

IN THE MATTER OF PERMITS 18221 AND)
18223 AND APPLICATIONS 22762, 22763,))
22764 FILED TO CHANGE THE POINT OF)
DIVERSION OF WATER HERETOFORE APPRO-))
PRIATED UNDER PERMITS 18223, 18221,)
18222, RESPECTIVELY, NYE COUNTY,)
NEVADA.)

R U L I N G

General:

Applications 22762, 22763 and 22764 were each filed on September 7, 1965 by Kenneth R. Davis to change the point of diversion of 5.4 c.f.s. of water from an underground source heretofore appropriated under Permits 18223, 18221, 18222, respectively. The Applications were protested on November 2, 1965 by Tracy W. Smith. The matter of the Applications and protests were investigated on January 12, 1966. Present at the investigation were:

Mr. and Mrs. Tracy W. Smith, protestants
Mr. Bennett J. Vasey, and
Mr. Samuel Spieser, representing the applicant
Mr. F. W. Thorne, and
Mr. Roland D. Westergard, Division of Water Resources

Application 22762: The proposed point of diversion under Application 22762 is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 36, T. 16 S., R. 48 E., M.D.B. & M., or at a point from which the N.E. corner of said Section 36 bears N. 2° 5' 35" E., a distance of 2,741.82 feet. The description of the point of diversion under Permit 18223 is within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36, T. 16 S., R. 48 E., M. D.B. & M., or at a point from which the E $\frac{1}{4}$ corner of said Section 36 bears N. 69° 0' E., a distance of 3,545 feet. The grounds for the protest are: "Permit No. 18223 is for a nonexistent well, hence can not be relocated to a new point of diversion." The investigation revealed a hole approximately six feet in depth with a section of 12 inch diameter casing at the point of diversion under Permit 18223. There were no improvements at the proposed point of diversion under Application 22762. Proof of Commencement of Work, filed January 24, 1962, under Permit 18223 indicates improvements consisted of "setting one joint of 12 3/4 x 1/4" wall casing and drilling 40 feet." Proof of Completion filed May 28, 1963, indicates "drill 350' well case with 12 3/4" x 1/4" casing install gear head pump column tubing & engine. New map being filed to change place of use to NW $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ Section 23, T. 16 S., R. 49 E.,".

Application 22763: The proposed point of diversion under Application 22763 is within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 30, T. 16 S., R. 49 E., M.D.B. & M., or at a point from which the E $\frac{1}{4}$ corner of said Section 30 bears N., 45° 1' E., a distance of 141.42 feet. The point of diversion under Permit 18221 is described as within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 30, T. 16 S., R. 49 E., M.D.B. & M., or at a point from which the N $\frac{1}{4}$ corner of said Section 30 bears N. 1° 57' E., a distance of 2,740 feet. The grounds for the protest are: "Permit No. 18221 is for a non-existent well and should not be relocated a new point of diversion." Investigation revealed a hole approximately 6 feet deep with a section of 12" diameter casing at the point of diversion under Permit 18221. There were no improvements at the point of diversion under Application 22763. The Proofs of Commencement and Completion under Permit 18221 were filed on January 24, 1962 and May 28, 1963 respectively and improvements described were similar to those described under Permit 18223, however proof of completion indicates "new map being filed to change place of use to NW $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ Section 14, R. 16 S., T. 49 E."

Application 22764: The proposed point of diversion under Application 22764 is within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, T. 16 S., R. 49 E., M.D.B. & M., or at a point from which the N.E. corner of said Section 30 bears N. 45° 1' E., a distance of 141.42 feet. The description of the point of diversion under Permit 18222 is within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T. 16 S., R. 49 E., M.D.B. & M., or at a point from which the N $\frac{1}{4}$ corner of said Section 30 bears N. 59° 31' E., a distance of 194.00 feet. Remarks under Permit 18222 include in part, "this is a percolating well and was drilled in 1919." Grounds for the protest are: "Permit 18222 is for a well which has not been pumped for fifteen (15) years, hence should not be relocated to a new point of diversion." There were no improvements at the point of diversion described under Application 22764. There is an existing well with no pump and motor at the point of diversion described under Permit 18222. Proof of Commencement of Work filed January 24, 1962 under Permit 18222 indicates improvements consisted of "200 feet 16" casing drilling 40 feet of hole". Proof of Completion of Work, filed May 28, 1963, included "drill 350' well case with 12 3/4 x 1 1/4" casing install gear head pump column, & tubing & engine. New map being filed to change place of use to SW $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ Section 22, T. 16 S., R. 49 E." Mr. Vasey commented that it is the intention to file a claim of vested right on the well located at the point of diversion described in Permit 18222.

Mr. Vasey and Mr. Spieser explained that wells were drilled at or near the locations described on the Proofs of Completion of Work filed under Permits 18221, 18222 and 18223. An effort was made to locate the wells described but neither Mr. Vasey nor Mr. Spieser could say with certainty exactly where these wells were located.

Opinion:

It is our opinion that Applications 22762, 22763 and 22764 were not filed to correct the point of diversion of wells drilled under Permits 18223, 18221, 18222, respectively because there are no wells at points described under Applications 22762, 22763 and 22764. The applications must then be considered as requests for changes of points of diversion. Permits 18221, 18222 and 18223 were maintained in good standing by filing Proofs of Completion of Work for wells drilled some distance away as previously described. Existence and location of these wells were not verified during the field investigation by the representatives of the applicant under Applications 22762, 22763 and 22764. Proofs of Completion bearing notarized signatures were filed under Permit 18221 and 18223 when in fact improvements were not located at points described in the Permits. Although there were notations on the Proofs that a change in place of use was contemplated, there was no mention of changing points of diversion and no applications were filed to change to the descriptions included on the Proofs. Permits 18221 and 18223 are therefore subject to cancellation for failure to comply with the provisions of the Permits. It would impair the value of existing rights and be detrimental to the public welfare to allow Applications 22762 and 22763 to change Permits where the provisions of the Permits had not been satisfied. There is an existing well at the point described under Permit 18222. Application to change 22764 would be limited to the amount of water that can be produced from the well at this location because this is a limitation of Permit 18222.

RULING

Permits 18221 and 18223 are cancelled for failure to comply with the provisions of the Permits. Protests of Applications 22762 and 22763 are upheld and Applications 22762 and 22763 are denied on the grounds that allowance of the Applications would impair the value of existing rights and be detrimental to the public welfare. The protest of Application 22764

is overruled and a permit will be issued for the amount of water produced from the well at the point of diversion under Permit 18222, providing that production from this well is determined in the presence of a representative of this office within 60 days of this ruling.

Respectfully submitted,


Roland D. Westergard
Assistant State Engineer

Dated this 3rd day of
February, 1966.

RDW:ns