

IN THE MATTER OF APPLICATION)
28636 FILED BY NORMAN BAILEY)
TO APPROPRIATE WATER FROM AN)
UNDERGROUND SOURCE IN ESMERALDA)
COUNTY, NEVADA.)

R U L I N G

140

GENERAL:

Application 28636 was filed on August 27, 1974 by Norman Bailey to appropriate 1.0 cfs of water from an underground source known as Frenchman's Well for mining, milling and domestic purposes. Water is to be diverted from the source at a point within the protracted NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.8S., R.42E., MDM. The place of use is described as within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 26, T.7S., R.41E., MDM. The period of use is to be from January 1 to December 31 of each year.

A protest was filed on February 10, 1975 by Lida Livestock. The basis of the protest was that there was insufficient water available for commercial milling purposes. The protest was not to the granting of a permit to Application 28636 but such permit, if issued, was to be subject to a prior livestock use.

Application 28834 was filed on October 29, 1974 by Henry Howison to appropriate 0.02 cfs of water from an underground source known as Frenchman's Well for stockwatering (400 cattle) purposes. Water is to be diverted from its source at a point within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.8S., R.41E., MDM. The place of use is to be within the same 40 acre subdivision as the point of diversion. Period of use is to be from January 1 to December 31 of each year. A permit was granted to Application 28834 on March 19, 1975 for 0.0125 cfs of water for stockwatering.

Application 30202 was filed on April 30, 1976 by Norman Bailey to change the point of diversion under Application 28636. The proposed point of diversion is described as within the protracted SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.8S., R.41E., MDM. The existing point of diversion is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 10, T.8S., R.42E., MDM.

A hearing was held on October 21, 1976 in Goldfield, Nevada in the matter of protested Application 28636 and Application 30202. The testimony of this hearing is a matter of record and available in the office of the State Engineer.

Ruling
Application 28636
Page Two

No agreement could be reached after numerous discussions were held with the applicant and the protestant prior to the hearing in an attempt to work out ameanicable coexistence and use of the limited water from Frenchman's Well.

It is to be pointed out that under Nevada Revised Statutes that the request by the protestant cannot be upheld by issuing a permit to an application subject to existing rights filed after the application.

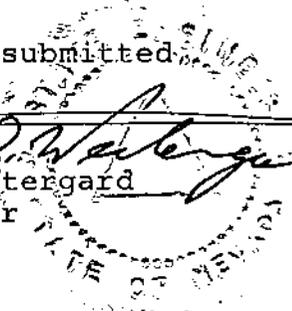
RULING:

The protest to the issuing of a permit to Application 28636 subject to a later right is herewith overruled and a permit will be granted to Application 28636 upon receipt of the permit fees and subject to the following conditions:

1. Water is to be made available at all times for stockwatering purposes subject to the availability of water at the source after satisfaction of the prior right under Permit 28636.
2. If water is not made available for stockwatering purposes, then Lida Livestock has authority to improve the source to develop water.
3. Water from Frenchman's Well shall not be diverted in excess of the permits granted.
4. Both parties to work out a satisfactory agreement for the joint use of the facilities to divert water from Frenchman's Well to include repairs and maintenance.
5. A permit will be granted under Application to Change No. 30202 to correct the point of diversion under No. 28636.

Respectfully submitted


Roland D. Westergard
State Engineer



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Dated this 30th day
of November, 1976.