

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

IN THE MATTER OF APPLICATION 63813)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE LOVELOCK VALLEY -)
OREANA SUBAREA HYDROGRAPHIC BASIN)
(73-A), PERSHING COUNTY, NEVADA.)

RULING

5193

GENERAL

I.

Application 63813 was filed on February 6, 1998, by Magma Minerals, Inc., to appropriate 1.0 cubic foot per second of water from an underground source for milling ore and domestic purposes within a portion of the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 31, T.29N., R.33 E., M.D.B.&M.¹ The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, T.29N., R.33E., M.D.B.&M.

II.

Application 63813 was timely protested by the Lovelock Meadows Water District on the grounds that there is no water available for appropriation, and use of water under the application may unreasonably lower the static water level thereby adversely affect existing rights.

¹ File No. 63813, official records of the Office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer finds that on January 22, 2002, the applicant was notified by certified mail to submit additional information to the State Engineer's Office concerning the plans for use of the water. The certified mail receipts were received in the Office of the State Engineer on January 25 and 30, 2002. To date, no response has been received by the State Engineer to the letter requesting additional information.

II.

On November 8, 2002, the Office of the State Engineer obtained information from the Nevada Secretary of State that indicated that the corporate status of Magma Minerals, Inc., has been revoked.¹

Nevada 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.²

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

² Black's Law Dictionary, 1028 (5th ed. 1979).

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 state or any state, or an agency of the United States Government.

The State Engineer finds that upon revocation of the applicant's incorporation status by the Nevada Secretary of State, the applicant ceased to be a "person" and thereby became disqualified from obtaining a water right permit under Nevada Water Law.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

Before either approving or rejecting an application, the State Engineer may require such additional information from the applicant as will enable him to properly guard the public interest.⁴

³ NRS chapters 533 and 534.

⁴ NRS § 533.375.

III.

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

- 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.

IV.

The applicant has failed to submit the information requested to the State Engineer's Office. The State Engineer concludes that without the additional data sufficient information is not available to properly guard the public interest.

V.

Application 63813 was filed by a corporation that is currently classified as a revoked entity by the Nevada Secretary of State's Office. The State Engineer concludes that upon the revocation of the applicant's incorporation status, it became ineligible to apply for a water right in the State of Nevada. Therefore, to grant a water right to an applicant no longer entitled to apply for a water right would threaten to prove detrimental to the public interest.

RULING

Application 63813 is hereby denied on the grounds that the applicant has not submitted the data and information requested by the State Engineer's Office, and that without this information granting of the application would threaten to prove detrimental to the public interest. Application 63813 is also denied on the

⁵ NRS Chapter 533.370(3).

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grounds that to grant a water right application to an entity not entitled to apply would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 7th day of
January, 2003.