

IN THE MATTER OF PERMIT 34092 FOR)
THE WATER OF AN UNDERGROUND SOURCE)
IN MASON VALLEY, LYON COUNTY, NEVADA)

R U L I N G

INTRODUCTION

Application 28324 was filed on May 13, 1974 by Theodore and Elaine M. Fontana to appropriate 4.0 c.f.s., of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T.14N., R.25E., M.D.B. & M., and to be used for the irrigation of 240 acres within the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 10, W $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ SW $\frac{1}{4}$ Section 11, T.14N., R.25E., M.D.B. & M.

A permit was granted under this application on October 21, 1974 in the amount of 4.0 c.f.s., for the irrigation of the lands described under the above place of use.

On March 26, 1975, deeds were filed for record in the State Engineer's office transferring title of this permit from Theodore and Elaine M. Fontana to Marvin V. and Kathleen M. Dye.

On June 17, 1976, the Proof of Commencement of Work was filed under Permit 28324, and on July 14, 1976 the Proof of Completion of Work was filed under Permit 28324.

On October 12, 1977, Application 34092 was filed by Marvin V. and Kathleen M. Dye to change the point of diversion and place of use of water heretofore appropriated under Permit 28324.

Application 34092 proposed to change the point of diversion to a point within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T.14N., R.25E., M.D.B. & M. The proposed change in the place of use was intended to cover 6.08 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, 29.76 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 11, 43.13 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, 34.18 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, 35.33 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, 33.52 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, and 58 acres within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, all within T.14N., R.25E., M.D.B. & M.

On August 11, 1978, a permit was granted under Application to Change 34092, subject to the terms and conditions of a Ruling issued by the State Engineer on July 21, 1978.

FINDINGS OF FACT

I

On August 11, 1978, a permit was issued under Application to Change 34092 to Marvin V. and Kathleen M. Dye. The terms of the permit provided that the Proof of Commencement of Work would be filed with the State Engineer on or before March 11, 1979; the Proof of Completion of Work would be filed on or before March 11, 1980; and, the Proof of Beneficial Use and supporting cultural map would be filed on or before March 11, 1982.

The permit granted under Application to Change 34092, allowed a change of point of diversion and place of use of water heretofore appropriated under Permit 28324.

II

A review of the record under Permits 28324 and 34092 indicates that the following agents represented the permittees at various times between May 13, 1974 and April 12, 1979:

G. W. "Jerry" Reno
120 Penrose Lane
Yerington, Nevada 89447

Wyatt J. Owens
P.O. Box 44
Smith, Nevada 89430

Walter G. Reid
State Water Right Surveyor
P. O. Box 474
Virginia City, Nevada 89440

III

The record also indicates that even after the transfer of ownership of Permit 28324, from Theodore and Elaine M. Fontana to Marvin V. and Kathleen M. Dye, that G. W. "Jerry" Reno continued to represent the new owners Marvin V. and Kathleen M. Dye.

IV

On June 5, 1975, an application for extension of time for the filing of the Proof of Commencement of Work was filed with the office of the State Engineer under Permit 28324 under the signature of G. W. "Jerry" Reno.

V

On June 17, 1976, the Proof of Commencement of Work was filed in the State Engineer's office for Permit 28324 under the signature of G. W. Reno as agent.

VI

On June 17, 1976, application for extension of time under Permit 28324 for the filing of the Proof of Completion of Work was filed with the State Engineer's office under the signature of G. W. Reno as agent.

VII

On June 14, 1976, the Proof of Completion of Work under Permit 28324 was filed in the office of the State Engineer under the signature of G. W. Reno as agent.

VIII

A review of the record under Application to Change 34092 indicates that at various times Wyatt J. Owens, P. O. Box 44, Smith, Nevada 89430, State Water Right Surveyor, represented the applicants Marvin B. and Kathleen M. Dye as their agent.

On March 12, 1979, notice that the Proof of Commencement of Work under Permit 34092 was required to be filed in the office of the State Engineer on or before March 11, 1979 was forwarded via certified mail #168550 to the applicants Marvin V. and Kathleen M. Dye at Box 862, Mammoth Lakes, California 93546. A copy of this certified notice was also forwarded to Wyatt J. Owens on the same date, via certified mail #168551.

On August 10, 1978, there is no record to indicate that certified notice of the requirement of filing the Proof of Commencement of Work under Permit 34092 was ever forwarded to G. W. "Jerry" Reno, 120 Penrose Lane, Yerington, Nevada 89447, as agent for the permittees.

CONCLUSIONS

I

A review of the record under Permits 28324 and 34092 in the name of Marvin V. and Kathleen M. Dye indicate that the permittees had proceeded with due diligence to show beneficial use under the terms of the permit.

II

Although it is the responsibility of the permittee to keep the office of the State Engineer informed of any change in mailing address of either the permittee or his agents, it appears, and the record shows, that there was apparently some confusion during the statutory processing of the application to change 34092 as to the agent to be notified of action required under Permit 34092.

III

On September 8, 1980, affidavits were submitted to the State Engineer's office under the signature of Marvin V. "Vince" Dye and Jerry Reno, attesting that Jerry Reno was the agent for the permittees under Permit 34092 through and including all matters pertaining thereto. The affidavits are made a part of this ruling by reference.

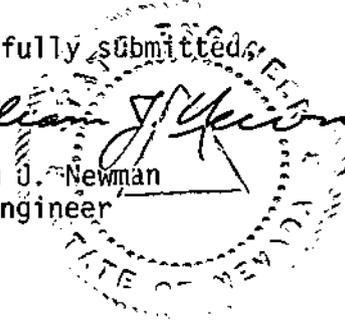
RULING

The cancellation of Permit 34092 is hereby rescinded on the grounds that the agent designated by the permittee was not timely notified as to the filing of the Proof of Commencement of Work under Permit 34092. The Proof of Commencement of Work and Proof of Completion of Work including the well log, must be filed in the State Engineer's office within 30-days of the date of this Ruling under Permit 34092.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer



WJN/bc

Dated this 16th day of
SEPTEMBER, 1980.