

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

IN THE MATTER OF APPLICATIONS 42938, )  
42939 AND 42940 FILED TO APPROPRIATE )  
THE PUBLIC WATERS FROM SPRING SOURCES )  
WITHIN THE RAILROAD VALLEY (NORTHERN )  
PART) GROUNDWATER BASIN (173B) AND )  
WITHIN THE NEWARK VALLEY GROUNDWATER )  
BASIN (154), WHITE PINE COUNTY, NEVADA.)

RULING

# 4490

GENERAL

I.

Applications 42938, 42939 and 42940 were filed on December 10, 1980, by Frank W. Lewis to appropriate 0.03 cubic feet per second (cfs) each of water from Read Spring, Mokomoke Spring and Paul Spring, respectively, for mining, milling and domestic purposes within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.16N., R.58E., M.D.B.&M.<sup>1</sup> The points of diversion are described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, SW $\frac{1}{4}$  SE $\frac{1}{4}$  and SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.16N., R.58E., M.D.B.&M.<sup>1</sup>

Applications 42938, 42939 and 42940 were timely protested by Halstead-Forsgren Ranches, Inc. on the grounds that the granting of this application would conflict and interfere with the protestant's existing water rights.

FINDINGS OF FACT

I.

A field investigation into the matter of protested Applications 42938, 42939 and 42940 was held on September 18, 1984.<sup>1</sup> The Report of Field Investigation mentions possible agreement for use of the springs between the protestant and applicant. The State Engineer finds that no such agreement regarding Applications 42938, 42939 and 42940 was ever submitted.

II.

The applicant and agent were notified by certified mail dated September 11, 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

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<sup>1</sup>File No. 42938, 42939 and 42940, official records in the Office of the State Engineer.

properly endorsed return receipt was received from the applicant on September 16, 1996.<sup>1</sup> The return mail receipt to the applicant's agent was returned by the United States Postal Service labelled "Forwarding Order Expired - Returned to Sender" and "Unclaimed - Returned to Sender".<sup>1</sup>

The certified mailing 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 11, 1996, letter requesting the additional information established that failure to comply within 30 days would result in the denial of the applications.<sup>1</sup>

#### CONCLUSIONS

##### I.

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

##### 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.<sup>3</sup>

##### III.

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

- 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.

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<sup>2</sup>NRS Chapters 533 and 534.

<sup>3</sup>NRS 533.375.

<sup>4</sup>NRS 533.370(3).

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.

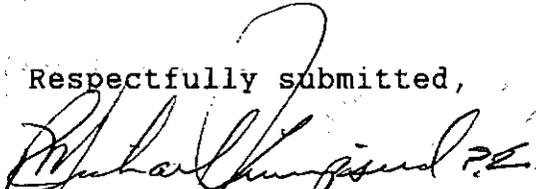
V.

It is the responsibility of any subsequent purchaser of the property or interest in these applications to file a report of conveyance with the State Engineer.<sup>5</sup> 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 42938, 42939 and 42940 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 22nd day of  
January, 1997.