

IN THE MATTER OF APPLICATION 24405 )  
TO CHANGE POINT OF DIVERSION AND )  
PLACE OF USE OF A PORTION OF WATER )  
HERETOFORE APPROPRIATED FROM AN UNDER- )  
GROUND SOURCE UNDER PERMIT 22263 FILED )  
BY GARRETT VAN DIEST MARCH 14, 1968. )

R U L I N G

GENERAL:

71  
Application 24405 was filed March 14, 1968, by Garrett Van Diest to change the point of diversion and place of use of water heretofore appropriated under Permit 22263. The existing point of diversion is in the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$ , Section 7, T.34N., R.38E., M.D.B.&M. The existing place of use is the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  section 7, T.34N., R.38E., M.D.B.&M. The proposed point of diversion is within the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  Section 29, T.34N., R.38E., M.D.B.&M. The proposed place of use is the E $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  Section 29, T.34N., R.38E., M.D.B.&M.

Protests to the above Application were filed March 14, 1968, by Great Western Land and Cattle Corporation and Clear Creek Land and Cattle Corporation.

The basis of the protest filed by Clear Creel Land and Cattle Corp. is as follows:

"The well drilled on Sec. 7, T.34N., R.38E., is owned by Clear Creek Land and Cattle Corp. along with the ground it was drilled upon. The Permit 22263 that was transferred from Sec. 7, T.34N., R.38E., was done without the mortgage holder and owner's consent, the water rights which you are now proposing to transfer to N $\frac{1}{2}$ N $\frac{1}{2}$  & S $\frac{1}{2}$ NW $\frac{1}{4}$  & SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 29, T.34N., R.38E. by Application 24405, filed March 14, 1968, legally belongs to the above protestant. Ira Grove transferred the permit fraudulently and he is now serving time in jail for fraud."

The basis of the protest filed by Great Western Land and Cattle Corp. is as follows:

"Great Western Land and Cattle Corp. is a substantial owner of the Clear Creek Land and Cattle Corp. as well as owning adjacent lands. The water rights which you are now proposing to transfer also affect Great Western Land and Cattle Corp. whose information it is that the subject water rights legally belong to Clear Creek Land and Cattle Corp. and if the transfer should be affected, it would cause financial loss to Great Western Land and Cattle Corp."

OPINION:

Permit 22263 was in the name of Ira V. Grove, in this office, at the time of transfer to Garrett Van Diest. The property to which it was appurtenant passed from Grove to the trustee, due to default, prior to the transfer of the permit. Application 22263 was filed on September 25, 1964, which was subsequent to the deed of trust executed on April 23, 1964, which deed described the area included in the place of use under Permit 22263. Sale of the property, by the trustee, occurred subsequent to the sale of the permit.

The question to be settled was, who owned the permit during the time the property was in the hands of the trustee.

Briefs submitted by counsel for the applicant and counsel for the protestants cite cases from other states, there apparently being little precedent in Nevada.

Based upon material submitted, it appears and we conclude that Ira V. Grove was possessor of the permit, and thereby entitled to sell it if he so desired. There are provisions within the Nevada Statutes for the filing of an application to change the point of diversion and place of use, as was Application 24405, made by Garrett Van Diest.

RULING

The protests to Application 24405 are hereby overruled and a permit will be issued.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW:KAR:jw

Dated this 9th day of  
February, 1970.