

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

IN THE MATTER OF APPLICATION)
52887 FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE)
AMARGOSA DESERT HYDROGRAPHIC)
BASIN (230), NYE COUNTY,)
NEVADA.)

RULING
#5502

GENERAL

I.

Application 52887 was filed on January 26, 1989, by Industrial Mineral Ventures, Inc., and later assigned to Floridin Company, to appropriate 1.0 cubic feet per second of underground water for mining, milling and domestic purposes within Section 29, T.17S., R.49E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 12, T.17S., R.48E., M.D.B.&M.¹

II.

Application 52887 was protested on March 20, 1989, by the United States, National Park Service on the following grounds:¹

The application, if granted, may cause injury to reserved and appropriative water rights of the United States, Death Valley National Monument, including the United States' reserved water rights at Devil's Hole, a detached unit of Death Valley National Monument.

FINDINGS OF FACT

I.

The State Engineer requested mining justification information from the applicant by certified letter dated March 6, 1989. The letter was mailed to current addresses on file for both the applicant and agent. Properly endorsed receipts are on file for the letters. On April 3, 1989, the applicant Industrial Mineral

¹ File No. 52887, official records in the Office of the State Engineer.

Ventures requested a one-year postponement of action for Application 52887. On July 11, 1989, the State Engineer's office sought comment on the applicant's postponement request from the protestant. The protestant's response provisionally allowed the one-year postponement and the State Engineer's office subsequently granted the one-year postponement on August 8, 1989. On August 14, 1990, the State Engineer's office notified the applicant that the one-year postponement had expired and required the submission of mining information previously requested in the March 6, 1989, correspondence. The letter assigned a 30 day time limit from August 14, 1990, to submit the information. While properly endorsed receipts were on file for this letter to the applicant, the letter was resent to additional addresses per agent correspondence of August 17, 1990. Again, properly endorsed receipts were received for the letter of August 14, 1990.¹

The State Engineer requested updated mining justification information from the applicant by certified letter dated September 17, 2003. The letter was mailed to current addresses on file for both the applicant and agent. The letter assigned a 60 day time limit from September 17, 2003, to submit the information. Properly endorsed receipts are on file for the letters. Subsequent phone conversations with various parties possibly associated with Application 52887, from September through November 2003, also failed to obtain current updated mining justification information.¹ The State Engineer finds that the required information has never been submitted despite multiple written and verbal requests, spanning over thirteen years. The State Engineer further finds that the applicant and agent were properly noticed of the request for additional information and that to date no information has been received.

II.

By letter dated January 26, 1990, correspondence was sent to U.S. Borax reporting problems assigning ownership from Industrial

Mineral Ventures, Inc. to Gulf Resources and Chemical Corporation with insufficient fees and non-certified documents. By letter dated August 10, 1990, Application 52887 was assigned to show Floridin Company, as the current owner-of-record, and the non-certified documents were returned. Correspondence from agent Ross E. de Lipkau, dated May 20, 1993, mentioned a request by "permittee, IMV, a Division of Floridin Company..." (emphasis added). Subsequent phone conversations with various parties possibly associated with Application 52887, from September through November 2003, also failed to obtain current updated ownership information. To date no assignment of ownership to IMV, a Division of Floridin Company has been filed in the Office of the State Engineer.¹

On July 8, 2003, the Office of the State Engineer obtained information from the Nevada Secretary of State's office verifying that Floridin Company was incorporated on April 12, 1989. The Office of the State Engineer also received information from the Nevada Secretary of State's office, which indicated that Floridin Company is currently classified as a withdrawn corporate entity in the state of Nevada. No corporate information was listed for IMV, a Division of Floridin Company.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.

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

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.³

The State Engineer finds that upon withdrawal of the incorporation status of the applicant by the Nevada Secretary of State, Floridin Company ceased to be a "person" and thereby became disqualified from obtaining a water right permit under Nevada Water Law. The State Engineer finds that it is the responsibility of the applicant to update ownership records, when necessary, and to maintain an active corporate status.

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 and agent were properly notified of the requirement for additional information concerning this application

³ NRS chapters 533 and 534.

⁴ NRS § 533.370(4).

and have failed to submit the information requested to the State Engineer. The State Engineer concludes that without the information requested, sufficient information is not available for the State Engineer to properly guard the public interest.

IV.

The owner-of-record on file for Application 52887 is currently classified as a withdrawn entity by the Nevada Secretary of State's office. The State Engineer concludes that upon the withdrawal of Floridin Company'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.

V.

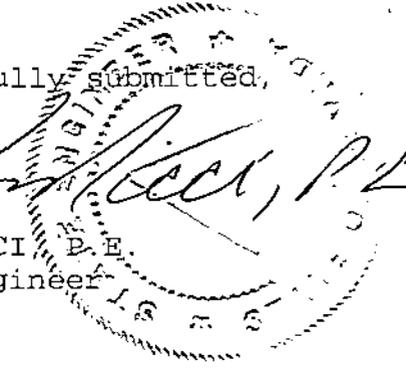
No assignment of ownership to IMV, a Division of Floridin Company, or other updated corporate ownership, has been filed in the Office of the State Engineer. The State Engineer concludes that it is the responsibility of the applicant to update ownership records and to maintain an active corporate status.

RULING

Application 52887 is hereby denied on the grounds that the approval of said application would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protest.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer



HR/DJL/jm

Dated this 2nd day of
September, 2005.