

IN THE MATTER OF APPLICATION No. 24128)
FILED ON SEPTEMBER 21, 1967 BY DALE R.)
AND ELMA G. CONAWAY TO CHANGE THE POINT)
OF DIVERSION OF THE WATER HERETOFORE)
APPROPRIATED UNDER PERMIT No.18857 FROM)
AN UNDERGROUND SOURCE IN EUREKA COUNTY,)
NEVADA.)

R U L I N G

GENERAL:

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Application No. 24128 was filed on September 21, 1967 by Dale R. and Elma G. Conaway to change the point of diversion of the water heretofore appropriated under Permit No. 18857. The application was made to change the point of diversion of water to a new well to be located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 21 N., R. 53 E., M.D.B.&M. The existing point of diversion is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 21 N., R. 53 E., M.D.B.&M. The place of use remains unchanged within the E $\frac{1}{2}$ Section 10, T. 21 N., R. 53 E., M.D.B.&M.

Application No. 24128 was protested on December 11, 1967 by the Ruby Hill Mining Company on the grounds that the lands to be irrigated embraces a right of way granted to the protestant by the United States through the Bureau of Land Management under Serial No. Nevada 056230.

In a letter dated December 28, 1967 to the State Engineer the Bureau of Land Management furnished the following information regarding the status of Desert Land Entry Nevada 046809 and the right of way grant to the Ruby Hill Mining Company. The land covered under Application and Permit No. 18857 and Application No. 24128 were public lands and the subject of Desert Land Entry Nevada 046809 which was allowed on June 2, 1960 by the Bureau of Land Management. The grant of right of way dated October 6, 1960 to the Ruby Hill Mining Company by the Bureau of Land Management was subject to all valid rights existing on the date of the grant. The Desert Land Entry was allowed before the right of way was granted and therefore is not subject to the right of way grant. The right of way grant would become a valid prior right only if the entry failed but has no force and effect when the entry goes to patent.

RULING

The protest of the Ruby Hill Mining Company is hereby overruled on the grounds that the Ruby Hill Mining Company does not have a valid right of way grant on the lands covered under Application No. 24128 and that the granting of Application No. 24128 would not be detrimental to the public welfare.

Respectfully Submitted,


Roland D. Westergard
State Engineer

RDW:WJN:dih

Dated this 5th day

of January, 1968