

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

IN THE MATTER OF APPLICATIONS)
52362, 52363, 52364 AND 52379)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF VARIOUS SURFACE AND)
UNDERGROUND SOURCES WITHIN THE)
EAST WALKER GROUNDWATER BASIN,)
(109) MINERAL COUNTY, NEVADA.)

RULING

4453

GENERAL

I.

Application 52362 was filed on August 3, 1988, by Vincent Brennen and Norman R. Smith to appropriate 0.5 cubic feet per second (cfs) of water from Judy B. Spring. The proposed manner and place of use is for mining, milling and domestic purposes within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16 all within T.8N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, T.8N., R.28E., M.D.B.&M.¹

II.

Application 52363 was filed on August 3, 1988, by Vincent Brennen and Norman R. Smith to appropriate 0.5 cfs of water from Sharon Spring for mining, milling and domestic purposes within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16 all within T.8N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, T.8N., R.28E., M.D.B.&M.²

¹File No. 52362, official records in the Office of the State Engineer.

²File No. 52363, official records in the Office of the State Engineer.

III.

Application 52364 was filed on August 3, 1988, by Vincent Brennen and Norman R. Smith to appropriate 0.5 cfs of water from Cabin Spring for mining, milling and domestic purposes within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16 all within T.8N., R.28E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.8N., R.28E., M.D.B.&M.³

IV.

Application 52379 was filed on August 5, 1988, by Vincent Brennen and Norman R. Smith to appropriate 0.5 cfs of underground water for mining, milling and domestic purposes within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16 all within T.8N., R.28E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, T.8N., R.28E., M.D.B.&M.⁴

V.

Applications 52362, 52363 and 52364 were timely protested by William A. Molini, Director, Nevada Division of Wildlife for the following reasons:^{1,2,3}

According to the Bureau of Land Management hydrological surveys, these seeps are not perennial with the exception on one flowing less than 0.01 second feet. These applications far exceed known flows. Carson City District hydrologist, Mr. Bashir Sularia, visited these sites this year and observed no flow.

The proposed development of these springs would adversely impact the following:

³File No. 52364, official records in the Office of the State Engineer.

⁴File No. 52379, official records in the Office of the State Engineer.

-Water would not be provided at the source during normal or high water years.

-Riparian habitat associated with these seeps would be permanently lost.

-The mining activities associated with these applications would directly and indirectly impact wildlife and wildlife habitat.

FINDINGS OF FACT

I.

By certified letter dated January 19, 1989, the State Engineer's Office requested the applicants or their agent to provide additional information concerning the projected annual water consumption at their proposed mining and milling project. Endorsed return receipts were received in the Office of the State Engineer on January 23, 1989.¹

Similar notices were sent to the applicants and their agent on March 30, 1989, and October 13, 1989. These letters informed both parties that if a response was not received within 30 days the State Engineer would assume the applicant was no longer interested in pursuing the applications, and they would be considered for denial. The State Engineer finds that no response was received to the numerous requests for additional information.

CONCLUSIONS

I.

The State Engineer has jurisdiction over 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 from the owner of record as will enable him to properly guard the public interest.⁶

⁵NRS Chapters 533 and 534.

⁶NRS 533.375.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:¹

- 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.

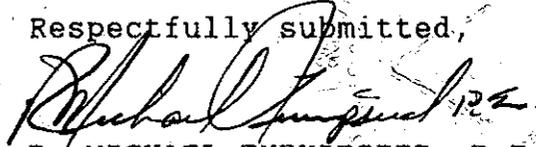
IV.

The applicants have failed to submit the information requested by 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

Applications 52362, 52363, 52364 and 52379 are hereby denied on the grounds that the applicants failed to submit the information requested by the State Engineer's Office and without this information the granting of these applications would be detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 19th day of
November, 1996.

¹NRS 533.370(3).