

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF PERMIT 62669, FILED TO CHANGE)
THE POINT OF DIVERSION, PLACE OF USE AND MANNER)
OF USE OF PERMIT 14576, CERTIFICATE 5329, AND)
APPLICATION 63048 FILED TO CHANGE THE POINT OF)
DIVERSION AND PLACE OF USE OF A PORTION OF)
PERMIT 14576, CERTIFICATE 5329, WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (10-162), NYE COUNTY,)
NEVADA.)

RULING

4888

GENERAL

I.

Application 62669 was filed on December 17, 1996, by Bernard Mills to change the point of diversion, place of use and manner of use of 0.01 cubic feet per second (cfs), not to exceed 1.0 acre-foot annually (afa), a portion of the underground water previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M., and the proposed manner of use is for commercial and domestic purposes. Bernard Mills conveyed change Application 62669 to Sean Michael Morris and Katherine Mary Morris by a quitclaim deed dated October 16, 1998, recorded by the Nye County Recorder on October 20, 1998.¹

The State Engineer issued Permit 62669 on February 5, 1999, to Sean Michael Morris and Katherine Mary Morris for 0.01 cfs, not to exceed 1.0 afa, for commercial and domestic purposes.

II.

Application 63048 was filed on April 17, 1997, by Stanley L. and Mary L. Braithwaite to change the point of diversion and place of use of 0.02 cfs, not to exceed 2.0 afa, a portion of the underground water previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M. The application was filed for

¹ File No. 62669, official records in the office of the State Engineer.

irrigation and domestic purposes within the SW¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M.²

FINDINGS OF FACT

I.

A Grant, Bargain, Sale Deed, Nye County Recorder No. 298058, was executed on November 12, 1991, and filed in the office of the State Engineer on February 27, 1992, pursuant to which 32.0 afa a portion of water rights under Permit 14576, Certificate 5329, were conveyed to Leonard Hamburg.³ Attachment 1 to this ruling summarizes the transaction between Leonard Hamburg and various parties who purchased water rights from Mr. Hamburg. The State Engineer finds that the summary gives the Nye County Recorder's document number, the amount of water rights purchased, the execution and recording dates of the transactions, the date the document was filed with the State Engineer and any associated change application numbers, the date any change application was ready for action and the date any permit or certification was granted by the State Engineer.

II.

Quitclaim Deed, Nye County Recorder No. 309497, executed on May 1, 1992, and recorded May 29, 1992, transferred 4.5 afa, a portion of the water rights under Permit 14576, from Leonard Hamburg to William H. and Anna Terrell, Joseph and Rita M. Licata, Pasty Licata, David Licata, Rose Piazza and, Lorraine Simonetti. The State Engineer's office received the documents on March 22, 1999.³

Quitclaim Deed, Nye County Recorder No. 323845, executed on December 8, 1992, and recorded on December 16, 1992, transferred 3.0 afa, a portion of the water rights under Permit 14576, from Leonard Hamburg to Ronald B. Adams and Sandra L. Adams. The State Engineer's office received the documents on September 16, 1999.³

Quitclaim Deed, Nye County Recorder No. 0326840, executed on February 5, 1993, and recorded on February 25, 1993, transferred 1.0 afa, a portion of water rights under Permit 14576, from Leonard Hamburg to Ronald L. Perkins and Cynthia C. Perkins. The State Engineer's office received the documents on November 15, 1994.³

² File No. 63048, official records in the office of the State Engineer.

³ File No. 14576, official records in the office of the State Engineer.

Quitclaim Deeds, Nye County Recorder Nos. 0336720 and 0342570, recorded on August 13, 1993, and November 19, 1993, respectively, transferred 1.0 afa, a portion of water rights under Permit 14576, from Leonard Hamburg to Ron Bryant and Sandy Bryant and John A. Waters and Beryl V. Waters who transferred the 1.0 afa to Water Rock Ranch. The State Engineer's office received the documents on July 1, 1998. The deeds were executed on July 27, 1993 and November 15, 1993.³

Quitclaim Deed, Nye County Recorder No. 0339509, executed on September 20, 1993, and recorded on September 28, 1993, transferred 0.25 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Elverna Burchfield. The State Engineer's office received the document on November 29, 1993.³

Quitclaim Deed, Nye County Recorder No. 0341235, executed on October 13, 1993, and recorded on October 26, 1993, transferred 1.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Hilbert M. Christie and Della J. Christie. The State Engineer's office received the document on April 11, 1995.³

Reports of Conveyance were received on February 18, 1994, and May 19, 1998, in the office of the State Engineer for Rosemarie Ricks. Rosemarie Ricks recorded Grant, Bargain, Sale Deed, Nye County Document No. 0347037, on February 1, 1994, and Nye County Document No. 0393071, on April 3, 1996, for 2.0 afa and 8.0 afa, respectively, which transferred a portion of the water rights under Permit 14576 from Leonard Hamburg to her. The deeds were executed on January 31, 1994, and April 1, 1996.³

Quitclaim Deed, Nye County Recorder No. 0351854, executed on April 29, 1994, and recorded on May 3, 1994, transferred 5.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Ray and Irene Wulfenstein, Trustees of the Wulfenstein Trust R-501. The State Engineer's office received the documents on July 8, 1997.³

Quitclaim Deed, Nye County Recorder No. 0355903, executed on June 20, 1994, and recorded on July 13, 1994, transferred 1.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Phillip G. Jensen. The State Engineer's office received the documents on May 19, 1998.³

Quitclaim Deed, Nye County Recorder No. 0359937, executed on September 13, 1994, and recorded on September 23, 1994, transferred 1.0 afa, a portion of water rights

under Permit 14576 from Leonard Hamburg to Floyd's Ace Hardware. The State Engineer's office received the document on August 3, 1995.³

Quitclaim deed, Nye County Recorder No. 0395253, executed on February 1, 1996, and recorded on May 8, 1996, transferred 2.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Daniel Daffer and Cheryl Daffer. The State Engineer's office received the document on July 1, 1998.³

Quitclaim Deed, Nye County Recorder No. 0407550, executed on October 28, 1996 and recorded on November 4, 1996, transferred 3.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to James C. Gomes and Lesley J. Murakam. The State Engineer's office received the document on July 1, 1998.³

Quitclaim Deed, Nye County Recorder No. 0409265, executed on November 25, 1996, and recorded on November 26, 1996, transferred 2.75 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Raymond W. Snowdon and Winona L. Snowdon. The State Engineer's office received the document on September 3, 1997.³

Quitclaim Deed, Nye County Recorder No. 410028, executed on February 23, 1996, and recorded on December 6, 1996, transferred 1.0 afa, a portion of water rights under Permit 14576 from Leonard Hamburg to Bernard S. Mills. By Grant, Bargain, and Sale Deed, Nye County Recorder No. 410029, executed on November 22, 1996, and recorded on December 6, 1996, Bernard Mills transferred ownership to Sean Michael Morris and Katherine Mary Morris. The State Engineer's office received the document on February 24, 1997.³

Quitclaim Deeds, Nye County Recorder Nos. 0414137 and 0416490, executed on February 11, 1997 and March 28, 1997, and recorded on February 14, 1997 and March 31, 1997, respectively, transferred 1.0 afa, each a portion of water rights under Permit 14576 from Leonard Hamburg to Stanley L. and Mary L. Braithwaite. The State Engineer's office received the documents on May 19, 1998.³

The State Engineer finds that as outlined in Attachment 1, Leonard Hamburg acquired 32.0 afa a portion of water rights under Permit 14576, Certificate 5329 from Theodore Blosser. Based on the information on file with the State Engineer as of March 2000, Leonard Hamburg sold a total of 35.5 afa of water rights under Permit 14576, resulting in the sale of 3.5 afa of more water rights than he owned under Permit 14576.

III.

By letter dated June 21, 1999, the State Engineer notified Leonard Hamburg that by legal documents he had transferred title to more water than he had acquired under Permit 14576, Certificate 5329. By a Grant, Bargain, Sale Deed filed in the office of the State Engineer on February 27, 1992, 32.0 afa of water rights under Permit 14576, Certificate 5329, were conveyed to Leonard Hamburg. At the time of the June 21, 1999, letter Mr. Hamburg had transferred 35.5 afa or 3.5 afa more than he had purchased.³

The State Engineer finds that on July 20, 1999, Mr. Hamburg filed a report of conveyance with the office of the State Engineer conveying 3.5 afa, a portion of water rights under Permit 14576, from Rosemarie Ricks to himself to mitigate the discrepancy.³

IV.

On September 16, 1999, a Quitclaim Deed, Nye County Recorder No. 323845, executed on December 8, 1992, and recorded December on 16, 1992, transferring 3.0 afa a portion of water rights under Permit 14576, from Leonard Hamburg to Ronald B. and Sandra L. Adams was filed in the office of the State Engineer.³ Mr. Hamburg was notified by the State Engineer's office by letter dated September 24, 1999, that he had transferred more water than he had purchased by legal document.³ The amount of the discrepancy was 3.0 afa. Mr. Hamburg was granted thirty (30) days to resolve this matter. On October 29, 1999, the State Engineer received a response from Mr. Hamburg in which he indicates that the water rights conveyed to the Adams are subject to forfeiture because they had not been transferred to a particular property and had not been put to beneficial use for five consecutive years.³ Mr. Hamburg believes that these water rights have been lost to forfeiture and that he is not responsible to transfer any more of his water right to cover the transfer to the Adams. The State Engineer finds the Adams filed Application 58387 in a timely manner after Mr. Hamburg conveyed water rights to them and Mr. Hamburg is the responsible party to resolve the discrepancy for the water rights he sold beyond the 32.0 afa he initially acquired from Theodore Blosser.

V.

Attachment 1 to this ruling summarizes transactions between Leonard Hamburg and the parties to whom he sold portions of water rights under Permit 14576. Attachment

1 is sorted according to the execution date of the transaction between Leonard Hamburg and the purchasers of portions of the water right under Permit 14576. The State Engineer finds that Leonard Hamburg acquired 32.0 afa of water rights under Permit 14576 and that based on the recordation date of the legal documents executed by Leonard Hamburg the following parties are owners of record of a portion of water rights under Permit 14576:

<u>OWNER</u>	<u>AMOUNT (afa)</u>
William and Anna Terrell, Joseph and Rita M. Licata, Pasty Licata, David Licata, Rose Piazza and Lorraine Simonetti	4.5
Ronald B. Adams and Sandra L. Adams	3.0
Ronald L. Perkins and Cynthia C. Perkins	1.0
Water Rock Ranch	1.0
Elverna Burchfield	0.25
Hilbert M. Christie and Della J. Christie	1.0
Rosemarie Ricks	6.5
Ray and Irene Wulfenstein Trustees of the Wulfenstein Family Trust	5.0
Phillip Jensen	1.0
Floyd's Ace Hardware	1.0
Daniel Daffer and Cheryl Daffer	2.0
James C. Gomes and Lesley J. Murakam	3.0
<u>Raymond W. Snowdon and Winona L. Snowdon</u>	<u>2.75</u>
TOTAL	32.0

VI.

Permit 62669 was issued to Sean Michael Morris and Katherine Mary Morris on February 5, 1999, for 0.01 cfs, not to exceed 1.0 afa, a portion of water rights under Permit 14576. At the time of issuance of Permit 62669, a review of the records of the State Engineer indicated that Leonard Hamburg had conveyed 31.0 afa of the 32.0 afa of the water rights that he had purchased from Theodore Blosser. Nevada Revised Statute § 533.384 requires that the State Engineer confirm that there are no conflicts in the chain of

title from documents and other records on file in the office of the State Engineer at the time of conveyance of a water right. The State Engineer finds that at the time of the conveyance of the portion of Permit 14576 from Leonard Hamburg to Bernard Mills and at the time change Application 62669 was granted Mr. Hamburg still had water rights available for transfer, thus, no conflict in the records of the State Engineer existed at the time of granting Permit 62669. The State Engineer also finds that upon receipt of the deeds from Terrell, Licata, Piazza and Simonetti and Adams that Leonard Hamburg conveyed 3.0 afa more than he owned, thus, Permit 62669 would not have been issued if all the information now on file with the State Engineer had been available prior to the issuance of change Application 62669.

VII.

Upon receipt of the documents indicating the ownership of record of Permit 14576, it has been determined that Stanley L. and Mary L. Braithwaite executed a quitclaim deed on February 11, 1997, and March 28, 1997, for 1.0 acre-foot annually each. The deeds were recorded with the Nye County Recorder on February 14, 1997, and on March 3, 1997. Attachment 1 includes the recordation date of the documents recorded with the Nye County Recorder. As indicated in the attachment, Stanley L. and Mary L. Braithwaite were the last to execute and record their deeds transferring 2.0 afa, a portion of the water rights under Permit 14576. The State Engineer finds that no water rights remain in the name of Leonard Hamburg to transfer to Stanley L. and Mary L. Braithwaite. Leonard Hamburg acquired 32.0 afa from Theodore Blosser and transferred 35.0 afa resulting in the aforementioned 3.0 afa discrepancy of which the Braithwaite's change Application 63048 is included.

VIII.

The State Engineer finds that a permit cannot be granted on change Application 63048 as the underlying water right supporting change Application 63048 has no water remaining in the name of Leonard Hamburg from which the applicants claim to have purchased the water; therefore, there is no valid water right that can be changed by the application.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:⁵

- A. The proposed use conflicts with existing rights; or.
- B. The proposed use threatens to be detrimental to the public interest.

III.

Nevada Revised Statute 533.383 provides that when a deed is conveying water rights and is not recorded with the county recorder, as set forth in NRS § 533.382, it shall be deemed as void as against a subsequent purchaser who in good faith and for valuable consideration purchases the same application, right, certificate or permit, or any portion thereof, if the subsequent purchaser first records his deed in compliance with NRS § 533.382. As outlined in Attachment 1, Leonard Hamburg purchased 32.0 afa of water rights under Permit 14576, Certificate 5329, and sold 38.5 afa, then bought back 3.5 afa, resulting in the net sale of 3.0 afa more of the water rights than was in his name under Permit 14576. The State Engineer concludes that Leonard Hamburg did not have title to the 1.0 acre-foot he sold to Bernard Mills and the 2.0 acre-feet conveyed to Stanley L. and Mary L. Braithwaite.

IV.

Nevada Revised Statute § 533.345(1) provides that an application can be filed to change the place of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right or certificate in good standing.⁶ Where the ownership of a permit has already been conveyed, in portion or totality, the water right is no longer

⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.370(3).

⁶ NRS § 533.324.

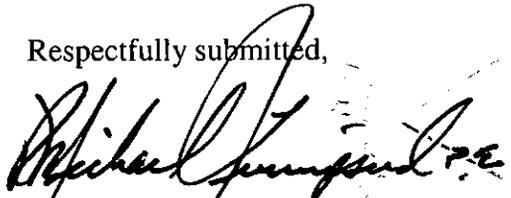
valid; thus it is not in good standing and cannot be used to support a change application. The State Engineer concludes that in the case of change Applications 62669 and 63048 the portion of the underlying permit in the name of Leonard Hamburg had already been conveyed to other parties as indicated in Attachment 1; therefore, no water right remained in the name of Leonard Hamburg to convey to Bernard Mills and Stanley L. and Mary L. Braithwaite to support change Applications 62669 and 63048.

RULING

Permit 62669 is hereby rescinded and ruled denied on the grounds that the underlying water right that supported the change application, Permit 14576, Certificate 5329, had no water remaining in the name of Leonard Hamburg to convey to support change Application 62669.

Application 63048 is hereby denied on the grounds that the underlying water right that was used to support the change application, Permit 14576, Certificate 5329, had no water remaining in the name of Leonard Hamburg to convey to support change Application 63048.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/KWH/cl

Dated this 28th day of
March, 2000.

ATTACHMENT 1

OWNER INFORMATION		LEGAL DOC. INFORMATION					ABROGATION INFORMATION			
Grantor	Grantee/Current owner if different	AFA	Document#	Exec. date	Recorded	Filed	Change App.	Status	RFA Date	Per/Cer date
Blosser	Leonard Hamburg	32	298058	11/12/91	11/27/91	2/27/92				
Hamburg	Terrell, Licata, Piazza, Simonetti	4.5	309497	5/1/92	5/29/92	3/22/99	57178	RFA	5/16/92	
	Adams	3	323845	12/8/92	12/16/92	9/16/99	58387	RFA	4/18/93	
	Perkins	1	0326840	2/5/93	2/25/93	11/15/94	61768	PER	4/12/96	8/8/96
	Bryant & Waters/Water Rock Ranch	1	0336720	7/27/93	8/13/93	7/1/98	59040	RFA	1/9/94	
	Burchfield	0.25	0339509	9/20/93	9/28/93	11/29/93	59301	CER	2/27/94	1/11/99
	Christie	1	0341235	10/13/93	10/26/93	4/11/95	60643	PER	7/1/95	8/8/96
	Ricks	2	0347037	1/31/94	2/1/94	2/18/94	62674 & 5	RFA	6/15/97	
	Wulfenstein Trust	5	0351854	4/29/94	5/3/94	7/8/97	62254	PER	1/17/97	2/9/98
	Jensen	1	0355903	6/20/94	7/13/94	5/19/98	60198	RFA	3/19/95	
	Floyd's Ace Hardware	1	0359937	9/13/94	9/23/94	8/3/95	61429	PER	12/15/95	12/19/95
	Daffer	2	0395253	2/1/96	5/8/96	7/1/98	62671	RFA	6/8/97	
	Ricks	8	0393071	4/1/96	4/3/96	5/19/98	62674 & 5	RFA	6/15/97	
	Gomes & Murakam	3	0407550	10/28/96	11/4/96	7/1/98	62673	RFA	6/8/97	
	Snowdon	2.75	0409265	11/25/96	11/26/96	9/3/97	62670	PER	8/3/97	6/18/98
	Mills/Morris	1	410028	2/23/96	12/6/96	2/24/97	62669	PER	6/8/97	2/5/99
	Braithwaite	1	0414137	2/11/97	2/14/97	5/19/98	63048	RFA	8/29/97	
	Braithwaite	1	0416490	3/28/97	3/31/97	5/19/98	63048	RFA	8/29/97	
Ricks	Hamburg	-3.50	473382	7/6/99	7/8/99	7/20/99	na	na	na	na

TOTAL AMOUNT CONVEYED BY HAMBURG: 35

RFA = ready for action

PER = permit

CER = certificate