

IN THE OFFICE OF THE STATE ENGINEER

3177

IN THE MATTER OF PERMIT 36125 TO )  
CHANGE THE POINT OF DIVERSION AND )  
PLACE OF USE OF A PORTION OF )  
UNDERGROUND WATER HERETOFORE )  
APPROPRIATED UNDER PERMIT 29181 IN )  
RED ROCK VALLEY, WASHOE COUNTY, )  
NEVADA. )

RULING ON  
REMAND

GENERAL

I.

Application 36125 was filed on November 3, 1978, by Jeffrey Pimpl and Rena Pimpl to change a portion (1.35 c.f.s.) of the underground waters of the State of Nevada heretofore appropriated under Permit 29181 to a new point of diversion in the SE1/4 NW1/4 Section 11, T.23N., R.18E., M.D.B.&M. and a new place of use being 80 acres in portions of the NW1/4, N1/2 SW1/4 and SW1/4 NE1/4 Section 11, T.23N., R.18E., M.D.B.&M. The proposed manner of use is irrigation and domestic.<sup>1</sup>

II.

A timely protest to the granting of Application 36125 was filed January 29, 1979, by Betty Miller and prayed the application be denied on the following grounds:

"Permit #29181 was held in the name of E. L. Puett. Mr. Puett has deeded eighty acres of water right to me. Under what appears to be a questionable deed, he deeded eighty acres to Jeff Pimpl. Mr. Puett has said that if the Division of Water Resources denies the application to Jeff Pimpl, he will deed this eighty acres to me. (This deed is in the mail now.)

After much research and talking to an old time rancher from this area, it is my belief that a 'vested water right' exists or could exist on my property. If the application of Mr. Pimpl is approved and the vested right is proven, it would appear to me that an additional eighty acres of water right is being created in a valley that is already over-appropriated. My property was patented on July 5, 1924. The patent mentions 'vested water rights' to the heirs or assigns forever. The rancher I mentioned, Marshal Matley, says that this ranch was in production as early as 1910, and possibly earlier. There is a large concrete ditch half a mile long and over a mile of dirt ditches still visible on the property. This irrigation system is served by a well in which the old turbine pump is still situated. It is a 12" pump and the metal nomenclature plate on it is dated 1917.

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<sup>1</sup> Application and Permit No. 36125 of record in the office of the State Engineer.

Jeff Pimple owns a total of eight ten-plus acre lots situated in the Eagle Peak Development Subdivision. This subdivision was created with the intent of being for single family residences, not farming. There are several homes on this property, plus out buildings, driveway, etc. In addition, the topography of a portion of the lots renders them unsuitable for agriculture. Therefore, I question whether eighty acres of water rights could be utilized by Jeff Pimpl on this property when he has declared to be the 'place of use.'

I purchased my property for the express purpose of seeding to alfalfa hay and utilizing all of the water right under permit #29181. The possibility of removing eighty acres of water right under the application of Jeff Pimpl would create a hardship and render my land worth far less than my acquisition price.

Therefore, I respectfully request that the application of Jeff and Rena Pimpl to move eighty acres of water right from my land, purchased in good faith, after being told by your division that it did have a full 160 acre water right, be denied."<sup>2</sup>

### III.

A field investigation into the matter of this protested application was held March 19, 1979, at which both the applicants and protestants were represented and where they gave a full and complete representation of their respective positions.<sup>3</sup>

Thereafter, on May 27, 1980, the State Engineer overruled the Miller protest on the grounds that there was no evidence to show the transfer of a portion of the water right under 29181 to the Pimpls was invalid.<sup>4</sup>

Subsequently a permit was issued under Application No. 36125 on September 24, 1980.

### IV.

On June 28, 1980, Betty Miller filed a "Petition for Judicial Review from Order of State Engineer" in the Second Judicial District Court of the State of Nevada in and for the County of Washoe being Case No. 80-5385 assigned to Department No. 2, the Honorable John W. Barrett, District Judge, presiding.

The State Engineer filed his Answer, First Amended Answer and Motion to Dismiss.

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<sup>2</sup> Protest on file under Permit 36125 of record in the office of the State Engineer.

<sup>3</sup> Report of Filed Investigation No. 686 of record in the office of the State Engineer.

<sup>4</sup> Ruling No. 2557 of record in the office of the State Engineer.

On November 12, 1981, the Honorable Court issued its order denying the State Engineer's Motion to Dismiss and remanding the matter to the State Engineer for hearing and consideration and determination of the ownership of the water right in question.<sup>5</sup>

V.

On January 18, 1984, the State Engineer held a hearing after notice to all parties.<sup>6</sup> The Pimpls and Clifford Ladely appeared in person and through counsel. Betty Miller did not appear at said hearing in person or through counsel or other representative.<sup>7</sup> It should also be noted that notices sent to Miller were returned unclaimed even though every reasonable effort was made to contact her.<sup>8</sup> No further evidence of any kind has been submitted by Miller to substantiate her allegations. No other person appeared at the January 18, 1984, hearing.

VI.

A review of the Permit 29181 file shows that by means of properly certified documents of transfer:

1. On October 10, 1978, Earnest L. Puett sold to Jeffrey and Rena Pimpl the SE1/4 NE1/4, and the NE1/4 SE1/4 of Section 11, T.23N., R.18E., M.D.B.&M., and the water rights appurtenant thereto as evidenced by Permit 29181.<sup>9</sup>
2. On December 8, 1978, Earnest L. Puett sold to Betty L. Miller the SW1/4 NW1/4 and the NW1/4 SW1/4 Section 12, T.23N., R.18E., M.D.B.&M. and the water rights appurtenant thereto as evidenced by Permit 29181.<sup>9</sup>
3. On December 16, 1981, by Trustee's Deed, the Miller interest was sold to Nick J. Tarbochia and Rose J. Tarbochia.<sup>9</sup>
4. On March 22, 1982, the Tarbochias sold the Miller interest to the Pimpls and Clifford Ladely.<sup>9, 10</sup>

No challenge of any kind to any of these documents was put into evidence at the January 18, 1984, hearing or made of record in this office at any time during the pendency of this matter since Miller's appeal was filed.

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<sup>5</sup> State Exhibit No. 4, State Engineer's hearing, January 18, 1984.

<sup>6</sup> State's Exhibit No. 1, State Engineer's hearing, January 18, 1984.

<sup>7</sup> Transcript of State Engineer's hearing, January 18, 1984, p. 3, ll. 10-21 and p. 8, ll. 17-19.

<sup>8</sup> Transcript of State Engineer's hearing, January 18, 1984, p. 5, l. 29 through p. 6, l. 5. Exhibits No. 2 and 3, State Engineer's hearing, January 18, 1984.

<sup>9</sup> Permit File No. 29181 of record in the office of the State Engineer.

<sup>10</sup> State's Exhibit No. 5, State Engineer's hearing, January 18, 1984.

VII.

On January 23, 1979, Betty Miller filed Application No. 36521 to change a portion of the place of use of Permit 29181, which application was subsequently approved by the State Engineer on August 13, 1980.<sup>11</sup> Claim of Vested Right No. 03111 was filed by Betty Miller on January 29, 1979. Claim 03111 and Permit 36521 were assigned by Trustee's Deed to the Tarbochias on December 16, 1981,<sup>11</sup> and subsequently to the Pimpls and Ladely on March 22, 1982.<sup>10</sup>

No challenge from Miller has been entered to these transfers and no communication with the State Engineer's office has been made by Miller or any person purporting to represent her since the filing of the appeal.

At the hearing, the Pimpls and Ladely withdrew Permit 36125 and 36521 on the record.<sup>12</sup>

**FINDINGS OF FACT**

I.

There is no conclusive evidence that the Puett-Pimpl transaction of October 10, 1978, is in any way invalid.

II.

The granting of Permit 36125 was proper in that the portion of 29181 changed by 36125 was owned by the Pimpls at the time the permit was granted.

III.

There are proper and uncontroverted documents on file in the instant matter in the State Engineer's office to transfer all of Permits 29181, 36521 and Claim 03111 from Betty L. Miller to Jeffrey and Rena Pimpl and Clifford Ladely.

IV.

The Pimpls and Ladely wish to withdraw Permit Nos. 36521 and 36125.

**CONCLUSIONS**

I.

As to ownership of the water rights under consideration, the ruling herein is made pursuant to the Order of the Court hereinabove mentioned.<sup>5</sup>

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<sup>11</sup> Permit File No. 36521 of record in the office of the State Engineer.

<sup>12</sup> Transcript of State Engineer's hearing, January 18, 1984, p. 7, ll. 11-13.

II.

Permit Nos. 29181 and 36521 and Claim of Vested Right No. 03111, are entirely owned by Jeffrey and Rena Pimpl and Clifford Ladely.

III.

The owners of record of Permit Nos. 36125 and 36521 have authority to withdraw said permits.

RULING

Jeffrey and Rena Pimpl are the owners of Permit 36125 and the water right appurtenant to the SE1/4 NE1/4 and NE1/4 SE1/4 Section 11, T.23N., R.18E., M.D.B.&M., under Permit 29181.

Jeffrey Pimpl and Rena Pimpl are the owners of record of an undivided 2/3 interest and Clifford Ladely is the owner of record of an undivided 1/3 interest in the water right appurtenant to the SW1/4 NW1/4 and NW1/4 SW1/4 of Section 12, T.23N., R.18E., M.D.B.&M., under Permit 29181.

Jeffrey and Rena Pimpl own a 2/3 interest and Clifford Ladely owns a 1/3 interest in Permit 36521 and Claim 03111.

Permit Nos. 36125 and 36521 are hereby withdrawn at the request of the owners of record thereof.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/LCR/bl

Dated this 19th day of  
April, 1985.