

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

IN THE MATTER OF APPLICATION 31205 )  
FILED TO APPROPRIATE UNDERGROUND )  
WATER IN THE STAGECOACH SUB-AREA, )  
DAYTON VALLEY GROUNDWATER BASIN )  
(103), LYON COUNTY, NEVADA. )

RULING

# 4438

GENERAL

I.

Application 31205 was filed on March 21, 1977, by Utah International Inc., to appropriate 6.0 cubic feet per second (cfs) of water for use within Sections 7 and 18, T.17N., R.23E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 18. Application 31205 became ready for the State Engineer's action on July 3, 1977.<sup>1</sup>

FINDINGS OF FACT

I.

The State Engineer finds that Application 31205 is the third application that has been filed by Utah International Inc., or its predecessor, for mining and milling use at this site. Permits were issued for Applications 20161 and 23774 and were cancelled after proofs were not filed when due.<sup>2,3</sup>

II.

Application 20161 was filed on November 20, 1961. Permit 20161 was approved on July 25, 1962, for an appropriation of 3.0 cfs. Proof of completion of work was due on February 25, 1964, and requests for extension of time were approved extending the due date until February 25, 1967, the initial due date for the proof of beneficial use. Permit 20161 was cancelled on March 28, 1967, after the permittee did not respond to three notices that the proof

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<sup>1</sup>File No. 31205, official records in the Office of the State Engineer.

<sup>2</sup>File No. 20161, official records in the Office of the State Engineer.

of completion was due, and that a request for extension of time would not be approved for filing the proof of completion. The same notices stated that either the proof of beneficial use or a request for extension of time for the proof of beneficial use was due. The State Engineer finds no response to the three notices in the permit file.<sup>2</sup>

### III.

Application 23774 was filed on March 24, 1967. Permit 23774 was approved on August 14, 1969, for an appropriation of 6.0 cfs. Proof of completion of work was filed on April 10, 1973. Proof of beneficial use was first due on March 14, 1974, but annual requests for extension of time extended the due date to March 14, 1979. On May 23, 1979, the State Engineer notified the permittee's agent that the request for extension of time was denied and requested that the proof of beneficial use be filed within thirty (30) days. On June 26, 1979, the State Engineer cancelled Permit 23774, finding that the permittee was not proceeding with reasonable diligence to perfect the appropriation through beneficial use.<sup>3</sup>

The permittee appealed the cancellation of Permit 23774 to the Ninth Judicial District Court of Nevada in June 1979. On August 31, 1981, at the stipulation of permittee's counsel and counsel for the State Engineer, the court entered an order dismissing the appeal with prejudice.<sup>3</sup>

### IV.

The State Engineer finds that the Iron Mountain Ranch Subdivision has been recorded for 91 lots<sup>4</sup> within parts of Sections 7 and 18, T.17N., R.23E., part of the place of use under Application 31205. The subdivision was approved for water supply

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<sup>3</sup>File No. 23774, official records in the Office of the State Engineer.

<sup>4</sup>File No. 30003 indicates only 89 lots were recorded under Iron Mountain Ranches Unit I.

from an individual domestic well on each lot supported by a relinquishment of a groundwater right from Permit 30003, Certificate 9150.<sup>5</sup>

V.

The State Engineer finds that no mining claims or mining activity exists upon the place of use under Application 31205.<sup>6</sup>

VI.

An application to appropriate is filed with the intent to place water to a beneficial use for a specific purpose within a specific place of use. Application 31205 was filed to appropriate underground water for mining, milling and domestic purposes within Sections 7 and 18, T.17N., R.23E., M.D.B.&M. During the 1980's, this mining prospect was parcelled and subdivided in accordance with county ordinance and part became the Iron Mountain Ranch subdivision. The State Engineer finds that the subdivision of the land for the Mountain Ranch subdivision precludes any possibility of placing the water under the subject application to beneficial use for the mining and milling purposes identified in the application.

#### CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>7</sup>

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<sup>5</sup>Lyon County Assessor Parcel Maps, book 15, pages 32, 35 and 36; Subdivision Review No. 3289F-1, January 20, 1988, official records in the Office of the State Engineer, and File No. 30005, official records in the Office of the State Engineer.

<sup>6</sup>Bureau of Land Management, United States Department of Interior, Mining Claim Index, May 1996. Copy of claim index and master title plat filed in File No. 31205.

<sup>7</sup>NRS Chapter 533 and 534.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>8</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.

III.

The State Engineer concludes that the permittee's filing of numerous requests for extension of time instead of timely filing the requested proofs for Permit 20161 or Permit 23774 shows that the permittee was not proceeding with reasonable diligence to put the water to beneficial use and perfect the water right.

IV.

Application 31205 requests an appropriation of underground water for mining, milling and domestic purposes within a place of use which has been abandoned for mining use and which has been a residential subdivision in excess of eight years. The State Engineer concludes that it would threaten to prove detrimental to the public interest to grant an application to appropriate water where there is no possibility of placing the water to the intended beneficial use as identified in the application.

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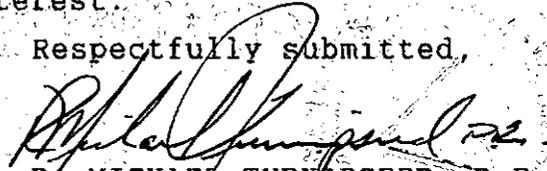
<sup>8</sup>NRS 533.370(3).

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RULING

Application 31205 is hereby denied on the grounds that to grant an application for mining purposes on lands which the applicant cannot demonstrate the ability to place the water to beneficial use for mining purposes would threaten to prove detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/CAB/ab

Dated this 13th day of  
September, 1996.