

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

IN THE MATTER OF APPLICATION 46696)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNNAMED SPRING SOURCE,)
AND APPLICATION 46697 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
CLOVERS AREA GROUND WATER BASIN,)
LANDER COUNTY, NEVADA.)

RULING

4109

GENERAL

I.

Application 46696 was filed on March 4, 1983, by Kinetic Minerals, Inc., to appropriate 0.005 c.f.s. of water from an unnamed spring source for mining, milling and domestic purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, T.32N., R.43E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, T.32N., R.43E., M.D.B.&M.¹

II.

Application 46697 was filed on March 4, 1983, by Kinetic Minerals, Inc., to appropriate 0.5 c.f.s. of water from an underground source for mining, milling and domestic purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, T.32N., R.43E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 23, T.32N., R.43E., M.D.B.&M.¹

III.

Application 46696 was timely protested on April 26, 1983 by Louie Venturacci on the following grounds:

Summit Mining Corp. In 1982 started mining this claim & tore up the upper spring & put a cynide(sic) pond above the spring with no wate(sic) rights Wayne Testolin from Elko told them they could not do this without water rights then last fall they went down below and tore up another spring this is vested water for livestock & wildlife we object the afore mentioned & put back the way it originaly(sic) was

Therefore the protestant requests that the application be Denied and that an order be entered for such relief as the State Engineer deems just and proper.

¹ Public record in the office of the State Engineer.

IV.

Application 46696 was protested on May 20, 1983, by William A. Molini, Director, Nevada Department of Wildlife on the following grounds:

The granting of this permit would not be in the public interest.

The 'proposed works' described in the application was accomplished during the summer of 1982, before the application for water or described works was received by the State Engineer's Office.

The Division of Water Resources had previously issued a stop work order on the spring development, but work on the site was accomplished in spite of the order. The spring development resulted in the destruction of an attendant meadow which is critical for local sage grouse populations, as well as a variety of other wildlife species.

The water is now being used for a cyanide leach operation which may have negative impact on terrestrial wildlife species, as well as fisheries. These springs do contribute to the headwater sources of Trout Creek, which contains a wild brook trout population.

The livestock permittee in the area has also indicated that he intends to protest this application because the spring development has jeopardized the use of and access to the water by domestic livestock.

Therefore the protestant requests that the application be Denied and that an order be entered for such relief as the State Engineer deems just and proper.

FINDINGS OF FACT

I.

The applicant and agents were notified by certified mail on May 26, 1993, to submit additional information to the State Engineer's Office regarding consumptive use, specifically, requesting data concerning water conservation measures and amount of water to be recycled. The certified letter to Kinetic Minerals, Inc., was returned by the United States Postal Service labelled "Forwarding Order Expired".² The return receipts were received

² See Certified Mail, returned envelope on file in the office of the State Engineer, return Receipt No. P 139 025 207.

from the addressees Robert N. Caldwell, Summit Mining Company and Metals Research Corp., on May 28, 1993, June 4, 1993 and June 4, 1993, respectively.³

II.

The letter assigned a 30 day time limit to file the required information. To date, the information requested has not been received from the applicant or agents.⁴

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to guard the public interest properly.⁶

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁷

- 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. Therefore, sufficient information

³ See Certified Mail, return Receipt No's. P 139 025 208, P 139 025 209 and P 139 025 210.

⁴ A check of the records of the State Engineer indicates that no information has been received.

⁵ NRS Chapters 533 and 534.

⁶ NRS 533.375.

⁷ NRS Chapter 533.370(3).

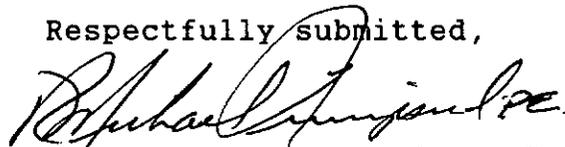
Ruling
Page 4

is not available for the State Engineer to guard the public interest properly.

RULING

Applications 46696 and 46697 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's Office and, therefore, the granting of said applications without the additional information requested would not be in the public interest. No finding is made on the protest by Louie Venturacci, or on the protest by the Nevada Department of Wildlife.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/pm

Dated this 31st day of
March, 1994