

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 17824, CERTIFICATE)
5986 AND APPLICATION 45517 TO CHANGE)
PERMIT 17824, CERTIFICATE 5986, TO)
APPROPRIATE THE WATERS OF AN UNDER-)
GROUND SOURCE IN FISH LAKE VALLEY,)
ESMERALDA COUNTY, NEVADA)

R U L I N G

GENERAL

I

Application 17824 was filed by Dorothy B. Cemo on February 11, 1959 to appropriate underground water for irrigation and domestic purposes. A permit was issued under Application 17824 on June 24, 1959. Certificate 5986 was issued on February 24, 1966 for 2.5 c.f.s. of underground water to irrigate 160 acres within the E $\frac{1}{2}$ E $\frac{1}{2}$ Section 22, T.4S., R.36E., M.D.B.&M.

Application 45517 was filed by Lawrence T. Atkinson on April 9, 1982 to change the point of diversion and place of use of Permit 17824, Certificate 5986. The point of diversion was to be changed from the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 22 to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T.4S., R.36E., M.D.B.&M. The place of use was to be changed to the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 4 and the W $\frac{1}{2}$ NW $\frac{1}{2}$, NW $\frac{1}{2}$ SW $\frac{1}{2}$ of Section 10, T.4S., R.36E., M.D.B.&M.

On July 14, 1982 Dorothy B. Cemo protested Application 45517 and prayed for denial on the following grounds:

"That Protestant, DOROTHY B. CEMO, has instigated foreclosure proceeding under a Deed of Trust secured by the property and attached water rights due to Applicant, LAWRENCE T. ATKINSON, nonpayment of monthly instalments and taxes. If this application is granted and the pending foreclosure proceeding goes through, Protestant will be left only with land devoid of sufficient water; thus, Protestant's interest in the land is severely jeopardized."

On August 13, 1982 James P. Wallace protested Application 45517 and prayed for denial on the following grounds:

"No. 1 that the application proposes to change an existing right, namely permit 17824 cert's. No. 5986, a determination on whether this existing right has been forfeited through non use must be made. No. 2. The change proposed would adversely affect existing water rights, and not be in the best interests of good management of the resource in the basin." 1/

FINDINGS OF FACT

I

Lawrence T. Atkinson, Dorothy B. Cemo and James P. Wallace were given notice, by letter, of September 3, 1982, that a hearing in this matter was

scheduled for September 23, 1982, in the Esmeralda County Courthouse, Goldfield, Nevada. 2/ The hearing was held and evidence, testimony and arguments were presented.

II

A certified copy of a grant, bargain and sale deed, dated April 21, 1980 was filed in the State Engineer's office on May 3, 1982. The deed transfers Permit 17824, Certificate 5986, from Dorothy B. Cemo to Lawrence T. Atkinson. 3/

Dorothy B. Cemo, protestant, testified that Lawrence T. Atkinson, applicant, is current in his payments to her for Permit 17824, Certificate 5986. 4/ Lawrence T. Atkinson also testified to this. 5/

III

James P. Wallace, protestant, presented testimony and evidence that water was not beneficially used at times on the place of use under Permit 17824, Certificate 5986. No conclusive testimony or evidence has been submitted to show that water has not been used under Permit 17824, Certificate 5986, for a period of five (5) specific-successive years. 6/

Lawrence T. Atkinson, applicant, presented evidence and testimony that water was used for irrigation under Permit 17824, Certificate 5986, in 1981. 7/

IV

Lawrence T. Atkinson, applicant, presented evidence and expert testimony that the proposed point of diversion change under Application 45517 would not have an unreasonable adverse effect on existing water rights in Fish Lake Valley. The closest irrigation well to the existing point of diversion under Permit 17824, Certificate 5986, is about 1/2 mile away while the closest irrigation well under the proposed point of diversion under Application 45517 is about 1/2 mile away.

The proposed point of diversion under Application 45517 is farther away from protestant James P. Wallace's wells than the existing point of diversion under Permit 17824, Certificate 5986. 8/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action. 9/

II

The grant, bargain and sale deed, copy filed on May 3, 1982, is adequate to transfer Permit 17824, Certificate 5986, to Lawrence T. Atkinson. The procedure followed to change the point of diversion and

place of use of Permit 17824, Certificate 5986, is correct under Application 45517.

III

The source of water under Permit 17824, Certificate 5986, is underground water.

NRS 534.090 provides as follows:

"1. Failure for 5 successive years on the part of the holder of any right, whether it be an adjudicated right, an unadjudicated right, or permitted right, and further whether such right be initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which such right shall be acquired or claimed, shall work a forfeiture of both undetermined rights and determined rights of the right to the use of such water to the extent of such nonuse. Upon the forfeiture of a right to the use of ground water, such water shall revert to the public and shall be available for further appropriation, subject to existing rights. If, upon notice by registered or certified mail to the person of record whose right has been declared forfeited, such person fails to appeal such ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final." 10/

The water right under Permit 17824, Certificate 5986, is a "permitted right" and a "determined right" as described in NRS 534.090 and is subject to the provisions of that statute.

The testimony, evidence and information available do not clearly and conclusively establish that water has not been beneficially used under Permit 17824, Certificate 5986, for a period of 5 successive years.

IV

The testimony, evidence and information available do not indicate that there will be an unreasonable adverse effect on existing water rights if Application 45517 is permitted.

RULING

1. Application 45517 was filed and processed to a ready for action status in accordance with the procedures set out under NRS 533.
2. No substantial evidence has been presented to support a finding of forfeiture of Permit 17824, Certificate 5986, in accordance with NRS 534.090.

RULING
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3. No substantial evidence has been presented to support a finding that the proposed change under Application 45517 would adversely effect existing rights or prove detrimental to the public interest and welfare.
4. The protests to Application To Change 45517 are overruled and a permit will be issued to change the point of diversion and place of use of Permit 17824, Certificate 5986, subject to existing rights.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/JC/bc

Dated this 12th day of
NOVEMBER, 1982

FOOTNOTES

1. Public records in the office of the State Engineer, see file 45517.
2. State Exhibit No. 1, Transcript of the September 23, 1982 hearing, hereinafter referred to as Transcript.
3. Public records in the office of the State Engineer, see File 45517.
4. Transcript, page 23.
5. Transcript, page 63.
6. Transcript, pages 24 through 52.
7. Transcript, pages 55, 57 through 61, Applicant's Exhibit #1.
8. Transcript, pages 76 through 82, Applicant's Exhibit #2.
9. NRS 534.090.
10. NRS 534.090.