

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

IN THE MATTER OF APPLICATION 53911)
FILED TO APPROPRIATE THE WATERS OF)
AN UNDERGROUND SOURCE, SPRING VALLEY)
GROUNDWATER BASIN (184), WHITE PINE)
COUNTY, NEVADA.)

RULING

4405

GENERAL

I.

Application 53911 was filed on October 3, 1989, by Sophie C. Clark to appropriate 3.0 cubic feet per second (cfs) of water for mining purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.14N., R.67E., M.D.B.&M., or at a point from which the SW corner of said Section 15 bears N57°42'07"E, 4566.53 feet. The place of use consists of a group of unpatented placer mining claims located within portions of the E $\frac{1}{2}$ of Section 15, E $\frac{1}{2}$ of Section 10, S $\frac{1}{2}$ of Section 11, SW $\frac{1}{4}$ of Section 12, W $\frac{1}{2}$ of Section 13 and all of Section 14, T.14N., R.67E., M.D.B.&M.¹

II.

Application 31239 was filed on March 25, 1977, by Clark Mining Corp., to appropriate 3.06 cfs of water from an underground source for mining, milling and domestic purposes. The point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T.14N., R.67E., M.D.B.&M., or at a point from which the SW corner of said Section 15 bears N57°42'07"E, 4566.53 feet. The place of use consists of a group of unpatented placer claims located within the E $\frac{1}{2}$ of Section 15, E $\frac{1}{2}$ of Section 10, S $\frac{1}{2}$ of Section 11, SW $\frac{1}{4}$ of Section 12, W $\frac{1}{2}$ of Section 13 and all of Section 14, T.14N., R.67E., M.D.B.&M. Permit 31239 was approved on October 2, 1977, with Certificate 10334 issued under said permit on September 24, 1982,

¹File No. 53911, official records in the Office of the State Engineer.

for 0.49 cfs of water for mining, milling and domestic purposes within the aforementioned place of use.²

III.

By State Engineer's Ruling No. 3245, dated October 29, 1985, ownership of Permit 31239, Certificate 10334, was transferred to Warren Rogers.

FINDINGS OF FACT

I.

Application 53911 was filed by Sophie C. Clark to appropriate underground water from a point of diversion which is identical to the point of diversion granted and developed under Permit 31239, Certificate 10334.^{1,2} This certificated water right currently stands in the name of Warren Rogers in the records of the Office of the State Engineer.

On December 3, 1990, Sophie C. Clark was requested by the Division of Water Resources to provide a written agreement allowing her to utilize the existing well at the point of diversion under Permit 31239, Certificate 10334. The State Engineer finds that the December 3, 1990, letter also made reference to a conversation wherein Sophie C. Clark indicated Warren Rogers is dead and had not used the water for five consecutive years. Sophie Clark was informed that if she believed a forfeiture of Warren Rogers' rights had occurred she could file a written request for a forfeiture hearing. To date no response has been received regarding an agreement to use the well nor has a written request for a forfeiture hearing been filed. The State Engineer further finds that the applicant does not control the point of diversion described under Application 53911 and has no agreement on file in the Office of the State Engineer which would allow a diversion of water from the well under Warren Rogers' Permit 31239.²

²File No. 31239, official records in the Office of the State Engineer.

CONCLUSIONS

I.

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

II.

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

1. There is no unappropriated water at the proposed source, or
2. The proposed use conflicts with existing rights, or
3. The proposed use threatens to prove detrimental to the public interest.

III.

Application 53911 seeks an appropriation of underground water from an existing certificated point of diversion which is not controlled by the applicant. The State Engineer concludes that it would not be in the public interest to approve an application to appropriate water where the applicant is unable to divert water from the proposed source.

³NRS Chapters 533 and 534.

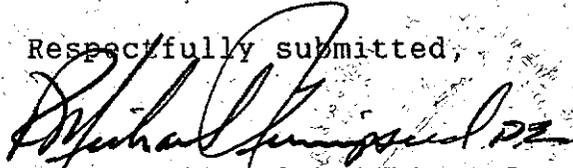
⁴NRS 533.370(3).

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Application 53911 is hereby denied on the grounds that it would not be in the public interest to approve an application for a point of diversion from which the applicant is unable to divert water.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 19th day of
August, 1996.