

IN THE MATTER OF APPLICATION 26598, FILED)
BY GILLMAN SPRINGS RANCH ON MARCH 6, 1972)
FOR PERMISSION TO CHANGE THE POINT OF)
DIVERSION, MANNER OF USE AND PLACE OF USE)
OF WATER HERETOFORE APPROPRIATED FROM)
GILLMAN CREEK AND GLOBE CANYON, AS DECREED)
UNDER THE KINGSTON CREEK ADJUDICATION.)

R U L I N G

GENERAL:

137B

Application 26598 was filed by Gillman Springs Ranch on March 6, 1972 for permission to change the point of diversion, manner of use and place of use of water heretofore appropriated under Proofs of Appropriation Nos. 02433 and 02434, Certificate No. 368 as decreed in the Kingston Creek Decree; to wit, 0.70 c.f.s. of water not to exceed 140 acre-feet of water per year. The proposed point of diversion is within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 4, T. 16 N., R. 44 E., M.D.B.&M.; the existing point of diversion is within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T. 16 N., R. 44 E. The proposed manner of use is quasi-municipal; the existing manner of use is irrigation, stock and domestic (as decreed). The proposed place of use is described as N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{2}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 10, T. 16 N., R. 44 E., M.D.B.&M.; the existing place of use is 35.0 acres within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of the said Section 10.

Application 26598 was protested by Young Brother's Livestock Company on June 8, 1972. The protest recites that the protestant is the owner of decreed and certified rights upon Kingston Creek and various tributaries thereto; that among said water rights are those decreed pursuant to Proof No. 01527, from Sheep Creek, Rock Creek, and Gillman Springs, with point of diversion in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10, T. 16 N., R. 44 E., which point of diversion is below the existing and proposed points of diversion as stated in Application 26598; that unless Applicant is required to install and maintain adequate headgate and measuring devices, protestant cannot be assured of water to which it is entitled under said decree, certificates and applicable law, that Applicant Gillman Springs Ranch is neither a political subdivision, municipal corporation, body politic, city, town, district, or governmental agency which could legally authorize its use of the public waters for municipal or quasi-municipal purposes; and that Gillman Springs Ranch is the fictitious business name of an individual, or a partnership, or a private corporation organized wholly for the profit of its own members, and cannot constitutionally be granted municipal, quasi-municipal, or other governmental powers.

The protestant asks that the said Application 26598 be denied; or if granted, issued subject to the installation of headgates and measuring devices at the new point of diversion; and, proof of qualification by applicant as an entity legally authorized to use the public waters for quasi-municipal purposes.

The waters of Kingston Creek and its tributaries are the subject of a decree entered in the Third Judicial District Court of the State of Nevada, in the Matter of the Determination of the Relative Rights in and to the Waters of Kingston Creek (also known as Big Smoky Creek) and its Tributaries in Lander County, Nevada. The decree was entered March 22, 1963.

Gillman Springs Ranch is the owner of record of the waters decreed under Proofs 02433 and 02434, the subject of Application 26598, for the amounts as stated in Application 26598; that is, 0.70 c.f.s., of water not to exceed 140 acre-feet per annum. Gillman Springs Ranch is the fictitious name of Carl V. Haas, Jr., an individual authorized to appropriate water in Nevada. Proofs 02433 and 02434 bear priorities of 1880 and 1881.

Young Brothers Livestock Company is the owner of record of certain other rights as decreed in the Kingston Creek Adjudication; including those decreed under Proof No. 01527, for the appropriation of the waters of Sheep Creek, Rock Creek and Gillman Springs. This right, combined with waters decreed under Proof 02413, Sheep Creek; Proof 02404, Rock Creek; and Proof 02415, Big Smoky Creek (also known as Kingston Creek), is for 2.63 c.f.s., of water not to exceed 525.96 acre-feet per annum, and bears a priority of 1882. The point of diversion of Proof 01527 is downstream from the existing point of diversion under Proofs 02433 and 02434, as well as that proposed under Application 26598.

Young Brothers Livestock Company is also the owner of record of certain other rights decreed in the Kingston Creek Adjudication, none of which involve the source described in Application 26598; all of which having points of diversion below that specified in the proposed change; and all of which are earlier in priority than the right proposed to be changed by Application 26598.

Paragraph V of the Kingston Creek Decree specifies that substantial headgates and weirs must be installed wherever necessary to insure and facilitate the proper measurement, control and distribution of water in accordance with the rights therein defined; further, all permits for the appropriation of surface waters are issued by the State Engineer subject to the provision that necessary headgates and measuring devices be installed to facilitate the control, measurement and distribution of waters.

Paragraph VIII of the Kingston Creek Decree requires that any water user desiring to change the point of diversion, manner and place of use of the water allotted therein must make application to the State Engineer for permission to make the change pursuant to law; thus granting the State Engineer authority to approve such changes.

Gillman Springs Ranch is a "person" as defined in Chapter 533 of Nevada Revised Statutes and therefore authorized to apply for permission to change the point of diversion, manner and place of use of waters already appropriated; and, "Quasi-Municipal" use is a beneficial Use.

Ruling

A permit will be issued under Application 26598, subject to existing rights and subject to the provision that a substantial headgate and weir must be installed at the proposed point of diversion to insure and facilitate the proper measurement, control and distribution of waters in accordance with the rights defined in the Kingston Creek decree.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW:JCP:gs

Dated this 1st day
of September , 1972.