IN THE MATTER OF APPLICATIONS 20260)
AND 20261 FILED BY CLARENCE HAROLD)
ALLOMONG AND GLADYS ALLOMONG, RES-)
PECTIVELY, ON JANUARY 19, 1962, TO) R U L I N G
APPROPRIATE WATER FROM AN UNDERGROUND)
SOURCE (RUBY HILL MINE - T. L. SHAFT))
FOR IRRIGATION AND DOMESTIC PURPOSES)
IN EUREKA COUNTY, NEVADA.)

DESCRIPTION

Application 20260 was filed by Clarence Harold Allomong for 8.0 second-feet of water to irrigate 330.58 acres. The point of diversion is in the NE¼ NW¼ Sec. 15, T. 19 N., R. 53 E., M.D.B.&M. The place of use is Lots 3, 4, 5, 6, 11, 12, 13, and the SE¼ SW¼ of Sec. 20, T. 20 N., R. 53 E., M.D.B.&M.

Application 20261 was filed by Gladys Allomong for 8.0 second-feet of water to irrigate 330.84 acres. The point of diversion is in the NE¼ NW¼ Sec. 15, T. 19 N., R. 53 E., M.D.B.&M. The place of use is Lots 1, 2, 7, 8, 9, 10, 14, and the SW¼ SE¼ Sec. 20, T. 20 N., R. 53 E., M.D.B.&M.

More specifically the point of diversion for the two applications is the T. L. Shaft of the Ruby Hill Mining Company. The water is to be used for irrigation and domestic purposes and is additional water for lands under Applications 19500, 19501, 19502, and 19503.

PROTESTS

The two applications were protested by the Ruby Hill Mining Company on the grounds "That Ruby Hill Mining Company is the owner and in possession of the T. L. Shaft of the Ruby Hill Mine therein referred to, and that said shaft penetrates mining property owned by the Ruby Hill Mining Company, and that any attempt by the applicants to appropriate the waters from said shaft would be a trespass upon the property of the Ruby Hill Mining Company; that Ruby Hill Mining Company also owns the mining property surrounding the T. L. Shaft;

"The Ruby Hill Mining Company on December 14, 1960, filed its application to appropriate 4.7 c.f.s. of water from the T. L. Shaft

for the purpose of irrigation and domestic use; that Application 19402 of the Ruby Hill Mining Company appropriates all water which might be available from the T. L. Shaft and that any attempt by the applicants to appropriate water as set forth would be in violation of the Ruby Hill Mining Company's nullity."

In addition to the above protests of the two applications by the Ruby Hill Mining Company, the Mining Company protested Application 20261 on the additional grounds, to wit: "The applicant in Application 20261 states that she proposes to irrigate lands that in fact embrace a right of way granted to this protestant by the United States through its Bureau of Land Management, Reno, Nevada, covered by DLE Nevada-056230."

GENERAL

Applications 20260 and 20261 have a direct bearing on Applications 19500, 19501, 19502, 19503, and 19402. Application 19500 has its place of use as Lots 11, 12, 13, and SE¼ SW¼ Sec. 20, T. 20 N., R. 53 E., and Application 19501 has its place of use as Lots 3, 4, 5, and 6 Sec. 20, T. 20 N., R. 53 E. The two applications have the exact location as the place of use described in Application 20260 and all three applications were filed by Clarence Harold Allomong.

Proof of Commencement of Work was filed under Application 19500. The Proof of Commencement of Work states the improvements consisted of "Sixteen inch diameter irrigation well placed down to a depth of 224 feet in the SW¼ SW¼ of Sec. 20, T. 20 N., R. 53 E., M.D.B.&M., Diamond Valley, Eureka Co., Nevada."

Application for Extension of Time on the Proof of Commencement of Work has been filed under Application 19501. Reason for the Application for Extension of Time states that due to "present doubt of underground water supply on applicants filing, as well as surrounding filings. Applicant plans on possibly deepening his first well under Application 19500, to fully explore the underground water potential, and be fully assured of the water supply in said well before commencing work in his No. 1 well (Permit 19500)."

Applications 20261, 19502, and 19503 were filed by Gladys Allomong. The place of use of Application 19502 is Lots 9, 10, 14 and SW¼ SE¼ Sec. 20, T. 20 N., R. 53 E., The place of use of

Application 19503 is Lots 1, 2, 7, and 8, Sec. 20, T. 20 N., R. 53 E. The place of use of Application 20261 is Lots 1, 2, 7, 8, 9, 10, 14, and SW¼ SE¼ Sec. 20, T. 20 N., R. 53 E. The Proof of Commencement of Work has been filed under Application 19502. The proof states "Said improvements consisted of construction of a sixteen-inch diameter irrigation well, placed to a depth of 200 feet. Said well being located in the SW¼ SE¼ of Sec. 20, T. 20 N., R. 53 E., M.D.B.&M., Diamond Valley, Eureka County, Nevada."

The Application for Extension of Time for Proof of Commencement of Work has been filed under Application 19503. Said extension of time states "That due to applicants present plan is to deepen her present well on the land under permit No. 19503 of this application to first fully ascertain the underground water potential before proceeding with the construction of her second well under permit No. 19503. The matter of cost must also be considered at this time, as applicant will be forced to expend considerable money on the proposed deepening of No. 1, and for this reason would like to delay the starting of this new well."

Application 19402 filed by the Ruby Hill Mining Company has a Proof of Commencement of Work filed, to wit: The improvements under the proof consist of "A vertical square shaft, 9' 10" x 9' 10" outside the timbers, and 1127 feet deep.

"One vertical 400 HP Byron Jackson Submersible pump in the shaft, immediately below the 1050 level, the water to be used for irrigation and domestic purposes."

RULING

The court found (Cardelli vs. the Comstock Tunnel Company, 26 Nevada 284, 293-295, 66 Pac. 950 - 1901) developed waters are the property of the person who developed them. "Such waters entered a tunnel on public land of the United States from three sources: (1) Drainage of the adjacent land; (2) pumping from mines; and (3) waters discharged into the tunnel after being used in the machinery. It was held that such a stream is artificial and temporary, not a natural stream, and that the waters are not subject to appropriation. The court said (at 26 Nev. 295) that: Such waters are not like water running in streams on the public domain of the

United States. They are produced by the capital, labor, and enterprise of those developing them, and by such developing, they become the property of those engaged in the enterprise."

NOW, THEREFORE, Applications 20260 and 20261 are herewith denied on grounds that their granting would tend to impair the value of existing rights and would be detrimental to the public welfare.

Respectfully submitted,

ELMO J. DeRICCO
State Engineer

BY George W. Hennen

GEORGE W. HENNEN
Assistant State Engineer

Dated this 17th day of

October, 1963.

GWH