

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

IN THE MATTER OF APPLICATION 50364)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE)
WITHIN THE STEPTOE VALLEY)
HYDROGRAPHIC BASIN (179), WHITE)
PINE COUNTY, NEVADA.)

RULING

5162

GENERAL

I.

Application 50364 was filed on November 14, 1986 by Sheba Gold to appropriate 0.033 cubic feet per second (cfs) of underground water. The proposed manner and place of use is for mining, milling and domestic purposes within the S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T.23N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 4.¹

FINDINGS OF FACT

I.

Application 50364 was filed to appropriate underground water for a proposed mining and milling operation. While the applicant has estimated that this project will require 0.033 cfs of water, the information presented on the original application form is insufficient to provide an insight into what percentage of this amount will be lost during the mining and milling process. In instances such as this, the State Engineer may request additional information from the applicant pursuant to the authority granted under Nevada Revised Statute § 533.375. In view of this, by letter dated February 23, 1987, Sheba Gold was requested to provide additional justification and consumptive use data to the Office of the State Engineer. The receipt for the certified mailing of this letter was endorsed by a representative of Sheba

¹ File Number 50364, official records in the Office of the State Engineer.

Gold, signifying that the applicant had been properly noticed of the need to provide additional data. While this request for specific data was ignored by the applicant, the Office of the State Engineer did receive several documents relating to lease options and agreements, none of which contained information relevant to consumptive use issues. Due to the lack of response generated by the letter dated February 23, 1987, a second request for additional information relating to ownership and mineral processing questions was sent to the applicant on November 17, 2000. Identical copies of this letter were also sent by certified mail to several individuals and companies that had been identified as having a possible interest in matters concerning the subject application. The November 17, 2000, letter carried with it a warning that a failure to timely respond within sixty days would result in the possible denial of Application 50364. While the majority of these certified letters were returned to the Office of the State Engineer unclaimed, a properly endorsed receipt from the applicant was received.¹ To this date, none of the information requested by the Office of the State Engineer has been submitted to this office. The State Engineer finds that the applicant has failed to respond to two separate requests for information and that this failure represents a lack of continued interest in pursuing the application.

II.

By letter dated January 2, 2001, Jay Mackenzie requested the State Engineer to withdraw Application 50364. This request was denied by the Office of the State Engineer on the grounds that there was no evidence that Jay Mackenzie was authorized by the applicant to take such action.¹ The State Engineer finds that only the applicant or its duly appointed agent can withdraw Application 50364; therefore, the rejection of the withdrawal request leaves Application 50364, classified as ready for action.

III.

On September 11, 2002, the Office of the State Engineer obtained information from the Nevada Secretary of State's Office regarding the corporate status of Sheba Gold. This information indicated that Sheba Gold Mines (USA), Inc. is a revoked entity.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 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 once the incorporation status of the applicant, Sheba Gold Mines (USA), Inc., was revoked, the applicant ceased to be a "person" and thereby became disqualified from obtaining a water right permit under the Nevada Water Law.

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

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 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 applicant has been provided several opportunities to demonstrate a continued interest in pursuing Application 50364, and has failed to do so. The State Engineer concludes that the approval of an application that the applicant has no further interest in completing would threaten to prove detrimental to the public interest.

IV.

Application 50364 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 Sheba Gold'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.

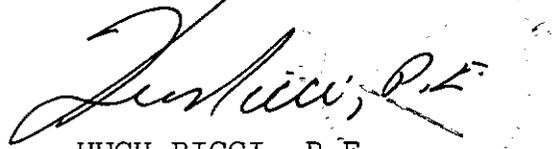
³ NRS chapters 533 and 534.

⁴ NRS § 533.370(3).

RULING

Application 50364 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MB/jm

Dated this 17th day of
October, 2002.