

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

IN THE MATTER OF APPLICATIONS 40321)
AND 40322 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF THE JARBIDGE RIVER)
WITHIN THE JARBIDGE RIVER AREA)
HYDROGRAPHIC BASIN (039), ELKO)
COUNTY, NEVADA.)

RULING

5111

GENERAL

I.

Application 40321 was filed on January 15, 1980, by Jarbidge Gold and Silver Mining Corporation to appropriate 2.0 cubic feet per second (cfs) of water from the Jarbidge River. The proposed manner and place of use is for mining, milling and domestic purposes within the SE $\frac{1}{4}$ of Section 33, T.46N., R.58E., 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 said Section 33.¹

II.

Application 40322 was filed on January 15, 1980, by Jarbidge Gold and Silver Mining Corporation to appropriate 0.02 cfs of water from the Gorge Gulch. The proposed manner and place of use is for quasi-municipal purposes within the SE $\frac{1}{4}$ of Section 33, T.46N., R.58E., 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 33.²

FINDINGS OF FACT

I.

On February 19, 2002, the Office of the State Engineer obtained information from the Nevada Secretary of State's office regarding the corporate status of the Jarbidge Gold and Silver Mining Corporation.¹ This information indicated that the applicant is not currently incorporated within the State of Nevada. Nevada

¹ File Number 40321, official records in the Office of the State Engineer.

Revised Statute § 533.325 provides that only a "person" can file an application to appropriate water. In general usage, a "person" is defined to be a human being, firm, labor organization, partnership, association, corporation, legal representative, trustee, etc.³

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 the Jarbidge Gold and Silver Mining Corporations failure to achieve or maintain an active corporate status within the State of Nevada disqualifies it from obtaining water right permits from the Office of the State Engineer.

CONCLUSIONS

I.

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

II.

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

² File Number 40322, official records in the Office of the State Engineer.

³ Black's Law Dictionary, 1028(5th ed. 1979)

⁴ NRS chapters 533 and 534.

⁵ 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.

Applications 40321 and 40322 were filed by an applicant that is not currently registered as an active corporation in the State of Nevada. The State Engineer concludes that the approval of water right permits to a nonexistent corporate entity would threaten to prove detrimental to the public interest.

RULING

Applications 40321 and 40322 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



Hugh Ricci, P.E.
State Engineer

HR/MB/jm

Dated this 7th day of
March, 2002.