

IN THE MATTER OF APPLICATION)
35728 TO CHANGE THE PLACE OF)
USE OF WATER HERETOFORE)
APPROPRIATED UNDER PERMIT)
28246 IN DAYTON VALLEY, LYON)
COUNTY, NEVADA)

R U L I N G

FINDINGS OF FACT

I

Application 35728 was filed on August 11, 1978, in the name of Lyon County, Nevada to change the place of use of 1.0 c.f.s. of water from an underground source heretofore appropriated under Permit 28246. The proposed and existing point of diversion is located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, T.16N., R.21E., M.D.B.&M. The existing place of use under Permit 28246 is the SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ Section 23 and the NW $\frac{1}{4}$ Section 24, T.16N., R.21E., M.D.B.&M. The proposed place of use under Application 35728 is the SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ Section 23, NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 24, T.16N., R.21E., NW $\frac{1}{4}$ Section 17, SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 18, N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$ Section 19, all in T.16N., R.22E., M.D.B.&M. The existing and proposed manner of use is for municipal purposes. Item 15 under Application 35728 indicates that the water is to be used for service to 1000 single family homes and 20 business houses in the Town of Dayton. 1/

In accordance with NRS 533.360, Application 35728 was sent for publication on October 11, 1978, and was published in the Mason Valley News on October 13, 20, 27 and November 3, and 10, 1978. An Affidavit of Publication was filed in the State Engineer's office on November 21, 1978. The period for filing of protest under Application 35728, as established under NRS 533.365, ended on December 10, 1978. 2/

II

A protest to the granting of Application 35728 was timely filed on November 16, 1978, in the name of Quilici Ranch Corp. by Theodore J. Schroeder, acting as agent for the protestant. The protest seeks denial of the application on the following grounds:

"That the requested diversion will effectuate a taking of water at a point whereby Quilici Ranch Corp. will in effect lose its prior appropriation rights due to the failure of the water to come back into the water system at a point where it is then usable by the Quilici Ranch Corp." 3/

A second protest to the granting of Application 35728 was timely filed in the State Engineer's office on December 11, 1978, by Gene Minor acting as agent for six (6) separate Dayton area ranchers whose names were included on an attachment to the protest.

This protest seeks denial of Application 35728 on the following grounds:

- "1. That the requested diversion will remove agricultural water from the Carson River and dispose of said water some 3 miles from the river into aerating ponds resulting in loss of return flow.
2. That the existing well is constructed with full depth perforations in the casing that will in fact draw surface water from the streambed of the nearby Carson River.
3. That the intent of the change of use of this permit is to furnish water for development purposes some 2 to 3 miles from the Dayton Township in an attempt to circumvent established criteria of the office of the State Engineer.
4. That (1) one ft.³ sec. will affect the well as exists.
5. The increased amount of (1) one ft.³ sec. will in fact increase the removal of water from the Carson River." 4/

In accordance with the provisions of statute, 5/ the applicant was duly notified by certified mail of the filing of the two above described protests. 6/

Included in the list of individual protestants to the application filed by Gene Minor as agent for the Dayton Valley ranchers, was the name John D. Winters. By subsequent letter dated April 27, 1979, submitted to the State Engineer's office, Mr. Winters requested that his name be removed from the list of protestants under that particular protest. 7/

III

Original Permit 28246, which is the base right to be changed by protested Application 35728, was approved on January 7, 1975, in the amount of 1.0 c.f.s. for municipal purposes. It was subsequently determined that Application 28246 had originally been filed to appropriate 0.1 c.f.s. rather than 1.0 c.f.s. Therefore by State Engineer's Ruling No. 2454, dated April 16, 1979, the total diversion rate allowed under Permit 28246 was reduced from 1.0 c.f.s. to 0.1 c.f.s. and an amended permit was issued on that same date to reflect the reduction. 8/ By letter dated April 17, 1979 under signature of the State Engineer, all interested parties were notified of the issuance of Amended Permit 28246 in the reduced

amount of 0.1 c.f.s., and were further informed that Application 35728 would only be considered for a change of 0.1 c.f.s. since that was the total amount that now existed under the permit. 9/

IV

A formal hearing into the matter of protested Application 35728 was conducted by the State Engineer on Friday, April 27, 1979. All interested parties were duly informed of the date and time of the hearing in accordance with the provisions of NRS 533.365. A transcript of the proceedings had under the hearing is on file and available for review in the office of the State Engineer.

V

The point of diversion under Application 35728 and under Permit 28246 (being the same point of diversion) is an existing well. Currently also in existence in this same well is Certificate 3318, issued under Permit 12436, of record in the name of Lyon County. Certificate 3318 was issued on December 14, 1949, in the amount of 0.25 c.f.s. of water for irrigation and domestic purposes to be used within the Town of Dayton on Lots 3 thru 7 and 9 and a Lot known as Minerada. 10/ Very little information is available to the State Engineer, either from available records or from direct testimony given during the hearing, as to the construction of the well. 11/ The Proof of Commencement of Work filed on March 29, 1949, under Permit 12436 indicates that the well is 180 feet deep and is "cased with 14" standard welded casing." 12/ However no specific information can be found as to the actual date of drilling of the well, and no specific information can be found as to the location of perforations within the casing of the well.

VI

By Judgement and Decree of the First Judicial District Court of the State of Nevada dated August 28, 1974, Permit 12436 and the well itself were assigned as real property from Chester Barton to Lyon County. 13/ That assignment has been filed as record in the office of the State Engineer.

VII

Records of the State Engineer's office indicate that the existing well under Permits 12436 and 28246 is the only current permitted source of municipal groundwater supply for the Town of Dayton. In currently pending litigation captioned "U.S.A. vs Alpine Land and Reservoir Company, a Corporation, et al, No. D-183" both the Proposed Findings of Fact, Conclusions of Law and Decree (page 86), and the Temporary Restraining Order under that same suit (page 86 of Plaintiffs Contentions of Rights) allow for a diversion of 0.59 c.f.s. of water from the Carson River into the Dayton Town Ditch for domestic and municipal supply to the Town of Dayton. 14/

However, due primarily to the need for treatment of such Carson River water prior to its consumption, no use of that allowed diversion is currently being made. 15/

VIII

Documents on file in the State Engineer's office indicate that Lyon County is in the process of constructing a sanitary sewage treatment and collection system which will serve the place of use under pending Application 35728, including the area now known as the Town of Dayton or Dayton Townsite. 16/ Under this system, sewage will be transported to a treatment facility located on 10 acres of land within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T.16N., R.22E., M.D.B.&M. This acreage will be conveyed by the Estate of Walter E. Herrmann and the Fern E. Herrmann Testamentary Trust (hereinafter referred to as Herrmann) to Lyon County. 17/ Herrmann will receive exclusive right to the use of all sewage effluent from the treatment plant for beneficial use disposal on 550 acres owned by Herrmann 18/ with the specific stipulation that Herrmann "shall apply the treated effluent in such a manner as will not permit its return to the Carson River." 19/

The proposed sewage treatment plant is located approximately 2 $\frac{1}{4}$ miles east of the existing well under Permit 28246. Water pumped from that well and subsequently collected in the sewage system after use will be transported to the treatment plant for ultimate disposal. Testimony given before the State Engineer indicates that ultimately all septic systems currently located within the service area of the sewage system, which includes the Dayton Townsite will ultimately be filled and capped and no longer used after hook-up to the collection line. 20/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action in accordance with NRS 533.025 and NRS 533.030, subsection 1.

II

Currently the only source of municipal water supply to the Town of Dayton is from a single well as allowed under Permit 28246, of record in the name of Lyon County, Nevada. Permit 28246 provides for the diversion of 0.1 c.f.s. (44.8 gallons per minute), which would allow for an annual pumpage of 23.59 million gallons.

III

The intent of Application 35728 as filed by Lyon County is to change the place of use now allowed under Permit 28246. Any permit which might be issued under Application 35728 must necessarily

be limited to the amount of water and to the manner of use allowed under Permit 28246. Approval of Application 35728 would not result in any additional appropriation of water.

IV

Whether Application 35728 is approved or denied by the State Engineer, recharge to the ground water system from septic systems now in Dayton will ultimately cease upon completion of the sewage collection and treatment system.

V

Insufficient information and data is available to the State Engineer's office to make a determination as to whether or not a portion of the water diverted from the well under Permit 28246 is a contribution from the direct subsurface flow of water from the Carson River. Should any of the water currently diverted under Permit 28246 actually constitute a diversion of water from the Carson River system, the amount would be well within the total amount currently allowed under both the proposed Carson River Decree and Temporary Restraining Order for use within the Town of Dayton for municipal service.

VI

There is no evidence that within the scope of the State Engineer's authority to consider the public interest or welfare, that the proposed change would be detrimental to the public welfare.

VII

NRS 533.370 provides that the State Engineer shall approve all applications made in proper form where the proposed use or change does not tend to impair the value of existing rights or to be otherwise detrimental to the public welfare.

RULING

The protests to the granting of Application 35728 are herewith overruled and permits will be issued subject to the following conditions:

1. The diversion rate under Permit 35728 shall be limited to 0.1 cubic foot per second.
2. Municipal service allowed under Permit 35728 will be limited to that amount of development that can adequately be served by the amount of water allowed under said permit.
3. A totalizing meter must be installed and maintained

in the discharge line near the well under Permit 35728 and accurate measurements must be kept of the water place to beneficial use. The totalizing meter must be installed before any use of water is made outside of the currently existing place of use of Permit 28246.

4. Permit 35728 will retain the priority of appropriation of Permit 28246 and will be issued subject to all prior existing rights.

Respectfully submitted,

William J. Newman
WILLIAM J. NEWMAN
State Engineer

WJN/BAR/ha

Dated this 22nd

day of May, 1979.

STATE ENGINEER
WATER DIVISION
MONTGOMERY, ALABAMA

FOOTNOTES

1. Public record on file at the State Engineer's office.
2. Public record on file at the State Engineer's office.
3. Public record on file at the State Engineer's office.
4. Public record on file at the State Engineer's office.
5. NRS 533.365, subsection 2.
6. Public record on file at the State Engineer's office.
7. Public record on file at the State Engineer's office.
8. Public record on file at the State Engineer's office.
9. Public record on file at the State Engineer's office.
10. Recorded in records of Lyon County, Nevada on December 22, 1949, BK. R. Misc., Pg. 409. Also public record on file at the State Engineer's office.
11. Hearing transcript, pages 17-18, 24-26, 39.
12. Public record on file at the State Engineer's office.
13. Judgement and Decree in Lyon County Action No. 5660 entitled: Lyon County, a political subdivision of the State of Nevada, and Helen Barton, a single person, Plaintiffs, vs. All surviving Heirs-at-Law of George C. Barton, et al, Defendants.
14. Copy on file in records of State Engineer's office.
15. Per discussion of State Engineer with Roy Hibdon, Lyon County Engineer.
16. Agreement dated August 16, 1978 between County of Lyon and Walter E. Herrmann Estate, Fern Herrmann Trust, by and through Ralph W. Herrmann, Executor and Trustee. Entered in State Engineer's hearing as Protestant Exhibit No. 1.
17. Hearing Transcript, Protestant Exhibit No. 1, page 2.
18. Hearing Transcript, Protestant Exhibit No. 1, page 3.
19. Hearing Transcript, Protestant Exhibit No. 1, page 4.
20. Hearing Transcript, page 28.