

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

IN THE MATTER OF PERMIT 52202, CERTIFICATE)
13311 FILED TO CHANGE THE PLACE OF USE AND)
POINT OF DIVERSION OF A PORTION OF THE)
UNDERGROUND WATERS HERETOFORE APPROPRIATED)
UNDER PERMIT 30108, CERTIFICATE 10578,)
WITHIN THE WARMS SPRINGS VALLEY GROUNDWATER)
BASIN, WASHOE COUNTY, NEVADA.)

RULING
4044

GENERAL

I.

Application 52202 was filed on June 8, 1988, by Robert J. Avila to change the point of diversion and the place of use of 0.1008 c.f.s., a portion of the underground waters heretofore appropriated under Permit 30108, Certificate 10578. The proposed use is for irrigation and domestic purposes within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, T.22N., R.21E., M.D.B.&M. The proposed point of diversion is described as being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, T.22N., R.21E., M.D.B.&M. The existing point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 22, T.23N., R.21E., M.D.B.&M. The existing place of use was within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, T.22N., R.21E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Permit 30108 which is partially abrogated by Application 52202 was certified under the name of MCO Properties, Inc., on February 15, 1983.²

II.

On February 26, 1986, a Quitclaim deed being Document No. 1249918 was executed between MCO Properties, Inc. ("Grantor") and Robert J. and Martha J. Avila, husband and wife as joint tenants ("Grantees"), which transferred a portion of Permit 30108, Certificate 10578, amounting to 0.1008 c.f.s., not to exceed 16

¹ Public records of the office of the State Engineer under Application 52202.

² Public records of the office of the State Engineer under Permit 30108.

acre feet annually. Said document was recorded on May 31, 1988, in the Washoe County Recorder's Office.²

III.

A county certified copy of Document No. 1249918 was submitted to the State Engineer's Office on June 8, 1988, accompanied by the required filing fees.²

IV.

On December 14, 1989, the assignment of title specific to the subject portion of Permit 30108, Certificate 10578, to Robert J. and Martha Avila was completed by the State Engineer's Office.

V.

An examination of the records of the State Engineer's Office failed to disclose any additional transfer documents germane to the subject parties.

VI.

Application 52202 was approved under the single name of Robert J. Avila on February 12, 1990, for 0.1008 c.f.s. for irrigation and domestic purposes.¹

VII.

Certificate 13311 was issued under Permit 52202 in the single name of Robert J. Avila on April 2, 1992, in the amount of 0.1008 c.f.s., not to exceed 16 acre feet annually.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the subject matter contained herein.³

II.

The State Engineer concludes that a water right is a form of property right and is protected as such.⁴ It can be abrogated only with the consent of the owner(s) of record as reflected in the records of the office of the State Engineer.

³ NRS Chapter 534.

⁴ Carson City v. Estate of Compa, 88 NEV. 541, 501 P.2d 662 (1972).

III.

The State Engineer concludes that changes in ownership of water rights between parties can be accomplished by submitting originals or copies of the original instruments of transfer, certified by the county recorder, to the office of the State Engineer. Upon the proper filing of the deed in the State Engineer's Office, the assignment of water rights is made a matter of record. The State Engineer further concludes upon examination of the records within the State Engineer's Office, that the owner of record of that portion of Permit 30108, Certificate 10578 being abrogated by Permit 52202, Certificate 13311 is in the names of Robert J. and Martha J. Avila, as joint tenants.

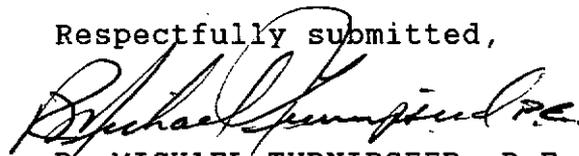
IV.

The State Engineer concludes that the abrogation of the subject portion of Permit 30108, Certificate 10578 represented by Permit 52202, Certificate 13311 was made without the required consent of the co-permittee, Martha J. Avila, and violates the criteria for approval and issuance of permits established within the Office of the State Engineer.

RULING

Permit 52202, Certificate 11331 is hereby rescinded and its associated diversion rate and annual duty of 0.1008 c.f.s., not to exceed 16 acre feet annually is returned to Permit 30108, Certificate 10578 in the name of Robert J. and Martha J. Avila.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 29th day of
November, 1993.