

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

IN THE MATTER OF APPLICATION 55209,)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE RUBY VALLEY)
HYDROGRAPHIC BASIN (176), ELKO)
COUNTY, NEVADA.)

RULING

4904

GENERAL

I.

Application 55209 was filed on August 21, 1990, by Angst Inc. to appropriate 0.5 cubic feet per second of underground water for mining, milling and domestic purposes within Sections 11, 12, 13 and 14, all within T. 26 N., R. 59 E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 11.¹

FINDINGS OF FACT

I.

Application 55209 was filed to provide underground water for a mining and milling operation that was being developed through a lease agreement between Angst, Inc. and Artemis Exploration Company (Artemis). By letter dated February 22, 1993, Artemis informed the State Engineer that because of an action filed by the Department of Justice with the United States District Court, Eastern District of New York, and by decree of Judge John Korman, all of the assets of Angst, Inc. had been forfeited to the United States. Judge Korman's decree also established and appointed a Special Trustee to administer and manage Angst's business affairs. One of the actions taken by the Special Trustee was the termination of the mining property lease that had existed between Angst, Inc. and Artemis. It was Artemis' contention that the termination of the lease transferred title to Application 55209

¹ File No. 55209, official records in the office of the State Engineer.

from Angst, Inc. to Artemis. To reinforce their claim of ownership Artemis submitted an agreement dated December 27, 1989, a Termination, Surrender and Release of Lease Agreement, dated December 29, 1992, and a Decree of Forfeiture and Order Appointing Special Trustee, Civil Action No. CV-92-2070 dated May 18, 1992. Upon review of these documents, a determination was made by the office the State Engineer that these documents would not transfer title of Permit 55209 to Artemis. The State Engineer's office then notified Artemis that additional transfer documents would have to be submitted to establish chain of title to their name. To this date, no additional transfer documents have been submitted by Artemis concerning Application 55209.¹ The State Engineer finds that Artemis cannot establish title to Application 55209, which currently remains under the name of the original applicant, Angst, Inc. in the records of the office of the State Engineer.

II.

When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert or use the waters.³ Information contained within the application file indicates that Angst, Inc. is no longer in a position to continue the development of the lode mining claims, which represent the project for which Application 55209 was filed.¹ The State Engineer finds that the necessity to appropriate water as described under Application 55209 has ceased, removing the need to issue a permit.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

² File No. 55209, see letter dated July 30, 1998 filed therein.

³ NRS § 533.045.

⁴ NRS chapters 533 and 534.

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

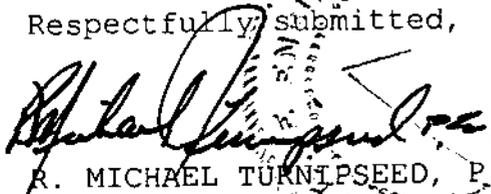
A water right application is filed to appropriate water for a specific purpose, which in the case of Application 55209, was to provide underground water for a precious metals mining and milling operation. Information found within the records of the office of the State Engineer indicates that the applicant's project no longer exists, therefore, the State Engineer concludes that the necessity to divert the requested water has ceased and that the approval of such an application would threaten to prove detrimental to the public interest.

⁵ NRS § 533.370(3).

RULING

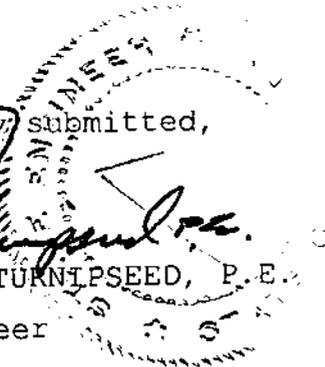
Application 55209 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer



RMT/MDB/dl

Dated this 31st day of
March, 2000.