

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE OWNERSHIP OF)  
PERMIT 31239, CERTIFICATE 10334, TO)  
APPROPRIATE THE PUBLIC WATERS OF THE)  
STATE OF NEVADA FROM AN)  
UNDERGROUND SOURCE IN SPRING)  
VALLEY, WHITE PINE COUNTY, NEVADA. )

RULING

3245'

GENERAL

I.

Application 31239 was filed on March 25, 1977, by Clark Mining Corporation of Winnemucca, Nevada, to appropriate 3.06 c.f.s. of water from an underground source for mining, milling and domestic purposes within the E1/2 Section 10, S1/2 Section 11, SW1/4 Section 12, W1/2 Section 13, all of Section 14, and the E1/2 Section 15, T.14N., R.67E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 15, T.14N., R.67E., M.D.B.&M.<sup>1</sup>

A permit was granted on October 2, 1977, for 3.06 c.f.s. not to exceed 721.87 million gallons annually. Subsequently, on June 1, 1981, Richard W. Forman filed proof of beneficial use on behalf of Clark Mining Corporation, now situated in Ely, Nevada, claiming 0.49 c.f.s. of water and the total use of 57,816,000 gallons per year for mining, milling and domestic purposes. Ultimately, Certificate 10334 was issued under Permit 31239 for 0.49 c.f.s. of water not to exceed 57.816 million gallons annually. The place of use described on the certificate is the same as the place of use described on the permit. Certificate 10334 was issued on September 24, 1982.

-----  
<sup>1</sup> Public record in the office of the State Engineer under Permit 31239.

II.

On October 13, 1982, an instrument was filed in the State Engineer's office entitled "Water Deed" purporting to convey water Application 31239 from Clark Mining Corporation to Sophie C. Clark.<sup>2</sup> This water deed, filed in the office of the State Engineer, is an original document executed by Waldo R. Clark, President, and Sophie C. Clark, Secretary, dated September 24, 1982. On February 13, 1984, a Bill of Sale and Quitclaim Deed were received in the office of the State Engineer transferring the subject permit from Clark Mining Corporation to Warren Rogers. Both the Quitclaim Deed and the Bill of Sale, with a copy of Permit 31239 attached, were executed on February 11, 1980. The Quitclaim Deed was recorded on the White Pine County records on February 25, 1980, and was executed by Waldo R. Clark, President, and Sophie Clark Secretary. The Bill of Sale was recorded on the White Pine County records on February 3, 1984, and was executed by Waldo R. Clark.<sup>3</sup>

III.

On November 7, 1984, after proper notice, the State Engineer held a hearing in Ely, Nevada, for the purpose of developing a record of evidence and testimony relating to the two deeds described for the purpose of determining the ownership of the water right evidenced by Permit 31239, Certificate 10334.

IV.

At said hearing, Warren Rogers and Sophie Clark appeared, gave sworn testimony and entered exhibits in support of their respective positions.

---

<sup>2</sup> State Engineer's Hearing, November 7, 1984, State's Exhibit No. 4.

<sup>3</sup> State Engineer's Hearing, November 7, 1984, State's Exhibit No. 5.

V.

Mrs. Clark testified that she was one of the owners of Clark Mining Corporation, that the corporation had sold the claims described on the Quitclaim Deed to Mr. Rogers, that she is the Sophie Clark that executed the Quitclaim Deed and the Water Deed, and that she was aware of the Bill of Sale. Mrs. Clark further said that in 1981 she was of the opinion that the Rogers claims were abandoned, so she filed mining claims on that property and executed the Water Deed (along with Waldo Clark) to herself because she felt the water right was abandoned also.<sup>4</sup>

VI.

Mr. Rogers testified that he has not abandoned the claim described in the Quitclaim Deed and made offer of proof by means of documents to substantiate such claims and that, by virtue of the Quitclaim Deed and the Bill of Sale with permit attached, it was his understanding that he acquired all the title to the water right under Permit 31239, Certificate 10334.<sup>5</sup>

Mrs. Clark stated she did not know whether all the water right was intended to be transferred by the Bill of Sale.<sup>6</sup>

**FINDINGS OF FACT**

I.

The Bill of Sale with permit attached contains wording used to transfer property and, when coupled with the Quitclaim Deed and testimony, establishes that ownership of the entire water right under Certificate 10334 was transferred to Warren Rogers on February 11, 1980.

-----  
<sup>4</sup> State Engineer's Hearing, November 7, 1984, Transcript, pp. 15-30.

<sup>5</sup> State Engineer's Hearing, November 7, 1984, Transcript, pp. 32-99.

<sup>6</sup> State Engineer's Hearing, November 7, 1984, Transcript, p. 51.

II.

The Clark Mining Corporation to Warren Rogers transactions are as follows:

The Quitclaim Deed was executed and recorded in White Pine County in 1980 and received by the State Engineer in 1984. The Bill of Sale was executed in 1980, recorded in White Pine County in 1984 and received by the State Engineer in 1984.

III.

The Clark Mining Corporation to Sophie Clark transaction is as follows:

The Water Right Deed was executed in 1982, was not recorded in White Pine County and filed in the State Engineer's office in 1982.

IV.

Time of recording in the county recorder's office is not relevant in the instant matter because Sophie Clark is not a bono fide purchaser as she was an officer of Grantor and had knowledge that the water right had been sold to Rogers.

V.

The Clark Mining Corporation to Rogers transaction occurred previous to the Clark Mining Corporation to Sophie Clark transaction.

VI.

There is no evidence of abandonment or intent to abandon Permit 31239, Certificate 10334.

**CONCLUSIONS**

I.

The State Engineer has jurisdiction to determine the ownership of water rights of record in his office so that he may conduct the business of his office in an orderly fashion and discharge his duties properly.<sup>7</sup>

---

<sup>7</sup> NRS 533.385.

II.

The time of execution of instruments of transfer and time of recording where the grantee is a bona fide purchaser is controlling, although not binding on the State Engineer unless filed in his office.<sup>7</sup>

III.

At the time of execution of the Water Right Deed to Sophie Clark, Clark Mining Corporation had already transferred the subject water right to Warren Rogers and, therefore, had nothing to transfer to Sophie Clark.

IV.

The records of the State Engineer must reflect that Warren Rogers is the owner of Permit 31239, Certificate 10334.

**RULING**

The record of assignment in the office of the State Engineer of Permit 31239, Certificate 10334, to Sophie C. Clark is hereby declared null and void.

The Quitclaim Deed and Bill of Sale with permit attached, fully described hereinabove, are accepted for filing.

Ownership of the entire water right evidenced by Permit 31239, Certificate 10334, is hereby transferred to Warren Rogers as of February 13, 1984, on the records of the office of the State Engineer.

Respectfully submitted,

  
PETER G. MORROS  
State Engineer

PGM/LCR/bl

Dated this 29th day of  
October, 1985.