

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

IN THE MATTER OF APPLICATION 43251 FILED TO)
APPROPRIATE THE PUBLIC WATERS FROM COOKS)
CREEK WITHIN THE CARICO LAKE VALLEY)
HYDROGRAPHIC BASIN (055), LANDER COUNTY,)
NEVADA.)

RULING

4859

GENERAL

I.

Nevada Barite Inc. filed Application 43251 on February 23, 1981, to appropriate 0.56 cubic feet per second (c.f.s) of water for mining, milling and domestic purposes. The application indicated that the applicant was a Nevada corporation incorporated on March 13, 1980. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.28N., R.45E., M.D.B.&M. The proposed place of use is described as being portions of Lot 1, Section 3, N $\frac{1}{2}$ of Section 2, T.27N., R.45E., and a portion of E $\frac{1}{2}$ E $\frac{1}{2}$ of Section 34, W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 36, NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30 and SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 26, T.27N., R45E., M.D.B.&M. Application 43251 became ready for action by the State Engineer on May 29, 1981.¹

II.

Nevada Barite Inc., incorporated on March 13, 1980, is the current owner of record of Application 43251 in the official records in the office of the State Engineer.¹

FINDINGS OF FACT

I.

By letter dated December 16, 1981, the State Engineer's office requested information quantifying the annual consumptive use of water under the application. Two letters of response dated January 4 and 8, 1982, provided initial water usage requirements. A later request for updated water usage and recycling information was sent by certified mail from the State Engineer's office on July 17, 1984. The letter was mailed to the applicant's current address on file and assigned a 30-day time limit from

¹ File No. 43251, official records in the office of the State Engineer.

July 17, 1984, to submit the information. The letter to the applicant was returned by the U.S. Postal Service marked as "Unclaimed". The updated usage information has not been received. The State Engineer finds that the applicant and agent were properly notified of the need for additional information and that to date no information has been received in response.

II.

During preliminary application review, information obtained on April 17, 1997, from the Nevada Secretary of State indicated that the applicant Nevada Barite Inc. was no longer listed as a Nevada Corporation. Recent Nevada Secretary of State corporate information records of February 2, 2000, referenced a new Nevada Barite, Inc., incorporated on February 12, 1999. The 1999 incorporated company was contacted by the State Engineer's office. As reported by office memorandum dated February 9, 2000, personnel at the new company indicated that the 1999 Nevada Barite Inc. is not associated with the inactive corporation, has no water rights, is not a mining company, and is not in Lander County.¹ The State Engineer finds that applicant Nevada Barite Inc, incorporated on March 13, 1980, is not a currently active Nevada corporation and cannot acquire a water right.

III.

A review of assignment of ownership records on file in the office of the State Engineer indicates that no transfer of ownership documents have been received to date to change the ownership of Application 43251. The State Engineer finds that Nevada Barite Inc., incorporated in 1980, remains the owner of record of the said application and as the current owner of record was properly notified of the need for additional information.

CONCLUSIONS

I.

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

² NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:³

- A. there is no unappropriated water at the proposed source, or
- B. the proposed use conflicts with the existing rights, or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interest.⁴

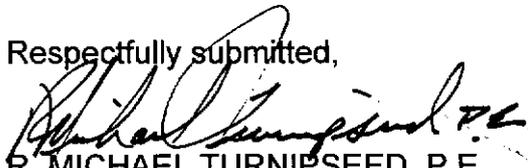
IV.

The applicant and its agent were properly notified of the requirement for additional information concerning said application and have failed to submit the information requested by the State Engineer. 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 43251 is hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer and that without this information the approval of the application would threaten to prove detrimental to the public interest.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/cl

Dated this 2nd day of
March, 2000.

³ NRS § 533.370 (3).

⁴ NRS § 533.375.