

IN THE MATTER OF PERMIT 28246)
TO APPROPRIATE WATER FROM AN)
UNDERGROUND SOURCE IN DAYTON)
VALLEY, LYON COUNTY, NEVADA)

R U L I N G

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GENERAL:

Application 28246 was filed on April 5, 1974 in the name of Lyon County, Nevada, to appropriate water from an underground source located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 23, T.16N., R.21E., M.D.B. & M. The water was to be used for municipal purposes in the Town of Dayton, Nevada, located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and E $\frac{1}{2}$ Section 23 and the NW $\frac{1}{4}$ Section 24 of said Township and Range.

The original application received by the State Engineer's Office had been completed by use of a typewriter. The amount applied for under Item 2 of the application was initially 0.1 c.f.s., as evidenced by the fact that that amount is typed on the application form. This is further evidenced by the fact that State Engineer's book record, which is prepared when the application is sent to publication, indicates a diversion of 0.1 c.f.s. Also the newspaper's first notice of publication and final affidavit of publication show a diversion of 0.1 c.f.s. Publication of the application in the Mason Valley News, as required under NRS 533.360, took place on May 17, 24, 31, June 7, and 14, 1974. Finally, a written letter dated October 2, 1974 and written by a representative of the State Engineer's Office, describes a diversion rate of 0.1 c.f.s. under the application.

The application was processed toward the issuance of a permit subsequent to the above described letter dated October 2, 1974. Item 2 of the application was apparently altered by an unknown person after the writing of the letter since the typewritten 0.1 c.f.s. is now written over in ink by a handwritten 1.0. The file contains nothing to indicate by whom the change from 0.1 to 1.0 was made, and the change itself is not initialled by whoever made the alteration as is the normal procedure in altering an original document.

In processing Application 28246 following its publication, the alteration of the original c.f.s. rate was not detected, and a permit was ultimately issued on January 7, 1975 in the amount of 1.0 c.f.s.

RULING:

NRS 533.360 requires that notice of any application to appropriate water be published in a newspaper having general circulation in the county where water is sought to be appropriated. Thus, the public is given formal notice in order that interested persons who feel aggrieved may protest the granting of a permit under that application. Such protest is provided for under NRS 533.365. Since the public is so notified by published notice of the amount of water sought to be appropriated, in the interest of protection through due process the State Engineer is precluded

from granting a permit to divert water in any amount greater than was applied for and for which the public was given formal notice.

Accordingly, since published notice of Application 28246 included a diversion rate of 0.1 c.f.s., the subsequently issued permit must be limited to no more than that amount. Therefore, the total diversion rate allowed under Permit 28246 is hereby reduced from 1.0 c.f.s. to 0.1 c.f.s. and an amended permit will be issued to reflect that reduction.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

WJN/dh

Dated this 16th day
of April 1979.