

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

IN THE MATTER OF APPLICATION 49260)
FILED TO APPROPRIATE THE WATERS OF)
STAR CREEK, WITHIN THE BUENA VISTA)
VALLEY GROUNDWATER BASIN (129),)
PERSHING COUNTY, NEVADA.)

RULING

#4434

GENERAL

I.

Application 49260 was filed on August 8, 1985, by Phillip Geertson to appropriate 0.55 cubic feet per second (cfs) of water from Star Creek for mining and milling purposes within the NE $\frac{1}{4}$ of Section 24, T.31N., R.34E., M.D.B.&M. and within the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 19, T.31N., R.35E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T.31N., R.34E., M.D.B.&M.¹

II.

Application 49260 was informally protested by Ted Fitzpatrick, Regional Land Manager, Santa Fe Pacific Realty Corporation on January 17, 1986, on the basis that Southern Pacific Land Company has vested water rights to the water in Star Creek, and that the mining operation would cause damage to the diversion works used by its leasee, Star Creek Ranch.¹

FINDINGS OF FACT

I.

After all parties had been noticed by certified mail, an administrative hearing in the matter of Application 49260 was held before representatives of the State Engineer on March 26, 1986, in Winnemucca, Nevada. Applicant's Exhibit No. 1 was entered into the record of the hearing and consisted of two pages of handwritten notes evidencing an agreement between the applicant, Phillip Geertson, and Ted Fitzpatrick representing Southern Pacific Land Company, and Maria Belzarena representing the Star Sheep Company.

¹File No. 49260, official records in the Office of the State Engineer.

Paragraph nine of said agreement provides for the withdrawal of Application 49260 by Phillip Geertson upon issuance of a written license agreement by Santa Fe which would lease Star Creek water from Proof 01177 for the applicant's mining and milling operation.² By letter dated August 29, 1989, the State Engineer informed the applicant that no final copy of the agreement had yet been received by the State Engineer; therefore, the file on Application 49260 remained open and ready for further action.

On May 27, 1993, a second letter was sent by the State Engineer to the applicant inquiring as to the whereabouts of the agreement and the withdrawal of Application 49260. The letter further informed the applicant that action would be withheld on Application 49260 for a period of 30 days and that failure to respond within 30 days would lead to the assumption that the applicant was no longer interested in pursuing the application.¹ The State Engineer finds that to date no response has been received to the inquiry letters.

CONCLUSIONS

I.

The State Engineer has jurisdiction over 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

²Exhibit No. 1, public administrative hearing before the State Engineer, March 26, 1986.

³NRS Chapter 533.

⁴NRS 533.375.

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.

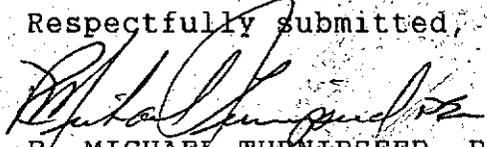
IV.

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.

RULING

Application 49260 is hereby denied on the grounds that the applicant failed to submit the information requested by the State Engineer's Office and that without this information the granting of the application would be detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 24th day of

September, 1996.

⁵NRS 533.370(3).