

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

IN THE MATTER OF PERMIT 19477, )  
CERTIFICATE 6040, FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS WITHIN THE BLACK ROCK )  
DESERT HYDROGRAPHIC BASIN (28), )  
HUMBOLDT COUNTY, NEVADA. )

**RULING**

**#6130**

**GENERAL**

**I.**

Permit 19477 was issued on November 1, 1961, to Oro Mines, Inc., to appropriate 2.3 cubic feet per second (cfs) of groundwater for placer mining and domestic purposes within the Black Rock Desert Hydrographic Basin, Humboldt County, Nevada. The point of diversion is identified as a well located within Lot 2, NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of Section 3, T.35N., R.30E., M.D.B.&M.<sup>1</sup>

**II.**

Oro Mines Inc., submitted a Proof of Beneficial Use on January 31, 1966, and Certificate 6040 was issued on May 11, 1966, for 0.891 cfs.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

A review of Permit file 19477 reveals that for more than 35 years there has been a dispute as to the ownership of Permit 19477. The original holder of Permit 19477 was Oro Mines, Inc., of Sulphur, Nevada. By letter dated November 8, 1974, R. E. Romine informed the State Engineer that a Mabel Crofoot had acquired 34 mining claims from her husband Henry C. Crofoot, Sr. who had died in 1967, and that she had also purchased a water right from Oro Mines, Inc. Mr. Romine also indicated that the charter for Oro Mines had been revoked several years prior to the date of his letter. The Office of the State Engineer advised Mr. Romine on the procedure to transfer ownership of water rights. On January 24, 1975, Mabel Crofoot submitted a copy of a document of transfer dated December 7, 1974, from Oro Mines, Inc., to her. No action was taken by the Office of the

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<sup>1</sup> File No. 19477, official records in the Office of the State Engineer.

State Engineer on this deed as the document was not a certified copy of a document recorded with the Humboldt County Recorder. It should be noted that the date of the deed is several years after the date that Mr. Romine indicated that the charter for Oro Mines, Inc., had been revoked; therefore, the State Engineer questions how such a deed could have been executed.

By letter dated April 9, 1976, Albert A. Johns and Rudy Gerken advised the State Engineer that they were developing a property in Humboldt County, Nevada, on which they believed Mabel Crofoot owned a water right. They requested any available information on the well and Permit 19477. The State Engineer informed Mr. Johns and Mr. Gerken that the Permit 19477 was in the name of Oro Mines, Inc., and furnished them with information on how to transfer ownership of a water right.

On April 10, 1978, Robert and Laurel Wigle submitted an unrecorded quitclaim deed dated March 31, 1978, which purported to transfer an appropriation of water from Oro Mines, Inc., to them. This deed raises the same question as the deed above; that being, how can a company with a revoked charter convey property? The right assumed to be transferred was Permit 19477 based on the legal description of the point of diversion. However, by letter dated April 17, 1978, the State Engineer informed the Wigles that the deed was not a copy of a certified document that had been recorded with the Humboldt County Recorder and was therefore insufficient to transfer ownership of the water right in the records of the State Engineer. The State Engineer also indicated that certified copies of the Articles of Incorporation for Oro Mines, Inc. and authority from the Secretary of State for the company would be necessary in support of any quitclaim deed for consideration of transfer of the water right. The Wigles re-submitted a recorded copy of the deed, dated April 21, 1978, and filed in the Office of the State Engineer on May 5, 1978.<sup>1</sup> With apparently conflicting chains of title, no action was taken by the State Engineer and the permit remained in the name of Oro Mines, Inc.

On September 4, 1979, Albert Johns submitted another letter dated August 31, 1979, which included recorded deeds and fees in an attempt to transfer ownership of Permit 19477 from Oro Mines, Inc., to Mabel Crofoot. Mrs. Crofoot wrote a subsequent letter dated September 19, 1979, to the State Engineer indicating that deeds had been submitted on her behalf. By letter dated September 26, 1979, the State Engineer replied to Mrs. Crofoot to

confirm receipt of her deed and indicated that apparently Oro Mines, Inc. had sold the water twice, once to her and a second time to Robert and Laurel Wigle, and requested her comments on the situation.

Notes dated October 2, 1979, in Permit file 19477, summarize a conversation with Albert Johns in which he restates that, in his opinion, Mrs. Crofoot owns Permit 19477. He also mentions that Mr. Wigle's mining property is south of railroad tracks, which run between their properties and that the railroad has not given permission to Wigle for a pipeline under the tracks.

Mrs. Crofoot and Mr. Johns sent another letter dated October 2, 1979, to the State Engineer with a certified deed and reiterate their belief that Mr. Wigle cannot use the well because the West Pacific Railroad has not given him permission for a pipeline and that Oro Mines, Inc., sold the well to Mrs. Crofoot in 1974, four years before they sold it to Wigle.

Notes dated October 5, 1979, in the Permit 19477 file, discuss the ownership of the water right and indicate that the Crofoot deed should be filed, but that the two parties should resolve their disputed claims to the permit. By letter dated February 26, 1980, Mr. Johns requested to be informed as to what determination had been made regarding ownership and again argues that Mr. Wigle never had a legal right to the water right.

A memorandum to the Permit 19477 file, dated March 9, 1987, summarizes an office visit by Messer's Johns and Gerken and indicates that they were advised the ownership question still had not been resolved. They both informed the State Engineer that Mabel Crofoot had passed away and her estate was in probate.

By notice dated August 17, 1987, the State Engineer set a date for an administrative hearing in an attempt to resolve the ownership of Permit 19477 to be held in Winnemucca, Nevada, on September 16, 1987. Notices were sent to all parties having an interest in said permit; however, there is no indication in the records of the State Engineer that any resolution as to ownership resulted from that hearing.

On April 5, 1991, Kent Mayer submitted a certified copy of a Court Order wherein interest of Mabel Crofoot's estate was assigned to her heirs. By letter dated December 11, 1991, the State Engineer confirmed the receipt of the Order to Set Aside Without Administration, but indicated that it was only being filed for informational purposes.<sup>1</sup>

The State Engineer finds for 35 years the Office of the State Engineer has been informing persons expressing an interest in Permit 19477 that title to the permit remains in the name of Oro Mines, Inc. and that a conflict in title existed and to date no one has filed sufficient documentation to resolve that conflict. The State Engineer finds that Nevada Revised Statute § 533.386 requires conflicts in chain of title to be resolved by a court of competent jurisdiction.

## II.

On October 16, 1980, Mabel Crofoot submitted Application 42675 for 0.891 cfs from an underground source for mining purposes with the point of diversion being from the same well as identified under Permit 19477. Application 42675 was permitted on May 22, 1981, for 0.891 cfs. Permit 42675 was cancelled by the Office of the State Engineer on May 5, 2009, for failure to comply with the permit terms.<sup>2</sup>

On September 23, 1986, Mabel Crofoot c/o of The Standard Slag Company submitted Application 50178 to change the place and manner of use of a portion of Permit 19477. Application 50178 was withdrawn by the Applicant on August 23, 1988.<sup>3</sup>

On May 1, 1987, Robert Wigle entered into an agreement with The Standard Slag Company to pump approximately 150 gallons per minute (gpm) under Permit 19477 for their mining operation.<sup>3</sup>

Messer's Johns and Gerken submitted another letter dated July 13, 1987, summarizing matters regarding Permits 19477, 42675, and 50178 and acknowledging Standard Slag's use of 100 gpm from the point of diversion identified under Permits 19477 and 42675 under an agreement dated August 5, 1985. They also requested some finality as to the ownership of Permit 19477.

Apparently in recognition that Permit 19477 was subject to a declaration of forfeiture, on August 13, 1987, Mr. Johns submitted a request for extension of time to prevent forfeiture of Permit 19477. On August 19, 1987, the Office of the State Engineer returned the extension and fees and requested information regarding the date water was last used under the permit. The State Engineer finds no response was received to this request for information. The State Engineer finds the request for extension of time to prevent

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<sup>2</sup> File No. 42675, official records in the Office of the State Engineer.

<sup>3</sup> File No. 50178, official records in the Office of the State Engineer.

forfeiture of Permit 19477 is an admission that the water recognized by Permit 19477 had not been used for a number of years. Nevada Revised Statute § 533.090 provides that failure to use water for five successive years for the purpose for which the right was acquired works a forfeiture of the water right.

### III.

On June 28, 2005, the State Engineer sent a letter to all interested parties, that could be determined, requiring them to submit annual reports of water usage under Permit 19477, and to provide the name of current owners of the water right and, if necessary, update ownership. The addressees were given 30 days to respond. A Robert C. Sheehy, who claims to be nephew of Mabel Crofoot, was the only person to answer. He stated that Hycroft Mines had been using the water up until the last few years and that his family has used the water for casual mining and domestic camping purposes a few times a year.<sup>1</sup> The State Engineer finds no evidence has been provided that the holder of record of Permit 19477 has used the water as authorized under the permit in decades, that no specific information was provided as to the date the water was last used as permitted, and that to date no information has been provided that would adequately demonstrate use of the water for the permitted mining purposes within the last 20 years.

### IV.

On March 28, 2007, Rex Evatt filed Application 75489 with a proposed point of diversion being the same as that identified under Permit 19477. The Office of the State Engineer sent a letter on December 4, 2007, to Rex Evatt acknowledging his Application 75489 to appropriate water and indicated that his application represents a top-filing on a well previously permitted under Permits 19477 and 42675 and inquired if he was still interested in pursuing his application. The State Engineer finds that Mr. Evatt replied by letter dated January 30, 2008, that he is still interested and he provided a historical chronology of Permit 19477.<sup>1,4</sup>

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<sup>4</sup> File No. 75489, official records in the Office of the State Engineer.

V.

On August 25, 2009, staff from the Division of Water Resources conducted an informal field investigation at the point of diversion identified under Permit 19477 and found the well in usable condition. There was no placer mining activity in the area.<sup>5</sup> Hycroft Mines used the water in the mid-1990s for their mining operation, but it is readily apparent no water has been pumped from the well since that time. Hycroft's diversion was done under Permit 42675 as evidenced by their usage documented on the Proof of Beneficial Use (PBU) submitted under Permit 42765. The PBU for Permit 42675 was rejected on the grounds that the place of use was the Hycroft Mine, several miles to the southwest and not within the described place of use under Permit 42675.

Based on the evidence that no person or entity has been able to sufficiently demonstrate legal ownership of Permit 19477 over the last 35 years and on the evidence that no person has been able to sufficiently demonstrate water use as authorized under Permit 19477, the State Engineer finds there is substantial evidence of an intent to abandon the water right and forfeiture of the water right.

**CONCLUSIONS**

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

II.

Nevada Revised Statute § 534.090(4) provides that a right to use groundwater may be lost by abandonment. Abandonment is a question of fact to be determined from all the surrounding circumstances. A water right holder's non-use of a water right is some evidence of intent to abandon the right and the longer the period of non-use, the greater the likelihood of abandonment.

The State Engineer concludes there is substantial evidence to support a declaration that Permit 19477, Certificate 6040 has been intentionally abandoned by the permit holder. The State Engineer concludes there is clear and convincing evidence of more than five

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<sup>5</sup> See, Field Investigation No. 1118, File No. 19477 official records in the Office of the State Engineer.

<sup>6</sup> NRS Chapters 533 and 534.

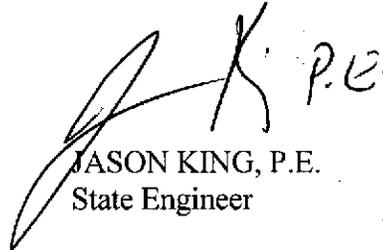
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consecutive years of nonuse for the purpose for which Permit 19477 was acquired thereby working a forfeiture of the water right.

**RULING**

Permits 19477, Certificate 6040 is hereby declared abandoned and forfeited.

Respectfully submitted,

 P.E.  
JASON KING, P.E.  
State Engineer

Dated this 28th day of  
July, 2011.