

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

IN THE MATTER OF APPLICATION 11116 FILED)
TO APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE WITHIN THE GRANITE)
SPRINGS VALLEY GROUNDWATER BASIN (78),)
PERSHING COUNTY, NEVADA.)

RULING

#4406

GENERAL

I.

Application 11116 was filed on May 7, 1944, by Rare Metals Corporation to appropriate 0.10 cubic feet per second (cfs) of water from an underground source for mining and domestic purposes within Sections 13 and 24, T.25N., R.24E., M.D.B.&M. The point of diversion is described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 29, T.25N., R.25E., M.D.B.&M.¹

II.

An informal protest to Application 11116 was filed on October 16, 1944, by Southern Pacific Land Company on the following grounds:

1. That protestant is now and at the time the above numbered application was made and for a long time prior thereto was the owner of the land upon which the proposed points of diversion mentioned in said application are situated; that it has never granted permission or consent of any kind to the applicant or any of it's predecessors to enter into or upon said land or any part thereof for the purpose of doing any work or constructing any works or structures necessary to the initiation of a right to the water mentioned in said application.
2. That applicant through its agents is now and for some time last past has been using the water for which said application is made under a license from protestant.

WHEREFORE, protestant prays that said application be denied.¹

¹ File No. 11116, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

On October 5, 1945, the State Engineer requested that Rare Metals Corporation submit the name of a contact person for a field investigation of protested Application 11116. Rare Metals Corporation responded by letter dated October 8, 1945, in which W.M. Kearney, acting as representative for Rare Metals Corporation, requested the State Engineer to withhold action on Application 11116, due to pending litigation.¹

On April 17, 1947, The State Engineer inquired as to the status of Application 11116. By letter dated May 13, 1947, W.M. Kearney, advised the State Engineer that litigation was still pending.¹

On June 19, 1951, the State Engineer again inquired about the status of Application 11116. By letter dated July 9, 1951, W.M. Kearney advised the State Engineer that there had been no action in the previous litigation. Mr. Kearney again requested that action be withheld on Application 11116. Mr. Kearney indicated that the parties, Southern Pacific Land Company, J.G. Clark and Gold, Silver and Tungsten, Inc. entered a stipulation "to let the matter rest until called up by either party". The July 9, 1951, letter outlined an association between Application 11116 and Permit 9838, Certificate 2521 and the litigation. The subject letter also mentioned a title transfer from Gold, Silver and Tungsten, Inc. to Rare Metals Corporation, or associate James A. Adams.¹

On August 1, 1969, the State Engineer sent certified correspondence to Robert Taylor Adams, an associate of W.M. Kearney, inquiring about the status of the litigation, and requesting the submission of addresses for Rare Metals Corporation, or its successors in interest.¹ To date, no written response was received to this request for information.

The State Engineer finds that a lengthy period of inaction on Application 11116 occurred, as requested by the applicant. The State Engineer further finds that no record of title for ownership

change of Application 11116 was submitted. Lastly, the State Engineer finds that the applicant did not respond to a request for the status of litigation, and failed to submit other requested information.

II.

The applicant and other interested parties were notified by certified mail dated February 8, 1995, to submit additional information to the State Engineer's Office. Specifically, the State Engineer requested information concerning consumptive use, water conservation measures, and the amount of water to be recycled. The letter further assigned a 30 day time limit to submit the requested information or Application 11116 would be held for denial. The return receipts from the applicant and other addresses were returned by the United States Postal Service labelled "Not Deliverable As Addressed-Unable to Forward, Returned to Sender Attempted, Not Known, and Returned to Sender-Forwarding Order Expired". 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 no information was received in response to the request for information.² The State Engineer further finds that the February 8, 1995, letter established that failure to comply with the request within 30 days would result in the denial of the application.¹ The State Engineer also finds it is the responsibility of the applicant or his successor in interest to keep this office informed of the current mailing address.

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

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 from the current owner of record as will enable him to properly guard the public interest.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 State Engineer concludes that despite numerous attempts by the State Engineer's Office to contact the interested parties and to resolve the ownership issues regarding Application 11116, the applicant has failed to submit the information requested.

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

³NRS Chapters 533 and 534.

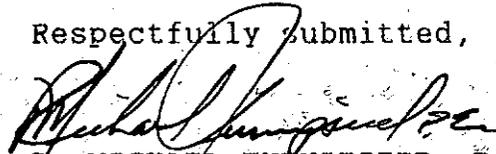
⁴NRS 533.375.

⁵NRS Chapter 533.370(3).

RULING

Application 11116 is hereby denied on the grounds that the applicant or successors have not submitted the data and information requested and, therefore, the granting of said application without the additional information would not be in the public interest. Because sufficient information is not available to the State Engineer, no finding is made on the protest.

Respectfully submitted,


F. MICHAEL TURNIPSEED, P. E.
State Engineer

RMT/DJL/ab

Dated this 29th day of
August, 1996.