

IN THE MATTER OF APPLICATIONS 26799,)
26800, and 26801 FILED BY M & R)
INVESTMENT CO., INC. (DBA DUNES)
HOTEL) TO CHANGE THE POINT OF DIVER-))
SION, MANNER AND PLACE OF USE OF)
PERMIT 10608, LAS VEGAS, CLARK)
COUNTY, NEVADA.)

R U L I N G

212

GENERAL:

Application 10608 was filed on January 10, 1941, by Murray Wollman to appropriate 1.0 c.f.s. of water from an underground source for irrigation and domestic purposes. The point of diversion was described as within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 23, T.21S.,R.61E., M.D.B.&M. The place of use was described as 100 acres within the S $\frac{1}{2}$ S $\frac{1}{2}$ Section 23, T.21S., R.61E., M.D.B.&M. The period of use was to be from January 1 and end December 31 of each year. A permit was granted to Application 10608 on May 5, 1941, for 1.0 c.f.s. of water for irrigation and domestic purposes. The Proof of Beneficial Use was filed on February 24, 1945, and Certificate 2858 was issued to Murray Wollman on April 10, 1945, for 0.84 c.f.s. of water for 4.0 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and 40.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.21S.,R.61E., M.D.B.&M. for irrigation and domestic purposes.

Applications 26799, 26800 and 26801 were filed on June 28, 1972, by the M & R Investment Co., Inc. (dba Dunes Hotel) to Change the Point of Diversion, Manner and Place of Use of Permit 10608, Certificate 2858. Applications 26799, 26800, and 26801 proposed to change the manner of use from irrigation and domestic use to recreation (irrigation of golf course) and domestic purposes.

Application 26799 was filed to change 0.28 c.f.s. of water under Permit 10608 to a point of diversion within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T.21S.,R.61E., M.D.B.&M., and the proposed place of use is described as within portions of the E $\frac{1}{2}$ Section 20, T.21S.,R.61E., M.D.B.&M.

Application 26800 was filed to change 0.28 c.f.s. of water under Permit 10608 to a point of diversion within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20, T.21S.,R.61E., M.D.B.&M., and the proposed place of use is described as within portions of the E $\frac{1}{2}$ Section 20, T.21S.,R.61E., M.D.B.&M.

Application 26801 was filed to change 0.28 c.f.s. of water under Permit 10608 to a point of diversion within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 20, T.21S.,R.61E., M.D.B.&M., and the proposed place of use is described as within portions of the E $\frac{1}{2}$ Section 20, T.21S.,R.61E., M.D.B.&M.

Permit 10608 (Certificate 2858) stands in the records of the Office of the State Engineer in the name of Murray Wollman. On June 28, 1972, a Quitclaim Deed dated June 27, 1972, was received in this office indicating that "MURRAY WOLLMAN do(es) hereby RELEASE AND FOREVER QUITCLAIM to R. JULIAN MOORE all the right, title, and interest" in Permit 10608 (Certificate 2858). A Quitclaim Deed dated June 27, 1972, was received June 28, 1972 indicating "R. JULIAN MOORE do(es) hereby RELEASE AND FOREVER QUITCLAIM to M & R INVESTMENT COMPANY, INC. all the right, title, and interest" in Permit No. 10608 (Certificate 2858). These deeds have not been filed for record in the Office of the State Engineer.

Representatives of the Division of Water Resources have, over an extended period of time, been aware of the conditions of the property described under the place of use of Certificate 2858. Periodic inspections have been made of the property and it is general knowledge that portions of the property have been subdivided, that there has been no application of water for irrigation and that the well described in the certificate has not been operable for many years. There has also been a general knowledge that ownership of parcels of the property have been transferred.

By letter of November 7, 1973, Mr. Murray Wollman, Mr. R. Julian Moore, and M. & R. Investment Company, Inc. were advised that a hearing would be held on January 9, 1974, to obtain additional information and evidence prior to action being taken on Applications 26799, 26800, and 26801. The notice included the following: "There are indications that water appropriated under Permit 10608 (Certificate 2858) has not, for a period of time, been diverted from the location described on the area described and for the purposes described in the water right. There are also questions about the possibility that portions of the right may have been included in transfers prior to the execution of the June 27, 1972 deeds described." "Information and evidence will be required to confirm the validity of and title to the prior right sought to be changed."

The scheduled hearing was held and submittals were received. Subsequently, on February 11, 1974, the Deposition of Murray Wollman was taken in Las Vegas, Nevada. In testimony at the hearing, witness for the applicant, R. Julian Moore, testified that land under Certificate 2858 had not been irrigated since the mid 1950's. Counsel for the applicant also indicated that, to his knowledge, there had been no physical diversion of water from the well or use of water from the well for any purpose since sometime in the 50's.

In the deposition, upon oral examination of Murray Wollman on February 11, 1974, he indicated that the well under Permit 10608 is capped. In answer to a question regarding when the well was last used, Mr. Wollman testified "I imagine, maybe ten years ago or something like that, or less than that."

Nevada Revised Statutes 533.385 include provisions regarding assignability of applications and permits. There has been a long standing practice and procedure in the Office of the State Engineer to exercise extreme caution in the assignment of water rights. Documents to reflect transfers or assignments of water rights are thoroughly scrutinized and reviewed to assure that the chain of title is valid and complete. If there is any reason to believe that the title may be questionable, clarification and further documentation is required. In the case of Permit 10608, Certificate 2858, as described above, personnel in the State Engineer's Office were aware of the status of the land and the possible transfer of the land within the place of use. County Recorder's records were thus checked and it was found that a Grant, Bargain, Sale Deed was executed on November 10, 1945, by Murray Wollman, Agnes D. Wollman, and Isabel Gunnerson. Those parties did grant, bargain, sell and convey to John M. Gunnerson the real property described as follows:

"The South Half ($S\frac{1}{2}$) of the South Half ($S\frac{1}{2}$) of Section 23, Township 21 South, Range 61 East, M.D.B.&M.

Together with that certain artesian well located in the Southwest Quarter ($SW\frac{1}{4}$) of the Southwest Quarter ($SW\frac{1}{4}$) of Section 23, Township 21 South, Range 61 East, M.D.B.&M., or at a point from which the Southwest Corner of said Section 23 bears South $19^{\circ} 11'$ West 1092 feet; and the casing placed therein and the water flowing or to be pumped therefrom, and Permit No. 10608 issued by the State Engineer of the State of Nevada and any Certificate of Appropriation issued thereunder."

This deed was notarized on January 4, 1946, and recorded on January 15, 1946 in the records of Clark County, Nevada.

Murray Wollman testified on February 11, 1974 that he sold certain lands and the use of Permit 10608 to Mr. Gunnerson. Mr. Wollman also testified in answer to a question, "Do you have any instrument or is there an instrument filed somewhere whereby he can convey his interest back to you?" (The "he" referred to is Mr. Gunnerson.) Mr. Wollman's answer was "No, not that I know of. It is just a gentlemen's agreement."

There are documents on file in the Clark County Recorder's office indicating that there have been subsequent transfers of property and appurtenant water rights from Mr. Gunnerson to other parties.

RULING

Quitclaim deeds previously described, dated June 27, 1972, between Murray Wollman and R. Julian Moore and between R. Julian Moore and M. & R. Investment Company, Inc. are rejected for purposes of assigning interest in Permit 10608, Certificate 2858, because water rights purported to be transferred have previously, by other documents, been conveyed to other parties. The deeds are returned herewith to M. & R. Investment Company, Inc. Applications 26799, 26800, and 26801 are denied on the grounds that the applicant does not own the prior right sought to be changed by these applications.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:WJN:jw

Dated this 25th day of
March, 1975.