

IN THE MATTER OF APPLICATIONS)
29931, 30351 AND 30351-S-1)
TO APPROPRIATE EFFLUENT FROM THE)
MINDEN-GARDNERVILLE SANITATION)
DISTRICT PLANT, DOUGLAS COUNTY,)
NEVADA)

R U L I N G

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INTRODUCTION

Applications 29931, 30351 and 30351-S-1 were filed to store and appropriate effluent from the Minden-Gardnerville Sanitation District treatment plant in Douglas County, Nevada.

FINDINGS OF FACT

I

Application 29931 was filed on January 20, 1976 by the Galeppi Land and Livestock, Inc., to appropriate 5.0 c.f.s. of effluent from the Minden-Gardnerville Sanitation District sewage disposal plant for irrigation purposes. The point of diversion is described as within the NE1/4 NW1/4 of Section 30, T.13N., R.20E., M.D.M. The place of use is described as 1,040 acres within portions of Sections 1, 12 and 13, T.13N., R.19E., M.D.M. The period of use to be from January 1 to December 31 of each year. 1/

A protest to the granting of Application 29931 was filed on May 4, 1976 by the Minden-Gardnerville Sanitation District. The basis of the protest is that under Federal laws, the District will be required to provide further treatment and will be held responsible for the control, discharge and usage of the effluent. The District also protests on the grounds that the effluent is a valuable property of the District and not subject to appropriation until discharged into a stream. In addition, the District has entered an agreement with a third party for the use of the effluent. 2/

A protest to the granting of Application 29931 was filed on May 6, 1976 by the H. F. Dangberg Land and Live Stock Company. The protest is filed on the grounds that the effluent cannot be placed to a beneficial use without crossing protestant's land and no right has been granted to the applicant to convey the effluent across protestant's lands. Also, the protest claims the effluent has not and will not become public waters as title has been transferred to the protestant by the District and becomes waters to which the protestant is entitled prior to its leaving the District Sewage Plant by Lease Agreement dated May 1, 1975. 3/

II

Application 30351 was filed on June 25, 1976 by the Minden-Gardnerville Sanitation District to appropriate 3.12 c.f.s. of effluent from the Water Pollution Control Plant as a primary application. The point of diversion is described as within the NE1/4 NW1/4 Section 30, T.13N., R.20E., M.D.M.

The place of use is described as a primary use within Douglas County. The period of use is to be from January 1 to December 31 of each year. 4/

A protest to the granting of Application 30351 was filed on November 12, 1976 by the Galeppi Land and Livestock, Inc. The basis of the protest is that for the past eight (8) or nine (9) years, the said waters have been flowing into the Martin Slough and Klauber Pond and those waters have always been used by Galeppi for irrigation. The protest further claims that only through secondary applications can the Minden-Gardnerville Sanitation District use this water. 5/

III

Application 30351-S-1 was filed on August 18, 1976 by the H. F. Dangberg Land and Livestock Company to appropriate 3.12 c.f.s. as a secondary application for the effluent from the Minden-Gardnerville Sanitation District Plant under primary Application 30351 for irrigation purposes. The point of diversion is described as within the NE1/4 NW1/4 Section 30, T.13N., R.20E., M.D.M. The place of use is described as 1,000 acres within Section 24, NE1/4 NE1/4 Section 25, T.13N., R.19E.; the W1/2 Section 19 and the NW1/4 Section 30, T.13N., R.20E., M.D.M. The period of use is from January 1 to December 31 of each year. No protest was filed to the granting of Application 30351-S-1. 6/

IV

A hearing was held before the State Engineer in the matter of protested Applications 29931 (Galeppi Land and Livestock, Inc.) and 30351 (Minden-Gardnerville Sanitation District) on November 5, 1979 in Minden, Nevada. 7/

Testimony by Dallas Byington, President, Vice President and General Manager of Galeppi Land and Livestock, Inc., on behalf of Galeppi Land and Livestock, Inc., states that the protest to the District's Application 39351 was filed for the sole purpose of protecting the prior Application 29931 filed by the Galeppi Land and Livestock, Inc. Mr. Byington affirmed that if a permit were issued to Application 29931, the necessary steps would be taken to insure that no environmental laws were violated in the disposal of the effluent.

Testimony by Daniel K. Hellwinkel, Chairman, Minden-Gardnerville Sanitation District, on behalf of the Minden-Gardnerville Sanitation District states that a lease agreement dated May 1, 1975 between the Minden-Gardnerville Sanitation District and the H. F. Dangberg Land and Livestock Company granted the lessor first and prior right to the use of any and all effluent from the sewage disposal plant. Mr. Hellwinkel stated that he believed this agreement was still in force and effect with the Anderson Farms as successors in interest to the H. F. Dangberg Land and Livestock Company. Mr. Hellwinkel further stated that in his opinion the District must maintain control of the effluent to land disposal as part of the treatment to comply with environmental laws.

Testimony by H. A. Van Fleet, General Manager for John B. Anderson, on behalf of John B. Anderson doing business as Dangberg Farms affirmed that Anderson is the successor in interest to Dangberg in terms of the lease agreement dated May 1, 1975 and that Anderson has fulfilled its part of this lease agreement.

Testimony by Ernest Gerber, Superintendent and District Engineer for the Minden-Gardnerville Sanitation District, on behalf of the Sanitation District described the operation of the sewage treatment plant. Mr. Gerber affirmed that the District must have control to the very end of where the water is totally dissipated pursuant to various EPA permits.

Testimony by John Davis, Attorney for the Sanitation District, on behalf of the Minden-Gardnerville Sanitation District stated that in his opinion the District has a contractual obligation for 50 years, commencing May 1, 1975, to deliver the effluent to the Dangberg Company.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 8/

II

Galeppi Land and Livestock, Inc., by Application 29931 and testimony given at the November 5, 1979 hearing has not elected to appropriate effluent discharged from a sewage collection and treatment system under the reservoir - secondary permit procedure. 9/

III

Galeppi Land and Livestock, Inc., is not precluded from appropriating effluent discharged from the Minden-Gardnerville Sanitation District treatment plant in accordance with and subject to statute. 10/

IV

The Minden-Gardnerville Sanitation District has demonstrated compliance with the provisions set by statute under the reservoir - secondary permit procedure by properly filing Application 30351. 11/

The alternative in the sewage treatment process of land surface application as indicated by testimony is a 20 to 25 million dollar tertiary addition to the present plant. In the land surface application of effluent, the Minden-Gardnerville Sanitation District must retain control in their responsibility to comply with the standards set by the EPA permits. This control is maintained by the reservoir - secondary permit procedure established by statute. 12/

VI

The H. F. Dangberg Land and Livestock Company has demonstrated compliance with the provisions set by statute under the reservoir - secondary permit procedure by properly filing Application 30351-S-1.
13/

RULING

The protests to the granting of Application 29931 are overruled and a permit will be granted subject to the availability of effluent after final treatment. The protest to the granting of Application 30351 is overruled and a primary permit will be granted for the reservoir storage of effluent. A permit will be granted to Application 30351-S-1 subject to a valid agreement with the primary permit holder and remain in effect for the life of said agreement.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

WJN/bc

Dated this 17th day
of January, 1980.

FOOTNOTES

1. Public record available in the office of the State Engineer.
2. Public record available in the office of the State Engineer.
3. Public record available in the office of the State Engineer.
4. Public record available in the office of the State Engineer.
5. Public record available in the office of the State Engineer.
6. Public record available in the office of the State Engineer.
7. Transcript of November 5, 1979 hearing is a public record available in the office of the State Engineer.
8. NRS 533.440 Section 3.
9. NRS 533.440 Section 3.
10. NRS 533.440 Section 3 and NRS 533.325 to 533.435, inclusive.
11. NRS 533.440 Section 3.
12. Page 46, transcript of November 5, 1979 hearing available in the office of the State Engineer and NRS 533.440 Section 3.
13. NRS 533.440 Section 3.