

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

IN THE MATTER OF APPLICATION 66322)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF SUMMIT SPRINGS STREAM)
WITHIN THE WALKER LAKE VALLEY)
WHISKEY FLAT-HAWTHORNE SUB AREA)
HYDROGRAPHIC BASIN (110-C), MINERAL)
COUNTY, NEVADA.)

RULING
5059

GENERAL

I.

Application 66322 was filed on May 3, 2000, by All Products Industries, Inc., Hawthorne Silica to appropriate 0.33 cubic feet per second (cfs) of water from Summit Springs Stream. The proposed manner of use and place of use is for mining and milling purposes within the NW $\frac{1}{4}$ of Section 34, T.7N., R.29E., 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 28, T.7N., R.29E., M.D.B.&M.¹

II.

Application 66322 was timely protested by Willow J. Phillips, Chris Hegg, Bob and Arlene Hoferer, Larry Bagley, Sue Knight, Bill and Cora Towe, and John and Janet Phillips on the grounds that the aforementioned parties held ownership of the lands surrounding the spring and had plans for their own use of this spring.¹

FINDINGS OF FACT

I.

Application 66322 requests an appropriation of 0.33 cfs of water for mining and milling purposes associated with the applicant's quartz silica operation. The mining and processing of this natural resource will require a consumptive use of water that has not been quantified by the applicant. Accordingly, by letter dated October 26, 2000, the applicant and its agent were requested

¹ File No. 66322, official records in the office of the State Engineer.

by certified mail to submit an estimate of the amount of water that would be consumptively used during the mining and milling process. Signed receipts for the certified letter were received from all of the noticed parties.¹ The State Engineer finds that a recent examination of the record of correspondence under Application 66322 indicates that both the applicant and its agent failed to respond to the State Engineer's October 26, 2000, request for additional information.

II.

On June 11, 2001, a second request for additional information was sent to the applicant and its agent. Both parties were also cautioned that a failure to respond to this second request within sixty days would result in the possible denial of Application 66322. Signed receipts for the certified letter were timely received in the office of the State Engineer. After the sixty day time period set forth in the June 11, 2001, letter had expired, it was determined that the applicant and its agent had failed to submit the requested information.¹ The State Engineer finds that on two separate occasions, the applicant has been requested to provide additional information to the office of the State Engineer, and has failed to comply with either one of these requests. The State Engineer, in addition, finds that the applicant was also advised that a failure to timely respond to the most current request for additional information would result in a possible denial of Application 66322.

CONCLUSIONS

I.

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

² NRS chapter 533.

II.

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

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer must be able to derive sufficient information from an application to ensure the approval of the application will not threaten to prove detrimental to the public interest. Given the applicant's failure to supplement the information contained within Application 66322 with additional information, the State Engineer concludes that there is insufficient information contained within the records of the State Engineer to properly guard the public interest.

RULING

Application 66322 is hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's office and that without this information the granting of said application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/hf

Dated this 30th day of
August, 2001.

³ NRS § 533.370(3).