

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

IN THE MATTER OF APPLICATION 61549 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE BUENA VISTA VALLEY )  
HYDROGRAPHIC BASIN (129), PERSHING )  
COUNTY, NEVADA. )

RULING

# 5129

GENERAL

I.

Application 61549 was filed on September 15, 1995, by Nevatco Resources, L.L.C., to appropriate 1.00 cubic foot per second of underground water for mining, milling and domestic purposes. The proposed place of use is described as being located within the N $\frac{1}{2}$  S $\frac{1}{2}$  of Section 31, T.29N., R.35E., M.D.B.&M; the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 35, the SE $\frac{1}{4}$  and the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 36, both in T.29N., R.34E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 36.<sup>1</sup>

II.

Title to Application 61549 was assigned to the Gray Mountain Mining Company in the records of the Office of the State Engineer on August 20, 1996.<sup>1</sup>

FINDINGS OF FACT

I.

On March 5, 2002, the Office of the State Engineer obtained information from the Nevada Secretary of State's office regarding the corporate status of Nevatco Resources, L.L.C., and Gray Mountain Mining Company.<sup>1</sup> This information indicated that both parties were classified as revoked entities.

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

<sup>1</sup> File Number 61549, 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.<sup>2</sup>

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 upon revocation of the incorporation status of the Gray Mountain Mining Company by the Nevada Secretary of State, 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.<sup>3</sup>

##### II.

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

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<sup>2</sup> Black's Law Dictionary, 1028 (5<sup>th</sup> ed. 1979).

<sup>3</sup> NRS chapters 533 and 534.

<sup>4</sup> NRS § 533.370(3).

- 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.**

Application 61549 was filed by a corporation that is currently classified as a revoked entity by the Nevada Secretary of State's office. The State Engineer concludes that upon the revocation of Gray Mountain Mining Company's incorporation status, the applicant became ineligible to apply for a water right in the State of Nevada. Therefore, to grant a permit to an applicant that is no longer entitled to apply for a water right would threaten to prove detrimental to the public interest.

**RULING**

Application 61549 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/MDB/jm

Dated this 6th day of  
June, 2002.