

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

IN THE MATTER OF APPLICATION 50384)
FILED TO APPROPRIATE THE WATERS OF)
AN UNDERGROUND SOURCE FOR MINING)
AND MILLING PURPOSES WITHIN THE)
ALKALI SPRING VALLEY GROUNDWATER)
BASIN, ESMERALDA COUNTY, NEVADA.)

RULING
4102

GENERAL

I.

Application 50384 was filed on December 1, 1986 by Judith Warner to appropriate 0.10 c.f.s. of water from an underground source for mining and milling purposes within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, T.2S., R.42E., M.D.B.&M. The proposed point of diversion consists of a partially timbered vertical mine shaft, described as being within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 23, T.2S., R.42E., M.D.B.&M.¹ The current owner-of-record is Aqua Gold Inc.

FINDINGS OF FACT

I.

Application 50384 was timely protested on January 29, 1987, by J.R. Ridgway, for the following reasons and on the following grounds to wit:

The location of this mine shaft is on my Placer claim, Texas 312 (S23 T 2S R 42E). I am also attempting to process and extract gold and minerals from the water in this shaft.¹

II.

Application 50384 was timely protested on February 2, 1987, by R.F. Snodgrass for the following reasons and on the following grounds to wit:

By right of continuous occupancy and development work since before October 1985, under the right and concept of pedis possessio. The three cardinal requirements are all met and exceeded - to-wit:

¹ Public records in the office of the state Engineer under Application 50384.

- a. Continuous occupancy and work on the property, my equipment on the property and operating, testing water availability and recovery determined.
- b. Exclusion of all others seeking to invade and make invalid claims there.
- c. Bona fide ore and water testing and developing, improved testing and processing procedures now in progress, and have been for at least the last fifteen months. Progress is slow but very encouraging. In addition, my pump is still in place at present, along with storage tanks.¹

III.

On June 22, 1992, the applicant, Judith Warner, requested that the Nevada Division of Water Resources provide her with information regarding the status of her application.¹

IV.

An examination of the records on file within the office of the State Engineer disclosed that Application 50384 became ready for action under the subject protests on February 28, 1987, with no further progress contemplated until the protests are resolved.¹

V.

By letter of July 13, 1992 under the signature of Jonathan C. Palm, Hearing Officer, Nevada Division of Water Resources, the protestants were requested to define their respective intentions regarding their continued protests to Application 50384.¹

VI.

The above mentioned correspondence addressed to R.F. Snodgrass was returned to the Nevada Division of Water Resources with the notation, "box closed, no forward."¹

VII.

Richard Ridgway withdrew his protest to Application 50384 by letter received at the Nevada Division of Water Resources on June 18, 1993.¹

VIII.

The applicant and agent were notified by certified mail on December 16, 1993, 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.¹ Information was received from Aqua Gold on March 8, 1994.¹

IX.

The proposed point of diversion and place of use under Application 50384 lie within the Alkali Spring Valley Groundwater Basin.¹

X.

The estimated perennial yield of the subject basin is estimated to be 3,000 acre-feet annually. Perennial yield is defined as the maximum amount of water that can be withdrawn each year over the long term without depleting the groundwater reservoir.²

XI.

Based upon information and records available in the office of the State Engineer, existing water rights in the Alkali Spring Valley Groundwater Basin total over 19,800 acre-feet annually.² The State Water Planning Director's records indicate that the total groundwater withdrawals under existing rights total less than 3,000 acre-feet annually.³

XII.

NRS 533.371, allows the State Engineer to issue permits for a finite period of time under certain conditions, more specifically, that the perennial yield of the basin will not be exceeded during the period of use of the permit.

² Nevada Division Water Planning Hydrographic Basin Summary 142; Alkali Spring Valley.

³ Public records in the office of Water Planning.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁴

II.

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

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.⁵

III.

The State Engineer concludes that the approval of Application 50384 will not conflict with existing rights or prove detrimental to the public interest.

IV.

The State Engineer concludes that the proposed manner of use, mining and milling, under Application 50384 are by nature temporary water use with a total duty not to exceed 10.5 million gallons annually. Said application can be issued for a finite period of time without exceeding the perennial yield of the Alkali Spring Valley Groundwater Basin.

V.

The State Engineer concludes that the failure of R.F. Snodgrass and/or his representative to provide addition information regarding the status of his protest represents a lack of interest on his behalf to pursue his protest.

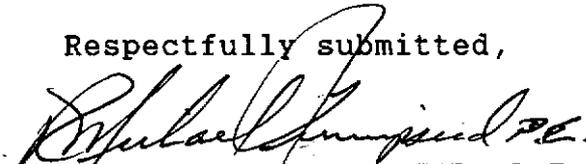
⁴ NRS 533.025 and 533.030(1).

⁵ NRS 533.370(3).

RULING

Application 50384 is hereby granted subject to the payment of the statutory permit fees existing rights and the provisions of NRS 533.371.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/DJL/pm

Dated this 29th day of
March, 1994.