

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

IN THE MATTER OF APPLICATION 55026)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE RALSTON VALLEY)
HYDROGRAPHIC BASIN (141) NYE)
COUNTY, NEVADA.)

RULING

5004

GENERAL

I.

Application 55026 was filed on July 2, 1990, by Jelly Bean Mining Corp. to appropriate 1.12 cubic feet per second (cfs) of underground water for municipal use for Tonopah within the NW $\frac{1}{4}$ of Section 31, T.4N., R.43E., M.D.B.&M. The proposed point of diversion was described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T.4N., R.43E., M.D.B.&M.¹ Information submitted on Application 55026 indicated that applicant Jelly Bean Mining Corp. was incorporated in the State of Nevada on October 20, 1981.

FINDINGS OF FACT

I.

On August 8, 2000, the office of the State Engineer obtained information from the Nevada Secretary of State's office verifying that Jelly Bean Mining Corporation was incorporated on October 20, 1981. The office of the State Engineer also received information from the Nevada Secretary of State's office, which indicated that Jelly Bean Mining Corporation is currently classified as a revoked corporate entity in the state of Nevada.

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

¹ File Number 55026, official records in the office of the State Engineer.

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 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 upon revocation of the incorporation status of the applicant, Jelly Bean Mining Corp., 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.

II.

Application 55026, filed by Jelly Bean Mining Corp., proposed municipal use for Tonopah by supplying water to Tonopah Public Utilities. Accordingly, the State Engineer's office contacted both the applicant and the Town of Tonopah and Tonopah Public Utilities, from 1990 through 1992, to request additional information to verify and quantify proposed use by Tonopah. Despite responses from Tonopah and from James L. Buchanan II, agent for Jelly Bean Mining Corp., memorandum and correspondence in file 55026 indicate no authorization from the Town of Tonopah or Tonopah Public Utilities for Jelly Bean Mining Corp. to provide service to Tonopah within the Tonopah Public Utilities Service

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

area. On September 24, 1998, the State Engineer's office requested a statement of interest in the project from the Town of Tonopah. The State Engineer's office has not received any correspondence to date to authorize the proposed municipal use of Application 55026 by the Town of Tonopah. The State Engineer finds that there is no reasonable expectation of beneficial use for municipal purposes proposed under Application 55026.

CONCLUSIONS

I.

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

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁴

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights; or
- C. the proposed use threatens to prove detrimental to the public interest.

III.

Application 55026 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 Jelly Bean Mining Corp.'s incorporation status, the applicant 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.

IV.

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

Application 55026 was filed to provide municipal use for the Town of Tonopah and supply water to Tonopah Public Utilities. The State Engineer concludes that there is no reasonable expectation of beneficial use for the municipal purposes of Tonopah under Application 55026.

RULING

Application 55026 is hereby denied on the grounds that to grant a water right application to an entity not entitled to apply, and further on the grounds that to grant a water right application to an entity with no reasonable expectation of beneficial use, would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.

State Engineer

HR/DJL/hf

Dated this 1st day of
March, 2001.