

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

IN THE MATTER OF APPLICATION 55158 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE RUBY VALLEY GROUND )  
WATER BASIN, ELKO COUNTY, NEVADA. )

RULING  
# 4101

GENERAL

I.

Application 55158 was filed on August 7, 1990, by Gexa Gold Corporation to appropriate 1.25 c.f.s. of water from an underground source for mining, milling and domestic purposes within Section 10 and Section 15, T.26N., R.59E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 10, T.26N., R.59E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

The applicant, Gexa Gold Corporation, and agents Ross de Lipkau and Richard E. Fonger were notified by certified mail on January 7, 1991, 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 from the addressees on January 9, January 15, and January 11, 1991, respectively.<sup>2</sup> To date the information requested has not been received from the applicant or agents.<sup>3</sup>

II.

The applicant and agents were again notified by certified mail on April 10, 1991, to submit the additional information requested

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<sup>1</sup> Public record in the office of the State Engineer, under Application 55158.

<sup>2</sup> See Certified Mail, return Receipt No's. P 397 018 168, P 397 018 169 and P 397 018 170.

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

by the State Engineer's office. The return receipts were received from the addressees April 16, April 15, and April 18, 1991, respectively.<sup>4</sup> The letter assigned a 30 day time limit to file the required information or request a postponement of further action as provided by NRS 533.370, subsection 2.

III.

By correspondence dated May 9, 1991, Michael R. Mapa of Gexa Gold Corporation requested a postponement pursuant to NRS 533.370.<sup>1</sup>

IV.

Applicant, Gexa Gold Corporation, was granted a one-year postponement on May 16, 1991. The applicant and agents were notified by certified mail. The return receipts were received from all addressees on May 20, May 23, and May 22, 1991, respectively.<sup>5</sup>

V.

The applicant and agents were notified by certified mail on July 2, 1992, that the one-year postponement had expired. The letter assigned a 30 day time limit to file the required information or request on additional postponement of further action as provided by NRS 533.370(2). The return receipts were received from addressees on July 14, July 7 and July 8, 1992, respectively.<sup>6</sup>

VI.

By correspondence dated July 22, 1992, Laura B. Kalbfleisch of Gexa Gold Corporation requested a second postponement of further action.<sup>1</sup>

VII.

Applicant Gexa Gold Corporation was granted a second one-year postponement on August 6, 1992. The applicant and agents were notified by certified mail. The return receipts were received from

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<sup>4</sup> See Certified Mail, return Receipt No's. P 397 018 361, P 397 018 362 and P 397 018 363.

<sup>5</sup> See Certified Mail, return Receipt No's. P 397 018 412, P 397 018 414 and P 397 018 413.

<sup>6</sup> See certified mail, return Receipt No's. P 668 457 262, P 668 457 264 and P 668 457 263.

all addressees on August 11, August 12 and August 13, 1992, respectively.<sup>7</sup>

VIII.

The applicant, agents and others associated with Application 55158 were notified by certified mail on December 17, 1993, that the second one-year postponement had expired. The letter assigned a 30 day time limit to file the required information. The return receipts were received from all addressees on December 22, 27, 28 and 29, 1993.<sup>8</sup> To date the information requested has not been received from the applicant or agents.<sup>3</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.<sup>9</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>10</sup>

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>11</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>7</sup> See Certified Mail, return Receipt No's. P 668 457 614, P 668 457 616 and P 668 457 615.

<sup>8</sup> See Certified Mail, return Receipt No's. P 398 485 596, P 398 485 597, P 398 485 598, P 398 485 599 and P 398 485 600.

<sup>9</sup> NRS Chapters 533 and 534.

<sup>10</sup> NRS 533.375.

<sup>11</sup> NRS Chapter 533.370(3).

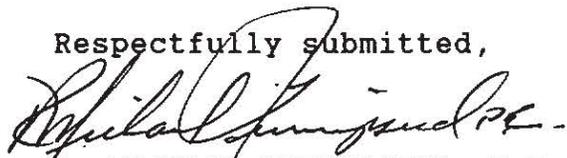
IV.

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

RULING

Application 55158 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 29th day of  
March, 1994.