

IN THE MATTER OF APPLICATION)
19265 FILED TO APPROPRIATE)
UNDERGROUND WATER IN LYON)
COUNTY, NEVADA.)

R U L I N G

General:

Application 19265 was filed on October 12, 1960 by Fay Northrip for 6.1 c.f.s. of water from an underground source for irrigation and domestic purposes. The place of use is described as 360 acres within the $W\frac{1}{2}$ $NE\frac{1}{4}$, $SE\frac{1}{4}$ $NW\frac{1}{4}$, $E\frac{1}{2}$ $SW\frac{1}{4}$, $SE\frac{1}{4}$ Section 25, T. 13 N., R. 23 E., M.D.B.& M. The proposed point of diversion is to be within the $NE\frac{1}{4}$ $SW\frac{1}{4}$ of said Section 25. Remarks in the application include in part: "This application applies to surplus water". The application was protested on December 8, 1961 by William F. and Kathrine Knowles Walker. A reply to the protest by Fay Northrip was received in this office on May 1, 1962.

A letter dated May 16, 1962 was received from the Bureau of Land Management indicating that the applicant had relinquished Desert Land Entry Nevada 056305 which included all but 80 acres of the land included in the application. This 80 acres is within the $SE\frac{1}{4}$ $NW\frac{1}{4}$, $SW\frac{1}{4}$ $NE\frac{1}{4}$ of said Section 25. Although the descriptions of the point of diversion under application 19265 and certificate 3570, to which reference is made in the protest and the reply are different, evidence available indicates both the application and certificate are for waters from the same well. Certificate 3570 was issued for 1.463 c.f.s. or 619.90 acre-feet per season. The following limitation is included on the amount of appropriation: "The source of this irrigation water is an artesian well the flow of which is diverted into a cumulating reservoir, and thence released into the so-called Low Ditch. The water from this well is comingled with the water from the wells covered by Permits Nos. 6400 and 6401, and the combined use from all sources shall not exceed 619.90 acre feet per season." The period of use under Certificate 3570 is March 1 to October 1 of each year. Certificate 3570 stands in the name of William F. and Katherine K. Walker.

At a field investigation held on May 10, 1962 the well in question was flowing at a rate estimated to be 1.5 c.f.s.

The protestant claims that the well in question is located on his property within the $SW\frac{1}{4}$ $NW\frac{1}{4}$ of Section 25, T. 13 N., R. 23 E., M.D.B.& M. The point of diversion described under

certificate 3570 is within this subdivision. The applicant claims that the well is located on public domain in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 25. The statutes provide: "The beneficial use of water is hereby declared a public use, and any person may exercise the right of eminent domain to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters." Wells A. Hutchins in "The Nevada Law of Water Rights" states: "On the other hand, an intending appropriator has no right to go upon the land of another, without the latter's permission (or without condemning a right-of-way), for the purpose of appropriating water."

Opinion:

It is our opinion that the problem of access to the well in question and the matter of ingress and egress is not a consideration in this ruling. Prior to allowance of an application it must be determined that there is water available for appropriation and that the proposed appropriation would not conflict with existing rights and that it would not threaten to be detrimental to the public welfare. It is our opinion that there is water available in quantities and at times over and above that required to satisfy rights under Certificate 3570. Statutes provide for a reasonable lowering of the static water level; therefore, if Permit 19265 were approved, subject to existing rights, there would be no conflict with existing rights. The problem of access, ingress and egress is one between the applicant and protestant and does not provide grounds for denial. There would be no apparent affects which would be detrimental to the public welfare provided the appropriation is limited to use on land controlled by the applicant and not allowed on vacant public land.

RULING

The protest to application 19265 is overruled and a permit will be issued for 1.7 c.f.s. subject to existing rights, and limiting the place of use to 80 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T. 13 N., R. 23 E., M.D.B. & M., upon receipt of the permit fees. No rights of ingress or egress are granted by issuance of this permit.

Respectfully submitted,

Dated this 21st day of

February, 1966.


Roland D. Westergard
Assistant State Engineer

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