

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

IN THE MATTER OF APPLICATION 25440 )  
FILED TO APPROPRIATE THE PUBLIC WATERS )  
OF GOLCONDA CANYON CREEK LOCATED WITHIN )  
THE PLEASANT VALLEY GROUNDWATER BASIN )  
(130), PERSHING COUNTY, NEVADA. )

RULING

# 4432

GENERAL

I.

Application 25440 was filed on January 21, 1970, by General Mercury Corp. to appropriate 1.0 cubic foot per second (cfs) of water from Golconda Canyon Creek for mining, milling and domestic purposes within a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.28N., R.39E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.28N., R.39E., M.D.B.&M.<sup>1</sup>

II.

The place of use under Application 25440 is identified as a millsite which is located upon federal land administered by the Bureau of Land Management.

III.

Application 25440 was timely protested by Manuel Chebagno on the grounds that he is the owner of a vested right to all the waters of the source and there is no water available for appropriation.<sup>1</sup>

FINDINGS OF FACT

I.

Application 25440 was filed in part to appropriate surface water for a milling operation which is located upon federal land, more specifically, a millsite located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.28N., R.39E., M.D.B.&M. Under the provision of the current federal mining laws, a milling operation can only occur

<sup>1</sup>File No. 25440, official records in the Office of the State Engineer.

on federal land if it resides within a valid millsite claim, which has been properly located and timely filed in the appropriate Office of the Bureau of Land Management.<sup>2</sup> No mention is made of the millsite as identified on the application map in the mining records of the Bureau of Land Management.<sup>3</sup> This indicates that even if the millsite claim was properly filed with the Bureau of Land Management at or near the time Application 25440 was filed in the Office of the State Engineer, any millsite claim has been allowed to lapse by the applicant and is now abandoned. The State Engineer finds that the applicant has no identifiable legal claim to the place of use envisioned under Application 25440 and has no possibility of placing the water to beneficial use.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>4</sup>

##### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>5</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>2</sup>Federal Land Policy Management Act of 1976.

<sup>3</sup>Public records in the Reno Office of the Bureau of Land Management, Mine Claim Index Files, May 22, 1996.

<sup>4</sup>NRS Chapters 533 and 534.

<sup>5</sup>NRS 533.370(3).

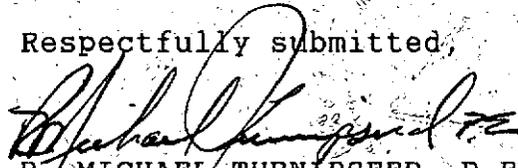
III.

Application 25440 requests an appropriation of surface water for mining, milling and domestic purposes within a place of use where such activities are not currently permitted by federal law. The State Engineer concludes that it would be detrimental to the public interest to grant an application to appropriate water where there is no possibility of placing the water to beneficial use.

RULING

Application 25440 is hereby denied on the grounds that to grant an application for mining, milling and domestic purposes on lands which the applicant cannot demonstrate the ability to place the water to beneficial use would threaten to prove detrimental to the public interest. No ruling is made as to the merits of the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/ab

Dated this 12th day of  
September, 1996.