

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

IN THE MATTER OF APPLICATIONS 16283)
AND 16284 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF SPRING SOURCES)
WITHIN THE WILLOW CREEK VALLEY)
GROUNDWATER BASIN (63), ELKO)
COUNTY NEVADA.)

RULING

4212

GENERAL

I.

Application 16283 was filed on March 25, 1955, by Community Mining Company to appropriate 1.0 cfs of water from Ivanhoe Spring for mining, milling and domestic purposes within E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19, W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20, T.38N., R.48E., M.D.B.&M. The point of diversion is described as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.38N., R.48E., M.D.B.&M.¹

II.

Application 16284 was filed on March 25, 1955, by Community Mining Company to appropriate 1.0 cfs of water from an unnamed spring for mining, milling and domestic purposes within W $\frac{1}{2}$ NW $\frac{1}{4}$ Section 20, E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 19, T.38N., R.48E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 20, T.38N., R.48E., M.D.B.&M.¹

III.

Applications 16283 and 16284 were protested by W.T. Jenkins Company on October 15, 1956, through Louise M. Marvel on the following grounds:

- (1) Protestant is informed and believes and alleges that as successor in interest of the Russell Land and Cattle Company, it owns, possesses and has perpetuated those certain prior water rights from valid appropriations as set out in CERTIFICATES NO. 1318 and 1319 on file with the State Engineer of Nevada, and that one or both of these said prior

¹ Public record in the office of the State Engineer.

appropriations is for appropriation of water from the same source as is concerned in this application hereby protested. Thus the protestant has prior water rights on the source for sufficient water to water 500 cattle and 100 horses during the period January 1 to December 31 of each year under a Priority of Appropriation of April 25, 1916.

- (2) Further, the W.T. JENKINS COMPANY, Protestant, in its own right initiated prior to March 1, 1905, has perpetuated through the years and now has and is vested with vested water rights for stockwatering purposes on the source from which this application hereby protested seeks to appropriate water and thus has prior vested water rights on this source. The said W. T. JENKINS COMPANY has for over 50 years owned and possessed lands in the surrounding area, has had enjoyed and perpetuated range grazing rights in, on and around the area of the source as well as customary or established trail or driving rights and has perpetually and does each year graze livestock in the area and on the source and use water from the said source as follows:
 - (A) Sufficient water to water at least 600 head of cattle and at least 100 head of horses during the period January 1 through December 31 of each year;
 - (B) Sufficient water to water at least 3,000 head of sheep during lambing and shearing operations from April 1 through June 15 of each year and from October 20 through November 15 of each year.
 - (C) Sufficient water to water at least 18,000 head of sheep from the source each year as the result of a normal years grazing operation through the area.
- (3) Further, that the protestant, as successor in interest of the RUSSELL AND BRADLEY LAND AND CATTLE COMPANY, and of the RUSSELL LAND AND CATTLE COMPANY, and all intervening successors

in interest, owns, possesses and has perpetuated through the years since protestant became such successor in interest, all water rights by appropriation and all vested water rights thereof in at least the amount of water sufficient to water 500 head of cattle and 100 head of horses during the period January 1 through December 31 of each year.

- (4) The Protestant now is and has been for many years a licensee of the Bureau of Land Management in the area and has subsisting rights to graze and water range livestock in the area, and utilizes a substantial portion of the public range readily available to livestock watering the area.

THUS, PROTESTANT BELIEVES AND ALLEGES:

- (A) That the Protestant is vested with, possesses and has perpetuated water rights to the source from which water is sought by said application, in sufficient quantity to utilize substantially all the waters of this source available in normal water years.
- (B) That Protestant, as well as other users with grazing drift rights in the area will be seriously and substantially affected by the granting of this application, particularly if the waters are used for mining and milling resulting in the loss and pollution of water depriving protestant and other users of the water for stockwatering purposes, to which they have prior, paramount and vested rights.
- (c) That approval of this application will impair and injure prior appropriations on the source as well as vested water rights for stockwatering purposes and will contravene the policy of the Nevada 1925 Stockwatering Law.

- (D) that the approval of the application would enable the proposed appropriator to deprive the owner of existing water rights and of grazing licenses and rights of their use and would substantially interfer(sic) with and impair the value of such water rights and grazing rights as well as private lands.
- (E) That the public interests would be best subserved by reserving this said source for the watering of livestock.

Wherefore protestant prays that the application be denied and that the use of water herein claimed by protestant be confirmed and that an order be entered establishing said right and for such other relief as the State Engineer deems just and proper.¹

FINDINGS OF FACT

I.

The applicant, and other interested parties, were notified by certified mail on January 23, 1995, to submit additional information to the State Engineer's office regarding consumptive use, specifically, requesting data concerning water conservation measures and amount of water to be recycled. The return receipts were received from 25 Ranch Venture, Vaughan, Hull, Copenhaver & Zingales, Ltd., and Western States Minerals Corporation.¹ Notice to Community Mining Company was returned by the United States Postal Service labelled "Returned to Sender No Address-Insufficient Address." A non-certified notice was sent to Wright & Eardley. It is the responsibility of the applicant or his successor in interest to keep this office informed of their current mailing address. The State Engineer finds that to date the information requested has not been received from the applicant or agent.²

² A check of the records of the State Engineer indicates that no information has been received.

II.

The Applicant and agent were again notified by certified mail on May 25, 1995, to submit additional information to the State Engineer's office. The return receipts were received from 25 Ranch Venture, Vaughan, Hull, Copenhaver & Zingales, Ltd., and Western States Minerals Corporation.¹ Notice to Community Mining Company was returned by the United States Postal Service labelled "Returned to Sender." The State Engineer finds that to date the information requested has not been received from the applicant or agent.²

CONCLUSIONS

I.

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

II.

Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to guard the public interest properly.⁴

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁵

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.

IV.

The applicant has failed to submit the information requested to the State Engineer's Office. Therefore, sufficient information is not available for the State Engineer to guard the public interest properly.

³ NRS Chapters 533 and 534.

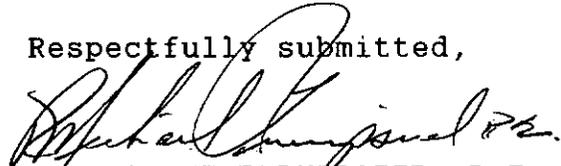
⁴ NRS 533.375.

⁵ NRS Chapter 533.370(3).

RULING

Applications 16283 and 16284 are hereby denied on the grounds that the applicant has not submitted the information requested by the State Engineer's Office and, therefore, the granting of said applications without the additional information requested would not be in the public interest. No finding is made on the protest.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/DJL/pm

Dated this 31st day of
August, 1995.