

IN THE MATTER OF APPLICATION 24449)
FILED BY ROY L. WILBUR TO CHANGE THE)
PLACE OF USE OF A PORTION OF PERMIT)
11384 FROM DEEP OR BIG SPRING IN NYE)
COUNTY, NEVADA.)

RULING

GENERAL:

Application 24449 was filed April 18, 1968, by Roy L. Wilbur for permission to change the place of use of 1.2 cfs of water under Permit 11384, certificate 4484, from Deep or Big Spring. The point of diversion is described as the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The proposed place of use is 3 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20.88 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T18S., R50E., MDB&M. A total of 23.88 acres. The existing place of use under certificate 4484 is described as 2.95 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, 14.80 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 6.13 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T18S., R50E., MDB&M. A total of 23.88 acres.

Certificate 4484 under Permit 11384 of record in the name of Roy L. Wilbur, 4/5 interest, and Garland R. Love, 1/5 interest, was issued for 1.5 cfs of water for the irrigation of 29.85 acres of land as follows: (12.1 acres) NE $\frac{1}{4}$ SE $\frac{1}{4}$, (14.8 acres) NW $\frac{1}{4}$ SE $\frac{1}{4}$, (2.95 acres) SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T18S., R50E., MDB&M.

Certificate 2251, subject of permit 4200 of record in the name of Robert M. Tubb, Robert M. Tubb, Jr., and Joyce Tubb and George W. and Norman Tubb, was issued June 2, 1936, for 2.3129 cfs of water from unnamed springs (Ash Meadow Springs) for the irrigation of 231.29 acres. The proposed point of diversion is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The place of use under this certificate is the SW $\frac{1}{4}$ NE $\frac{1}{4}$, (39.4 acres), S $\frac{1}{2}$ NW $\frac{1}{4}$ (80 acres), NE $\frac{1}{4}$ SW $\frac{1}{4}$ (26.4 acres), Section 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$ (40 acres) Section 25, T18S., R50E., Lot 4 (8.6 acres) Section 19, Lot 1 (36.89 acres), Section 30, T18S., R51E., MDB&M.

Certificate 2729, subject of Permit 8025, was issued October 20, 1943, for 0.63 cfs of water from Big Spring for irrigation and domestic purposes. The owner of record of this certificate is Ash Meadow Lodge, Inc. The point of diversion is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The place of use under this certificate is described as the SE $\frac{1}{4}$ SW $\frac{1}{4}$ (20 acres) Section 24, NW $\frac{1}{4}$ NE $\frac{1}{4}$ (13 acres), NE $\frac{1}{4}$ NW $\frac{1}{4}$ (30 acres) Section 25, T18S., R50E., MDB&M.

Application 24577 was filed July 15, 1968, by Robert M. Tubb to change the place of use of Certificate 2251 issued under Permit 4200. This application proposes to change the place of use of 0.794 cfs of water from Ash Meadow or Big Springs. The proposed point of diversion is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The proposed place of use is Lot 3 (32 acres) Section 19, T18S., R51E., W $\frac{1}{2}$ SE $\frac{1}{4}$ (47.4 acres) Section 24, T18S., R50E., MDB&M. This application was sent for publication on September 17, 1968.

Application 24578 was filed July 15, 1968, by Robert M. Tubb for permission to appropriate 1.2 cfs of water from Deep or Big Spring for irrigation (17.5 acres) and domestic purposes. The proposed point of diversion is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The proposed place of use is located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 24, T18S., R50E., MDB&M. The application will be ready for action November 11, 1968.

Application 24579 was filed July 15, 1968, by Robert M. Tubb for permission to appropriate 2.0 cfs of water from Deep or Big Spring for irrigation (282.33 acres) and domestic purposes. The proposed point of diversion is described as within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, T18S., R51E., MDB&M. The proposed place of use is located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T18S., R50E., MDB&M., and Lots 3 & 4 Section 19, Lot 1 Section 30, all in T18S., R51E., MDB&M. This application was returned for correction on August 15, 1968.

Application 24449 was protested on July 15, 1968, by Robert M. Tubb on the grounds that "the applicant has not used the water apportioned to the 2.95 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and the 14.8 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, a total of 17.75 acres, Section 24, T18S., R50E., MDB&M., for a period in excess of five years, and therefore, has abandoned the right to its use." A field investigation was held August 20, 1968.

OPINION:

It is the opinion of the State Engineer that the granting of the permit under Application 24449 will not conflict with or impair the value of existing rights or be detrimental to the public interest or contrary to statutes. The field investigation disclosed no intent of abandonment and the withholding of ingress and egress by physical means does not constitute grounds for abandonment.

RULING:

The protest to the granting of Application 24449 is hereby overruled and a permit will be issued subject to existing rights. This does not in any way constitute the granting of rights of ingress or egress to the applicant.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:RRD;dc

Dated this 14th day
of October, 1968.