

IN THE MATTER OF APPLICATION 24128)
FILED ON SEPTEMBER 21, 1967, BY)
DALE R. AND ELMA G. CONAWAY TO)
CHANGE THE POINT OF DIVERSION OF) AMENDED
THE WATER HERETOFORE APPROPRIATED) RULING
UNDER PERMIT 18857 FROM AN UNDER)
GROUND SOURCE IN EUREKA COUNTY,)
NEVADA)

GENERAL:

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Application 24128 was filed on September 21, 1967, by Dale R. and Elma G. Conaway to change the point of diversion of the water heretofore appropriated under Permit 18857. The application was made to change the point of diversion of water to a new well to be located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 21N., R. 53E., MDB&M. The existing point of diversion is within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T. 21N., R. 53E., MDB&M. The place of use remains unchanged within the E $\frac{1}{2}$ Section 10, T. 21N., R. 53E., MDB&M.

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Application 24128 was protested on December 11, 1967, by the Ruby Hill Mining Company on the grounds that the lands to be irrigated embraces a right-of-way granted to the protestant by the United States through the Bureau of Land Management under serial number Nevada 056230. Protestant further claims an easement granted on January 8, 1965, by Leonard W. and Yvonne Dillon predecessor in title to Dale R. and Elma G. Conaway and recorded on January 18, 1965, at Book 6, pages 395-6, Official Records of Eureka County, Nevada, being file No. 40578.

In a letter dated December 28, 1967, to the State Engineer, the Bureau of Land Management furnished the following information regarding the status of Desert Land Entry Nevada 046809, Patent No. 27-65-0058, and the right-of-way granted to the Ruby Hill Mining Company. The land covered under Application and Permit 18857 and Application 24128 were public lands and the subject of Desert Land Entry Nevada 046809 which was allowed on June 2, 1960, by the Bureau of Land Management. The grant of right of way dated October 6, 1960, to the Ruby Hill Mining Company by the Bureau of Land Management was subject to all valid rights existing on the date of the grant. The Desert Land Entry was allowed before the right of way was granted and therefore is not subject to the right of way grant. The right of way grant would become a valid prior right only if the entry failed but has no force and effect when the entry goes to patent.

A copy, not certified by the Eureka County Recorder, of an easement agreement dated January 8, 1965, between Leonard W. Dillon and Yvonne R. Dillon and the Ruby Hill Mining Company was received in the office of the State Engineer on January 18, 1968, and is retained for informational purposes only.

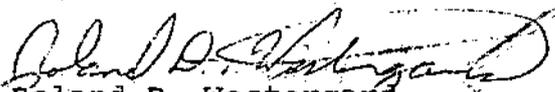
Because application No. 24128 is an application to change the prior and existing right under Permit 18857, the date of priority under Application 24128 is May 18, 1960, or the original date of filing of Application 18857. This date preceeds any right of way or easement grants of which we have a record.

It is the opinion of the State Engineer that the Ruby Hill Mining Company does not have a grant of right of way from the Bureau of Land Management over lands described within the East one half of Section 10, T. 21N., R. 53E., MDB&M., under Patent No. 27-65-0058. The issuing of a permit to appropriate water does not grant or deny a right of way, easement, ingress or egress to private, public or corporate lands.

RULING:

This Amended Ruling is issued to eliminate the following provisions of the original ruling issued January 5, 1968: "___ on the grounds that the Ruby Hill Mining Company does not have a valid right of way grant on the lands covered under Application 24128___". However, the protest of the Ruby Hill Mining Company is overruled on the grounds that due to the priority of appropriation under application 24128, the Permit cannot include a condition imposed subsequent to this priority date and further on the grounds that the issuance of a permit to appropriate water does not grant or deny rights of way, easement or rights of ingress and egress.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:WJN:dc

Dated this 5th day

of February, 1968.