

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

IN THE MATTER OF APPLICATIONS 54980 AND)
58103 FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE MONITOR VALLEY, SOUTHERN)
PART (140-B) AND THE BIG SMOKY VALLEY,)
NORTHERN PART (137-B), HYDROGRAPHIC)
BASINS, NYE COUNTY, NEVADA.)

RULING
#5507

GENERAL

I.

Application 54980 was filed on June 21, 1990, by Western States Minerals, to appropriate 1.0 cubic feet per second (cfs) of underground water from a well for mining, milling and domestic purposes within the E½ of Section 24, and the SE¼ SE¼ of Section 13, T.13N., R.45E., M.D.B.&M., and the W½ SW¼ of Section 18 and the W½ of Section 19, T.13N., R46E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 13, T.13N., R.45E., M.D.B.&M.¹

II.

Application 58103 was filed on September 18, 1992, by Western States Minerals Corporation, to appropriate 0.25 cfs of underground water from a free flowing bore hole for mining, milling and domestic purposes within Sections 2 through 5, inclusive, and Sections 10 through 14, inclusive, T.13N., R.45E., and within Sections 31 through 33, inclusive, T.13½N., R45E. M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 14, T.13N., R.45E., M.D.B.&M.²

FINDINGS OF FACT

I.

Applications 54980 and 58103 request an appropriation of water for a mining, milling and domestic operation that was originally expected to require 265.90 million gallons of water annually (mga).^{1,2} When considering applications that request this manner of use, the State Engineer often requires the applicant to provide a more detailed description of the project and its anticipated water usage. By certified letters dated January 7, 1991,¹ regarding Application 54980

¹ File No. 54980, official records in the Office of the State Engineer.

² File No. 58103, official records in the Office of the State Engineer.

and April 5, 1993,² regarding Application 58103, the applicant and its agents, were noticed at their respective addresses of record of the need to submit updated justification and consumptive use data. Accordingly, the applicant submitted mining justification data for Application 54980 on May 6, 1991,¹ and for Application 58103 on June 17, 1993.² A copy of the State of Nevada Water Pollution Control Permit-Closure NEV70010 was received on April 13, 1999.¹ This permit indicated that Western States Minerals Corporation was not authorized to process ore and authorized closure work and monitoring procedures. Closure Permit NEV70010 is to expire on April 23, 2004, unless modified, suspended or revoked. The State Engineer finds that since closure may be imminent, ongoing or completed, past information contained within Applications 54980 and 58103 must be supplemented with updated justification and consumptive use data.

II.

In light of this permitted project closure, the State Engineer's office requested updated mining justification data by certified letter dated September 27, 2000.¹ If the applicant was still interested in pursuing these applications, the State Engineer's office requested an update on company addresses and agent choice, and information on a land swap. The applicant was also advised that a failure to submit this information within sixty days from the date of the letter would subject the applications to possible denial. Though several of the mailings were returned by the post office, two returned certified mail receipts were received from Western States Minerals Corporation from two different addresses. A written response was also received from Western States Minerals Corporation on January 29, 2002.¹ The response letter indicated that Northumberland Mine was in a temporary shut down mode, but wished to retain Applications 54980 and 58103 for future use. The applicant indicated that the additional water applied for under Applications 54980 and 58103 would be used to support and develop Northumberland Gold Mine and that exploration had continued. The applicant indicated that a mining project may someday again exist at the proposed place of use. While the applicant was unable to provide any additional information regarding the actual quantity of water required for this project, the applicant offered to "construct a scenario and estimate the volume requirements if this is necessary" (emphasis added).¹ The State Engineer finds that the applicant and its agent have been requested to provide additional information regarding the subject applications, and have failed to do so; therefore, Applications 54980 and 58103 can be considered for denial. The State Engineer further finds that the applicant has not justified the approval of additional water

rights for a mill to be reopened or additional facilities built at some undefined time in the future, of unknown size and location. The State Engineer finds that the project property may contain valuable mineral resources and some exploration activity and mining has occurred on the property. The State Engineer also finds that the applicant has no firm date for when this project will move forward. Over fourteen years have passed since the applications were filed and the applicant has given no time frame for moving forward to reopen actual mining and milling. The State Engineer finds there is no reasonable expectation of putting the water under Applications 54980 and 58103 to beneficial use in the foreseeable future.

III.

In addition to claims of vested rights for irrigation and stock watering, Western States Minerals (Corporation) has existing permitted and certificated water rights in hydrographic basins 137-B and 140-B for mining and milling purposes at or near the project site under Permit No. 27971, Certificate No. 11169; Permit No. 27973, Certificate No. 11170; Permit No. 41934, Certificate No. 11263; Permit No. 41935, Certificate No. 11264; Permit No. 41936, Certificate No. 10996; Permit No. 43786, Certificate No. 12604; Permit No. 47418, Certificate No. 12512 and Permit No. 47602, Certificate No. 12624. The total combined duty of water allowed under these certificates listed is 167.832 mga (515.06 acre-feet annually).³ While some sites may have been reclaimed, and wells plugged, a small portion of water under these existing rights has been occasionally used for drilling and other exploration activities. The State Engineer finds that, the applicant has sufficient water to continue with current exploration activities.

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

³ File Nos. 27971, 27973, 41934, 41935, 41936, 43786, 47418 and 47602, official records in the Office of the State Engineer.

⁴ NRS chapters 533 and 534.

⁵ NRS § 533.370(4).

- 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.

The State Engineer concludes that the applicant was properly notified of the requirement to submit additional information regarding Applications 54980 and 58103 and has failed to do so. The State Engineer concludes that without the required mining justification data, sufficient information is not available for the State Engineer to properly guard the public interest.

IV.

The applicant has had over fourteen years since the applications were filed to proceed with a renewed mining project. The State Engineer concludes that during closure, the applicant did not demonstrate an intention to place the water to beneficial use with reasonable diligence; therefore, it would threaten to prove detrimental to the public interest to consider granting the applications. Considering the applicant's existing water rights, the State Engineer concludes no additional water is necessary for the applicant to continue the exploration phase of the project and the approval of Applications 54980 and 58103 are not justified at this time.

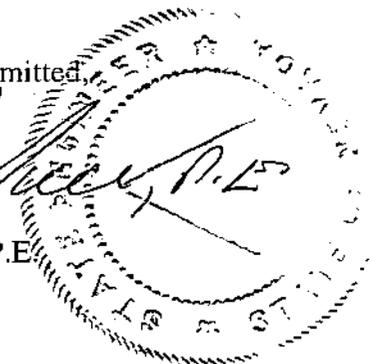
RULING

Applications 54980 and 58103 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/DJL/jm

Dated this 9th day of
September, 2005.