

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

IN THE MATTER OF APPLICATION 61320)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE CLOVERS AREA)
HYDROGRAPHIC BASIN (064), HUMBOLDT)
COUNTY, NEVADA.)

RULING

5103

GENERAL

I.

Application 61320 was filed on June 19, 1995 by Hemlo Gold Mines (USA), Inc., to appropriate 3.0 cubic feet per second of underground water. The proposed manner and place of use is for mineral exploration and mining purposes within many sections of T.35N., R.43E., T.36N., R. 43E., T.35N, R.44E., and T.36N. R.44E., all within the M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 16, T.35N., R.44E., M.D.B.&M.¹

II.

Application 61320 was timely protested by the Pershing County Water Conservation District of Nevada on grounds that are not applicable to the issues being addressed in this ruling.¹

FINDINGS OF FACT

I.

On June 15, 2001, the Office of the State Engineer obtained information from the Nevada Secretary of State's office regarding the corporate status of Hemlo Gold Mines (USA), Inc.¹ This information indicated that Hemlo Gold Mines (USA), Inc. was classified as a withdrawn entity.

Nevada Revised Statute § 533.325 provides that only a "person" can file an application to appropriate water. In general

¹ File No. 61320, official records in the Office of the State Engineer.

usage, a "person" is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.²

Nevada Revised Statute § 0.039 provides that except as otherwise expressly provided in a particular statute or required by the context, "person" means a natural person, any form of business or social organization, and any other non-governmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government. Nevada Revised Statute § 533.010 defines person as used in chapter 533 to include the United States and the State of Nevada. Nevada Revised Statute § 534.014 defines person to include any municipal corporation, power district, political subdivision of this or any state, or an agency of the United States Government.

The State Engineer finds that once the incorporation status of the applicant, Hemlo Gold Mines (USA), Inc., was withdrawn, the applicant ceased to be a "person" and thereby became disqualified from obtaining a water right permit under the Nevada Water Law.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and 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;

² Black's Law Dictionary, 1028 (5th ed. 1979).

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

- 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.

Application 61320 was filed by a corporation that is currently classified as a withdrawn entity by the Nevada Secretary of State's Office. The State Engineer concludes that upon the withdrawal of Hemlo Gold Mines (USA), Inc.'s incorporation status, the applicant became ineligible to apply for a water right in the State of Nevada. Therefore, to grant a water right to an applicant no longer entitled to apply for a water right would threaten to prove detrimental to the public interest.

RULING

Application 61320 is hereby denied on the grounds that its approval 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/MB/jm

Dated this 20th day of
February, 2002.