to develop or put the water to beneficial use without Forest Service approval, which would only be granted under certain circumstances.
4. The amount of water applied for is in excess of the actual flow and would conflict with Forest Service claims.¹

FINDINGS OF FACT

I.

The applicant, G. & S. Mining Company and B. & L. Mining Company and agent, George Denson Surveying, were notified by certified mail dated September 26, 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. A properly endorsed return receipt was received from Denson Surveying.¹ The return mail receipt for the applicant was returned by the United States Postal Service labelled "Attempted - Not Known".¹

The request for information assigned a 30-day time limit for the submission of a response or the applications would be subject to denial. The State Engineer finds that the applicant was properly notified and that to date no information was received in response to the request for information. The State Engineer further finds that the September 26, 1996, letter requesting the additional information established that failure to comply within 30 days would result in the denial of the applications.¹

CONCLUSIONS

I.

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

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.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁵

- 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.

³NRS Chapters 533 and 534.

⁴NRS 533.375.

⁵NRS 533.370(3).

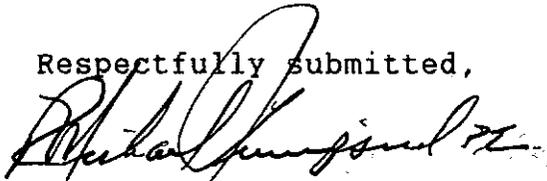
V.

It is the responsibility of any subsequent purchaser of the property or interest in these applications to file a report of conveyance with the State Engineer.⁶ The State Engineer concludes that the applicant was properly noticed based on the addresses currently on file in the Office of the State Engineer.

RULING

Applications 45304 and 45305 are 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 applications would be detrimental to the public interest. No finding is made on the merits of the protests.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/ab

Dated this 17th day of
December, 1996.

⁶NRS 533.384.