

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

IN THE MATTER OF APPLICATION 57863 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE ALKALI SPRING VALLEY )  
GROUND WATER BASIN, ESERALDA )  
COUNTY, NEVADA. )

RULING  
# 4090

GENERAL

I.

Application 57863 was filed on July 16, 1992, by Atkins Mining Co., to appropriate 1.0 c.f.s. of water from an underground source (shaft) for mining and milling purposes within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 23, T.2S., R.42E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 23, T.2S., R.42E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

The applicant, Atkins Mining Co., and agent, Wallace T. Boundy, were notified by certified mail on August 24, 1992, 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 return receipts were received on August 27, and August 28, 1992, respectively.<sup>2</sup> To date the information requested has not been received from the applicant or agent.<sup>3</sup>

II.

The applicant was again notified by certified mail on December 24, 1992, to submit the additional information requested by the State Engineer's office. The return receipt was received from the

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<sup>1</sup> Public record in the office of the State Engineer.

<sup>2</sup> See Certified Mail, return Receipt No's. P 668 457 371 and P 668 457 372.

<sup>3</sup> A check of the record of the State Engineer indicates that no information has been received.

applicant, Atkins Mining Co., on December 30, 1992<sup>4</sup>. Notice to the agent Wallace T. Boundy was sent by non-certified mail also, on December 24, 1992. The letter assigned a 60 day time limit to file the required information or request a postponement of further action as provided by NRS 533.370, subsection 2. To date the information requested has not been received from the applicant or agent.<sup>3</sup>

III.

By telephone conversation with Diana Lefler of this office on August 24, 1993, applicant Atkins indicated he wished to withdraw Application 57863 and would send a letter of withdrawal.<sup>5</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>6</sup>

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.<sup>7</sup>

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>8</sup>

- 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.

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<sup>4</sup> See Certified Mail, return Receipt No. P 668 457 808.

<sup>5</sup> Office memorandum on file in the office of the State Engineer, under Application 57863.

<sup>6</sup> NRS Chapters 533 and 534.

<sup>7</sup> NRS 533.375.

<sup>8</sup> NRS Chapter 533.370(3).

IV.

A letter of withdrawal has not been received from the applicant or agent for Application 57863.

V.

The applicant has failed to submit the information requested by the State Engineer's office. Therefore, sufficient information is not available to the State Engineer to guard the public interest properly.

**RULING**

Application 57863, is 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 application without the additional information requested would not be in the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/DJL/pm

Dated this 11th day of  
February, 1994.