

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

IN THE MATTER OF PERMIT 17109,)
CERTIFICATE 6439, AND PERMIT)
17110, CERTIFICATE 6002, FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS WITHIN THE BLACK ROCK)
DESERT HYDROGRAPHIC BASIN)
(28), PERSHING COUNTY, NEVADA.)

RULING
#6131

GENERAL

I.

Permit 17109 was issued on August 26, 1958, to Constant Minerals Separation Process, Inc., to appropriate 5.0 cubic feet per second (cfs) of groundwater from Barrel Spring and/or well for placer mining, milling, and domestic purposes within the Black Rock Desert Hydrographic Basin, Pershing County, Nevada. The point of diversion is identified as a well located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.34N., R.29E., M.D.B.&M.¹

II.

Permit 17110 was issued on August 26, 1958, to Constant Minerals Separation Process, Inc., to appropriate 5.0 cfs of groundwater Janke Spring and/or well for placer mining and domestic purposes within the Black Rock Desert Hydrographic Basin, Pershing County, Nevada. The point of diversion is identified as a well located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.34N., R.29E., M.D.B.&M.²

FINDINGS OF FACT

I.

On April 25, 1967, Constant Minerals Separation Process, Inc., submitted a Proof of Beneficial Use for Permit 17109, and Certificate 6439 was issued on January 12, 1968, for 2.0 cfs. On April 26, 1965, Constant Minerals Separation Process, Inc. submitted a Proof of Beneficial Use for Permit 17110, and Certificate 6002 was issued March 14, 1966, for 1.5 cfs.

¹ File No. 17109, official records in the Office of the State Engineer.

² File No. 17110, official records in the Office of the State Engineer.

II.

The ownership of Permits 17109 and 17110 passed to Pershing Gold through a merger and corporate name change. The original holder of the permits, Constant Minerals Separation Process, Inc., merged with Industrial and Petroleum, Inc., on September 1, 1961. The surviving entity was Industrial and Petroleum Inc.; however, documentation of the merger was not received in the State Engineer's office until sometime after March 1989. All documentation and correspondence in Permit files 17109 and 17110 is done under the name of Constant Minerals Separation Process, Inc.

No activity is recorded in the Permit files 17109 and 17110 from the time of issuance of Certificate 6002 until July 22, 1988, when the State Engineer sent a letter to Dale K. Barker of Salt Lake City, Utah concerning other pending applications.¹ A hand written note at the bottom of that letter states Permits 17109 and 17110 were also being assigned to Pershing Gold. On March 9, 1989, an Amendment to the Articles of Incorporation of Industrial and Petroleum Inc., was submitted to the Office of the State Engineer that changed the name of Industrial and Petroleum Inc., to Pershing Gold effective July 1987. Since 1989 there has been no further correspondence in the file of Permit 17109.

On September 15, 2009, the database for the Office of the State Engineer was checked and no record of pending conveyance documents was on file transferring the water rights to any other water right holder. The State Engineer finds no report of conveyance transferring ownership of Permit 17109 and 17110 has ever been filed in the Office of the State Engineer and the holder of the permits in the record of the office is Pershing Gold.

III.

On August 25, 2009, staff from the Office of the State Engineer conducted an informal field investigation at the points of diversion under Permits 17109 and 17110, and found the wells open, abandoned, and dry. No placer mining activity was discerned in the area.³ There are no valid mining claims in the name of Pershing

³ See, Field Investigation No. 1118, official records in the Office of the State Engineer.

Gold covering the place of use.⁴ Nevada Alaska Mining Co., Inc., currently owns mining claims covering the place of use of Permits 17109 and 17110; however, they have not filed applications for water rights with the Office of the State Engineer as of September 15, 2009.

On or about July 26, 2011, the State Engineer inquired with the Nevada Secretary of State as to whether Pershing Gold was an active company in the state of Nevada. The Secretary of State had no records indicating such a company is in existence.

Based on the evidence, that the permittee has failed to provide a current address for more than 20 years, that Pershing Gold does not exist as a business in the state of Nevada, that no entity or person has requested conveyance of the water right into the name of another water right holder in nearly 20 years, that no water is being used under the permits and the wells have been abandoned, the State Engineer finds there substantial evidence of an intent to abandon the water rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holders non-use of a water right is some evidence of an intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 17109, Certificate 6439, and Permit 17110, Certificate 6002, have been intentionally abandoned by the permit holder.

⁴ USDI Bureau of Land Management, Land and Mineral LR 2000 database.

⁵ NRS Chapters 533 and 534.

RULING

Permit 17109, Certificate 6439, and Permit 17110, Certificate 6002, are hereby declared abandoned.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 28th day of
July, 2011.