

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

IN THE MATTER OF APPLICATION 54206 )  
FILED TO CHANGE THE POINT OF )  
DIVERSION AND PLACE OF USE OF THE )  
UNDERGROUND WATERS OF THE STEPTOE )  
VALLEY GROUNDWATER BASIN (179) )  
WHITE PINE COUNTY, NEVADA. )

RULING

# 4368

GENERAL

I.

Application 54206 was filed on December 1, 1989, by Kenneth D. and Sharon Heinbaugh to change the point of diversion and place of use of 0.5 cubic feet per second (c.f.s.) of water heretofore appropriated under Permit 33203. The proposed use of water under the application is for the irrigation of 5.0 acres within a portion of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 35, T.16N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 35.<sup>1</sup>

FINDINGS OF FACT

I.

Application 33203 was filed on August 18, 1977, by Kenneth D. and Sharon Heinbaugh to appropriate 0.5 c.f.s. of water for irrigation and domestic purposes. The proposed place of use under Application 33203 was within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 23, T.16N., R.63E., M.D.B.&M.<sup>2</sup>

On October 8, 1980, Kenneth D. and Sharon Heinbaugh signed a Joint Tenancy Grant, Bargain and Sale Deed which sold the proposed place of use under Permit 33203 to H. Russell and Rita R. Suminski.

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<sup>1</sup>File No. 54206, official records in the Office of the State Engineer.

<sup>2</sup>File No. 33203, official records in the Office of the State Engineer.

This deed was recorded in the Office of the County Recorder of White Pine County on October 8, 1980, as document 210133, Book 28, Page 505 and was filed in the Office of the State Engineer on November 24, 1992. This deed made no reference to any water rights which may be appurtenant to the property being reserved to the sellers, Kenneth D. and Sharon Heinbaugh.<sup>2</sup>

II.

The Joint Tenancy Grant, Bargain and Sale deed provided for the conveyance of lots, pieces and parcels of land "Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging..." The Nevada Supreme Court has held that where a party conveys land on which they have acquired water rights and the deed of conveyance does not expressly grant or exclude the water rights from the sale, the water rights were appurtenant to the land and passed under the seller's deed of conveyance of the land under the provisions conveying "together with all and singular the tenements, hereditaments and appurtenances belonging thereto."<sup>3</sup> The State Engineer finds that the deed which conveyed ownership of the place of use under Permit 33203 from Kenneth D. and Sharon Heinbaugh to H. Russell and Rita R. Suminski on October 8, 1980, also conveyed the ownership of Permit 33203.<sup>4</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action.<sup>5</sup>

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<sup>3</sup>Zolezzi v. Jackson, 72 Nev. 150 (1956); NRS 533.040.

<sup>4</sup>NRS Chapter 533.040.

<sup>5</sup>NRS Chapters 533 and 534.

II.

NRS 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 permit or certificate in good standing.<sup>6</sup> Where a water right permit has been transferred pursuant to a deed of sale, the water right no longer exists in the name of the previous owner; therefore, there is no valid water right in good standing that can be used to support a change application. The State Engineer concludes that when the Heinbaugh conveyed the land to the Suminski's they also conveyed the appurtenant water right; therefore, the Heinbaughs do not own a water right that can be changed by Application 54206.

III.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>7</sup>

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

The State Engineer concludes that as Permit 33203 and Change Application 54206 do not have the same owner, the applicants do not own a valid water right that can be changed by a permit granted for Application 54206.

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<sup>6</sup>NRS 533.324.

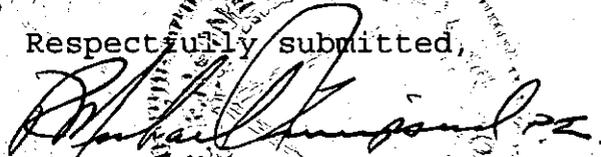
<sup>7</sup>NRS Chapter 533.370(3).

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Change Application 54206 is hereby denied on the grounds that Change Application 54206 and the associated base right, Permit 33203, do not have the same owner.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P. E.  
State Engineer

RMT/RAD/bk

Dated this 5th day of

July, 1996.