

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

IN THE MATTER OF APPLICATIONS 70741)
AND 70742 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE EAST WALKER AREA)
HYDROGRAPHIC BASIN (109), MINERAL)
COUNTY, NEVADA.)

RULING

#5944

GENERAL

I.

Application 70741 was filed on January 8, 2004 under the name of Metallic Ventures (U.S.), Inc., to appropriate 2.0 cubic feet per second (cfs) of underground water for mining, milling and dewatering purposes. The proposed place of use is described as being within a large block of mining claims that are located within portions of the following: Sections 13, 24, 25 and 36, T.5N., R.27E., M.D.B.&M., Sections 1, 2, 3, 4, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 29, 30 and 31, all within T.5N., R.28E., M.D.B.&M., and Section 6, T.5N., R.29E., M.D.B.&M. in addition to Sections 34, 35 and 36 of T.6N., R.28E., M.D.B.&M. The proposed point of diversion is described as the Prospectus Well, which is located within the SE1/4 NE1/4 of Section 18, T.5N., R.28E., M.D.B.&M.¹

II.

Application 70742 was filed on January 8, 2004, under the name of Metallic Ventures (U.S.), Inc., to appropriate 2.0 cfs of underground water for mining, milling and dewatering purposes. The proposed place of use is described as being within the same large block of mining claims as identified under Application 70741. The proposed point of diversion is described as the Martinez Well,

¹ File No. 70741, official records in the Office of the State Engineer.

which is located within the SW1/4 SE1/4 of Section 17, T.5N., R.28E., M.D.B.&M.²

FINDINGS OF FACT

I.

Applications 70741 and 70742 were filed to support Metallic Venture's precious metals mine located within the Aurora Mining District. Information provided by the Applicant indicates that this project was placed into care and maintenance status in 2004.¹

To determine if Metallic Ventures (U.S.), Inc., still had an active interest in pursuing Applications 70741 and 70742, the Applicant was contacted by the Nevada Division of Water Resources by letter dated April 28, 2005. A response to this letter was received on June 10, 2005, which confirmed that the project was in closure while all options, including a resumption of the mining operation, were evaluated. Additional letters were received from the Applicant on July 26, 2005, and April 11, 2006, in addition to October 12, 2006, stating that the mine was still in closure and it had discontinued pumping from the Martinez and Prospectus Wells. An examination of the pumping data specific to this project credits the Aurora Project with minimal pumpage during 2005 and zero pumpage during 2006 and 2007, and the first half of 2008.³

An informal field investigation held at the Prospectus and Martinez Wells on December 15, 2005, found each of them to be idle. A summary of activity for the Prospectus Well stated that, "Water was used for mining and milling purposes but since shutdown has been used for watchman's quarters." A similar degree of inactivity was found at the Martinez Well which consisted of a, "... casing with installed electric pump (currently burned out). Water was used for mining, milling and dewatering purposes but has not

² File No. 70742, official records in the Office of the State Engineer.

³ Year 2005, 2006, 2007 and 2008 Monthly Pumpage Report, Metallic Ventures Aurora Project, official records in the Office of the State Engineer.

been repaired since it was damaged."⁴ Recent aerial imagery of the mine site suggests that the operation continues to be maintained at caretaker status.⁵

A review of the Applicant's water right portfolio associated with the Aurora Project, finds that it currently holds in excess of 730 afa of active water rights, primarily for mining and milling purposes.⁶ At this point these permits and certificates remain in good standing and have not been subjected to cancellation or forfeiture actions. Any revival of the mining and milling operations could be supported under the company's existing water rights. If this demand ultimately exceeds 730 afa, the Applicant has the option of submitting new water right applications for consideration by the State Engineer. The State Engineer finds that only a small portion of the 730 acre feet of permitted and certificated water rights held by the Applicant for use at the Aurora Project has been used since 2005 and that there is no need for the additional water requested under the subject applications.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

⁴ East Walker River Basin Inventory 2005, official records in the Office of the State Engineer.

⁵ Google Earth Imagery, Aurora Area, obtained from its website, July 2, 2008.

⁶ West East Walker River Hydrographic Abstract, active water rights, July 2, 2008, official records in the Office of the State Engineer.

⁷ NRS chapters 533 and 534.

⁸ NRS § 533.370(5).

- C. the proposed use or change conflicts with protectable 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.

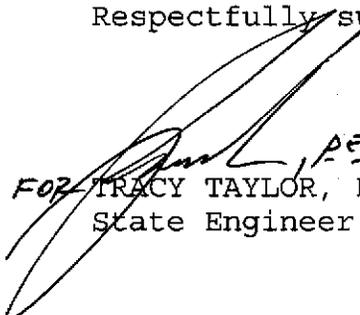
III.

Given the current low level of water use at the mine and the relatively large block of unused mining and milling rights held by the Applicant, the State Engineer concludes that the approval of additional water would threaten to prove detrimental to the public interest.

RULING

Applications 70741 and 70742 are hereby denied on the grounds that their approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



FOR TRACY TAYLOR, P.E.
State Engineer

TT/MB/jm

Dated this 11th day of
February, 2009.