

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

IN THE MATTER OF APPLICATION 51078)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE INDEPENDENCE)
VALLEY HYDROGRAPHIC BASIN (36),)
ELKO COUNTY, NEVADA.)

RULING
5239

GENERAL

I.

Application 51078 was filed on June 26, 1987, by the Federal Land Bank of Sacramento to appropriate 1.40 cubic feet per second (cfs) from an underground source for irrigation purposes. The underground source of water is further described as water resulting from the dewatering of a mining property previously appropriated and discharged under Permit 50715 from the Fisher [sic] Watt Mining Company Incorporated gold mining operation. The place of use is described as being located within portions of Sections 11 and 12, T.39N., R.51E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NE¼ (Lot 1) of Section 3, T.39N., R.51E., M.D.B.&M.¹

II.

Application 51078 was timely protested by Horizon Gold Shares, Inc. on the following grounds:

Horizon Gold Shares, Inc. is the operating joint venture partner of Fischer-Watt Gold Company, which joint venture is known as Tuscarora Gold Mines. All water from the source of the subject application is necessary for beneficial use under Fischer-Watt's Application No. 50715 for mining and milling purposes of the joint venture. The mining and milling operations of the joint venture have recently expanded and will be expanded considerably more over the next few years, thereby necessitating the use by the joint venture of all water from the subject source.¹

¹ File No. 51078, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The underground source of water for Application 51078 is described as water resulting from the dewatering of mining property previously appropriated and discharged under Permit 50715 from the Fischer-Watt Mining Co., Inc., gold mining operation. A review of records in the Office of the State Engineer shows Permit 50715 was cancelled on July 10, 1991, for failure to comply with the terms of the permit.² Due to the cancellation, water cannot be discharged under Permit 50715, and therefore, is unavailable for further appropriation. The State Engineer finds that Application 51078 cannot be approved because the source of water under cancelled Permit 50715 is no longer available.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.³

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

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

III.

The State Engineer concludes that Permit 50715 is cancelled and its water cannot be used as the source for Application 51078; therefore, there is no source of water available for appropriation.

² File No. 50715, official records in the Office of the State Engineer.

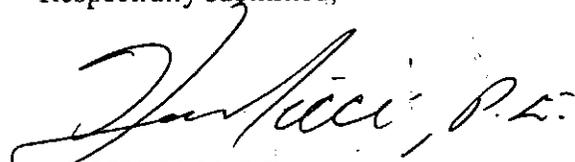
³ NRS chapter 533 and 534.

⁴ NRS § 533.370 (3).

RULING

Application 51078 is hereby denied on the grounds that there is no water available for appropriation. No ruling is made on the merits of the protest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 9th day of
May, 2003.