

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

IN THE MATTER OF THE CONTESTED OWNER-)
SHIP OF PERMITS 45580 AND 45581 AND)
PERMIT 52286 TO CHANGE PERMIT 45580 AND)
APPLICATION 52287 TO CHANGE PERMIT 45581)

RULING
#3810

GENERAL

I.

Permit 45580 was issued to Pahrump Valley Land Development Corporation on November 15, 1982, for quasi-municipal and domestic purposes from an underground source in Pahrump Valley Groundwater Basin. The diversion rate as approved was 1.0 cubic foot per second (cfs) with an annual duty of 24.09 million gallons annually (mga).¹

II.

Permit 45581 was issued to Pahrump Valley Land Development Corporation on November 15, 1982, for quasi-municipal and domestic purposes from an underground source in Pahrump Valley Groundwater Basin. The diversion rate as approved was 1.0 cubic foot per second (cfs) with an annual duty of 24.09 million gallons annually (mga).²

¹ Records in the Office of the State Engineer under file 45580 and State of Nevada's Exhibit No. 2 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

² Records in the Office of the State Engineer under file 45581 and State of Nevada's Exhibit No. 3 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

III.

The points of diversion for Permits 45580 and 45581 are located within the SW1/4 NE1/4 Section 19, T.20S., R.53E., M.D.B.&M. The place of use of Permits 45580 and 45581 are in the aforementioned 40 acre subdivision. The allowed combined duty under Permits 45580 and 45581 was not to exceed 24.09 million gallons annually.³

IV.

Application 52286 was filed by Central Nevada Utilities Company to change the point of diversion, place of use and manner of use of Permit 45580. Permit 52286 was issued on June 9, 1989, to change the point of diversion, place of use and manner of use of Permit 45580. The point of diversion of Permit 52286 is located in the SW1/4 SW1/4 Section 27, T.20S., R.53E., M.D.B.&M. The place of use of Permit 52286 is described by legal subdivisions which is identical to the Certified Public Service Commission Boundary of the Central Nevada Utilities Company. The diversion rate of Permit 52286 was limited to 1 c.f.s. and the annual duty was not to exceed 24.09 million gallons annually. The total combined duty under Permits 45581 and 52286 was not to exceed 24.09 million gallons annually.⁴

³ See footnotes 1 and 2.

⁴ Records in the Office of the State Engineer under file 52286 and State of Nevada's Exhibit No. 4 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

V.

Application 52287 was filed by Central Nevada Utilities Company to change the point of diversion, place of use and manner of use of Permit 45581. The proposed point of diversion of Application 52287 is in the SW1/4 SE1/4 Section 10, T.20S., R.53E., M.D.B.&M. The proposed place of use of Application 52287 is that described as the place of use on the application and is indicated to be the Certified Public Service Commission Boundary of the Central Nevada Utilities Company. No action has been taken to date on this application by the State Engineer.⁵

VI.

A hearing was held before the State Engineer's hearing officer on April 4, 1991, to receive evidence and testimony regarding the contested ownership of Permits 45580 and 45581; the issue of the place of use of Permit 52286 and Application 52287 and the Application for Extension of Time for filing the Proof of Beneficial Use under Permit 45881.⁶

FINDINGS OF FACT

At the hearing of April 4, 1991, the following facts were put into evidence.

⁵ Records in the Office of the State Engineer under file 52287 and State of Nevada's Exhibit No. 5 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

⁶ See Transcript of Hearing in Re: Permits 45580, 45581 and 52286, and Application 52287 of April 4, 1991.

I.

A final subdivision map, Machado-Oakes Unit No. 1, was signed by the Division of Water Resources on March 8, 1983, subdivision review No. 2416F. This final map approval was for a total of 66 lots using Permits 45580 and 45581 to satisfy the water right requirement. The basis of approval of the final map for the 66 lots was 1,000 gallon per day per lot, which total 24.09 million gallons annually; the entire amount of Permits 45580 and 45581. The owner/developer named on the final map was the Pahrump Valley Land Development Corporation.⁷

II.

A quitclaim deed from Pahrump Valley Land Development Corporation to Ron Floyd and Charlotte Floyd, husband and wife as joint tenants was executed on September 20, 1984 for "...any and all water rights in conjunction with Permits Nos. 45580 and 45581." This deed was recorded with the Nye County Recorder's Office on September 24, 1984 under file No. 125141. This deed was filed with the State Engineer's Office on May 7, 1985.⁸

⁷ Records in the Office of the State Engineer under files 45580 and 45581 and State of Nevada's Exhibit No. 17 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

⁸ Records in the Office of the State Engineer under file 45580 and State of Nevada's Exhibit No. 6 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

III.

A quitclaim deed from Ron Floyd and Charlotte Floyd, Husband and Wife as joint tenants to Central Nevada Utilities Company was executed June 8, 1987, for "...(A)ll rights and interest in water rights numbers 45580 and 45581." This deed was recorded with the Nye County Recorder's Office on June 24, 1987, under file No. 184238. This deed was filed with the State Engineer's Office on July 16, 1987.⁹

IV.

Permit 52286 was approved by the State Engineer on June 9, 1989, for the amount stated in the aforementioned General Statement,¹⁰ removing the place of use of the existing water right from the approved Machado-Oakes Unit No. 1 subdivision. Application to Change 52287 requests that the place of use of Permit 45581 be removed from the approved Machado-Oakes Unit No. 1 subdivision, thereby leaving no water right appurtenant to such subdivision.¹¹

V.

A letter dated January 18, 1991, directed to the Division of Water Resources, received on January 24, 1991, from Roy L. Mankins

⁹ Records in the Office of the State Engineer under file 45580 and State of Nevada's Exhibit No. 7 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

¹⁰ See footnote 4.

¹¹ See footnote 5.

included a copy of a quitclaim deed from Pahrump Valley Land Development Corporation, a Nevada corporation to Richard L. Geist, a married man as to an undivided 1/2 interest and Norma H. Helms, an unmarried woman as to an undivided 1/2 interest which was executed on November 9, 1982. This deed was recorded with the Nye County Recorder's Office on December 13, 1990, under file number 274322.¹²

VI.

At the hearing of April 4, 1991, Geist and Helms introduced into evidence a grant, bargain and sale deed executed on December 15, 1982, from Richard L. Geist and Norma H. Helms an unmarried woman who acquired title as Norma H. Greene to Ernest Frank Machado, a single man as to an undivided one-half interest and Kenneth Ings, a single man as to an undivided one-half interest in "...the southwest quarter (SW1/4) of the northeast quarter (NE1/4) of Section 19, Township 20 South, Range 53 East, M.D.B.&M."¹³

VII.

At the hearing of April 4, 1991, Geist and Helms introduced into evidence a short form Deed of Trust and Assignment of Rents dated December 15, 1982 between Ernest Frank Machado, a single man

¹² Records in the Office of the State Engineer under file No. 45580 and State of Nevada's Exhibit No. 8 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

¹³ Geist and Helms late filed Exhibit No. 21 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286, and Application 52287.

and Kenneth Ings, a single man, Trustor, and Richard L. Geist, an undivided 1/2 interest and Norma H. Helms, an undivided 1/2 interest, Beneficiary with Lawyers Title of Las Vegas, Inc., a Nevada corporation, as Trustee. The property described in the deed of trust is the southwest quarter (SW1/4) of the northeast quarter (NE1/4) of Section 19, T.20S., R.53E., M.D.B.&M. This deed of trust was recorded in the Nye County Recorder's Office on December 30, 1982, under file No. 72459.¹⁴

VIII.

At the hearing of April 4, 1991, Geist and Helms introduced into evidence a Trustee's Deed upon Sale dated December 17, 1985, between Lawyer's Title of Las Vegas, Inc. a Nevada corporation and Richard L. Geist as to an undivided 1/2 interest and Norma H. Helms as to an undivided 1/2 interest conveying the property in the southwest quarter (SW1/4) of the northeast quarter (NE1/4) of Section 19, T.20S., R.53E., M.D.B.&M. This trustee's deed upon sale was recorded with the Nye County Recorder's Office on July 6, 1990 under file No. 263842.¹⁵

IX.

An Application for Extension of Time for filing of the Proof of Completion of Work and the Proof of Beneficial Use under Permit

¹⁴ See footnote 13.

¹⁵ Geist and Helms Exhibit No. 20 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

45581 was submitted to the State Engineer on February 8, 1991, with the reason stated on the extension application being "additional time is needed to allow action on pending Application 52287 to Change the Point of Diversion, Place and Manner of Use."¹⁶

X.

Prior to the April 4, 1991 hearing, the only deeds filed with the State Engineer were the quitclaim deed between Pahrump Valley Land Development Corporation and Ron and Charlotte Floyd and the quitclaim between Ron and Charlotte Floyd and Central Nevada Utilities Company.¹⁷ These deeds once filed and recorded with and by the State Engineer becomes constructive notice that the grantee owned such water rights.¹⁸

XI.

Testimony was received by Ron Floyd that the water rights under Permits 45580 and 45581 were given in lieu of payment of work. Mr. Floyd further testified that the owner of the water rights was the person for which he did the work. Mr. Floyd further

¹⁶ Records in the Office of the State Engineer under file 45581 and State of Nevada's Exhibit No. 15 at the hearing of April 4, 1991, in Re: Permits 45580, 45581, 52286 and Application 52287.

¹⁷ See footnotes 8 and 9.

¹⁸ NRS 533.385.

testified as to why he sold the water rights to Central Nevada Utilities.¹⁹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.²⁰

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:²¹

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use or change conflicts with existing rights, or
- C. The proposed use or change threatens to prove detrimental to the public interest.

III.

No assignment of title to a water right is binding except between the parties "...unless filed for record in the office of the state engineer."²²

¹⁹ See Transcript of Hearing p. 29 11.7-25, p. 30, p. 31, p. 32.

²⁰ NRS 533.

²¹ NRS 533.370(3).

²² NRS 533.385.

IV.

The assignment of 45580 and 45581 to the Floyds became binding when filed in the State Engineer's office on May 7, 1985, all other title documents were filed after this date. Therefore, the present owner of record of said permits must be and is Central Nevada Utilities Company.

V.

Applications 52286 and 52287 request permission to change the point of diversion and place of use of 45580 and 45581. The granting of application to change 52286 did remove the place of use from a recorded subdivision and to grant 52287 will also remove the place of use from the subdivision. The final map approval for Machado-Oakes Unit No. 1 in accordance with NRS 278.377 was based on the water rights granted under Permits 45580 and 45581.

The State Engineer concludes that these actions are improper and would deprive a recorded subdivision of its water supply which would not be in the public interest.

VI.

Accordingly, the granting of 52286 will be rescinded and the application will be denied; and Application 52287 cannot be approved because it is also appurtenant to an approved subdivision.

VII.

Good cause appearing, the Application for Extension of Time

RULING

From the foregoing findings and conclusions it is hereby ORDERED that the title to Permits 45580 and 45581 remain vested in Central Nevada Utilities Company; and

It is further ORDERED that the approval of Permit 52286 be rescinded and said application be denied in all respects; and

It is further ORDERED that Application 52287 be denied in all respects; and

It is further ORDERED that the Application for Extension of Time under 45581 be granted for one year.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/LCR/bk

Dated this 20th day of
June, 1991.