

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

IN THE MATTER OF APPLICATIONS)
61646, 61647, 61648, 61649,)
61650, 61651, 61652, 61653,)
61654, 61655, 61656, 61657,)
61658 AND 61659 FILED TO)
APPROPRIATE THE PUBLIC WATERS)
OF AN UNDERGROUND SOURCE)
WITHIN THE GRASS VALLEY (71))
AND PLEASANT VALLEY (130))
HYDROGRAPHIC BASINS, PERSHING)
COUNTY, NEVADA.)

RULING

5282

GENERAL

I.

Application 61646 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cubic feet per second (cfs) of underground water from the Grass Valley Hydrographic Basin for mining, milling and domestic purposes within Sections 2, 3, 10, 11, 14, 15, the E½ of Section 21, all of Sections 22, 23, 26, 27, the E½ of Section 28, the N½ of Section 34, all within T.30N., R.38E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 14, T.30N., R.38E., M.D.B.&M.¹

Application 61647 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of the underground water from the Grass Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under

¹ File No. 61646, official records of the Office of the State Engineer; Exhibit No. 2, public administrative hearing before the State Engineer, December 5, 2002. Hereinafter exhibits from the hearing and the hearing transcript will be referred to by the exhibit number or the transcript page.

Application 61646. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 14, T.30N., R.38E., M.D.B.&M.²

Application 61648 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Grass Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SE¼ NW¼ of Section 14, T.30N., R.38E., M.D.B.&M.³

Application 61649 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Grass Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 14, T.30N., R.38E., M.D.B.&M.⁴

Application 61650 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 15, T.30N., R.38E., M.D.B.&M.⁵

² File No. 61647, official records of the Office of the State Engineer; Exhibit No. 3.

³ File No. 61648, official records of the Office of the State Engineer; Exhibit No. 4.

⁴ File No. 61649, official records of the Office of the State Engineer; Exhibit No. 5.

⁵ File No. 61650, official records of the Office of the State Engineer; Exhibit No. 6.

Application 61651 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.30N., R.38E., M.D.B.&M.⁶

Application 61652 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T.30N., R.38E., M.D.B.&M.⁷

Application 61653 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T.30N., R.38E., M.D.B.&M.⁸

Application 61654 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use

⁶ File No. 61651, official records of the Office of the State Engineer; Exhibit No. 7.

⁷ File No. 61652, official records of the Office of the State Engineer; Exhibit No. 8.

⁸ File No. 61653, official records of the Office of the State Engineer; Exhibit No. 9.

described under Application 61646. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 15, T.30N., R.38E., M.D.B.&M.⁹

Application 61655 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SE¼ SE¼ of Section 15, T.30N., R.38E., M.D.B.&M.¹⁰

Application 61656 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 14, T.30N., R.38E., M.D.B.&M.¹¹

Application 61657 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the NW¼ NW¼ of Section 23, T.30N., R.38E., M.D.B.&M.¹²

⁹ File No. 61654, official records of the Office of the State Engineer; Exhibit No. 10.

¹⁰ File No. 61655, official records of the Office of the State Engineer; Exhibit No. 11.

¹¹ File No. 61656, official records of the Office of the State Engineer; Exhibit No. 12.

¹² File No. 61657, official records of the Office of the State Engineer; Exhibit No. 13.

Application 61658 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 22, T.30N., R.38E., M.D.B.&M.¹³

Application 61659 was filed on November 1, 1995, by Kinross Goldbanks Mining Company to appropriate 4.0 cfs of underground water from the Pleasant Valley Hydrographic Basin for mining, milling and domestic purposes within the same place of use described under Application 61646. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 22, T.30N., R.38E., M.D.B.&M.¹⁴

II.

Applications 61646, 61647, 61648, 61649, 61650, 61651, 61652, 61653, 61654, 61655, 61656, 61657, 61658 and 61659 were timely protested by the United States Department of Interior, Bureau of Land Management (BLM) on the grounds that the land described in both the places of use and points of diversion is public land, and to the date of the protests the applicant had not filed for authorization to conduct mining activities on that land. Further, that approval of the applications should be withheld until such time as the environmental impacts from the mining activities and groundwater withdrawal could be analyzed.¹⁵

¹³ File No. 61658, official records of the Office of the State Engineer; Exhibit No. 14.

¹⁴ File No. 61659, official records of the Office of the State Engineer; Exhibit No. 15.

¹⁵ Exhibit No. 16.

III.

Applications 61646, 61647, 61648, 61649, 61650, 61651, 61652, 61653, 61654, 61655, 61656, 61657, 61658 and 61659 were timely protested by Agri-Beef Co. - IL Ranch on the grounds that the proposed dewatering project could have impacts on existing rights owned by Agri-Beef Co. - IL Ranch.¹⁶

IV.

After all parties of interest were duly noticed by certified mail, a public administrative hearing was held on December 5, 2002, before the State Engineer at Carson City, Nevada.¹⁷

FINDINGS OF FACT

I.

The water right applications at issue here were filed in 1995 for a mining project known as the "Goldbanks Project."¹⁸ Kinross Gold U.S.A., Inc. (Kinross) acquired a 50% interest in the Goldbanks Project in 1995, a 100% interest in 1997, and in 1998 auctioned the property to Newmont Mining Company (Newmont), which drilled additional exploration holes. When Newmont refocused its business it returned the project to Kinross.¹⁹ In late 1995 or early 1996, Kinross submitted a plan of operations for the development of the Goldbanks Project to the BLM,²⁰ and in July 1999 the BLM issued its Preliminary Draft Environmental Impact Statement for the Goldbanks Project.²¹ However, also in July 1999 Kinross notified the BLM of the termination of the Goldbanks

¹⁶ Exhibit No. 17.

¹⁷ Transcript, public administrative hearing before the State Engineer, December 5, 2002.

¹⁸ Exhibit No. 21.

¹⁹ Transcript, p. 21.

²⁰ Transcript, pp. 115-116.

²¹ Exhibit No. 21.

Project.²² No new request for a mining proposal has been filed with the BLM, which from a regulatory point of view makes the project "dead."²³

The witness for Kinross did not provide any evidence of a new plan of operation and could not say when Kinross could or would submit a new plan of operation for the Goldbanks Project.²⁴ "Until we get a better gold price or we have found additional reserves it [the project] would probably not [go forward] unless there was another company that had a different spin or angle or view on it that might take it forward. Newmont looked at it before. There may be somebody else out there that would be interested."²⁵

The applicant presented testimony indicating that it holds about 500 mineral claims on the Goldbanks project for which it pays approximately \$50,000 per year to hold the claims, and that it has drilled approximately 1,200 exploration holes and has spent millions on exploration.²⁶

Nevada Revised Statute § 533.030 provides that water may be appropriated for a beneficial use and not otherwise. Nevada Revised Statute § 533.035 provides that beneficial use "shall be the basis, the measure and the limit of the right to the use of water." An applicant requesting water for mining purposes needs to show the method of applying and utilizing the water.²⁷ Nevada Revised Statute § 533.370(1)(c) provides the State Engineer shall approve an application which contemplates the application of water to beneficial use if the applicant has provided proof satisfactory

²² Exhibit No. 22.

²³ Transcript, pp. 117-120.

²⁴ Transcript, pp. 34-35, 41.

²⁵ Transcript, pp. 42-43.

²⁶ Transcript, pp. 21-22.

²⁷ NRS § 533.340(4).

to the State Engineer of his intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence.

The State Engineer finds that, while the applicant has spent a significant amount of money in exploration, there was no evidence showing any active mining project being pursued for the Goldbanks Project by the applicant. The State Engineer finds there is no evidence that the applicant intends to move forward with reasonable diligence on the Goldbanks Project. Rather, the evidence provided indicates a wait and see attitude, a maybe, maybe not, look towards the project, and the evidence supports a finding that the Goldbanks Project at this time is considered "dead."

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.²⁸

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:²⁹

- 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.

As previously noted, NRS § 533.030 provides that water may be appropriated for a beneficial use and not otherwise, NRS § 533.035 provides that beneficial use "shall be the basis, the measure and

²⁸ NRS chapters 533 and 534.

²⁹ NRS § 533.370(3).

the limit of the right to the use of water," NRS § 533.340(4) provides an applicant requesting water for mining purposes needs to show the method of applying and utilizing the water, and NRS § 533.370(1)(c) provides the State Engineer shall approve an application which contemplates the application of water to beneficial use if the applicant has provided proof satisfactory to the State Engineer of his intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence.

The State Engineer concludes the applicant has not proved to the State Engineer's satisfaction a good faith intention to move forward on the project with reasonable diligence and to grant water right permits under those circumstances would threaten to prove detrimental to the public interest.

III.

The applicant's legal counsel argued that NRS § 533.370 provides that if an application is granted the applicant may request the State Engineer delay one year in the actual granting of the physical permit.³⁰ Nevada Revised Statute § 533.370(2) provides that action on a protested application may be postponed by the state engineer upon written authorization by the applicant and protestant. The State Engineer concludes there is no support in law for the position taken by the applicant's legal counsel, and action will not be postponed.

RULING

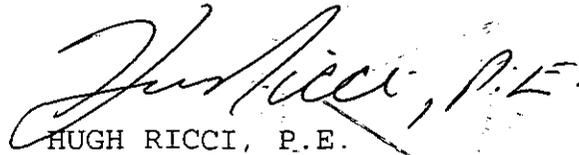
Applications 61646, 61647, 61648, 61649, 61650, 61651, 61652, 61653, 61654, 61655, 61656, 61657, 61658 and 61659 are hereby denied on the grounds that the applicant did not prove to the State Engineer's satisfaction a good faith intention to move

³⁰ Transcript, pp. 43-44.

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forward on the project with reasonable diligence and to grant water right permits under those circumstances would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 22nd day of
September, 2003.