

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

IN THE MATTER OF APPLICATION 78373, FILED )  
TO CHANGE THE PLACE OF USE OF A PORTION )  
OF THE PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE PREVIOUSLY APPROPRIATED UNDER )  
PERMIT 50369, WITHIN THE LAS VEGAS VALLEY )  
ARTESIAN BASIN (212), CLARK COUNTY,) )  
NEVADA. )

**RULING**  
**#6188**

**GENERAL**

**I.**

Application 78373 was filed on April 27, 2009, by H. Bruce Cox and Sue Ann Cox, (Cox) to change the place of use of a portion of the water right heretofore appropriated under Permit 50369. The amount requested for change is 0.365 million gallons annually to be used for quasi-municipal purposes. The proposed place of use is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 23, T.19S., R.60E., M.D.B.&M., more specifically Clark County Assessor's Parcel No. 125-23-302-002. The proposed point of diversion is unchanged and located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 23.<sup>1</sup>

**FINDINGS OF FACT**

**I.**

Permit 53069 was approved to provide water service to two residences located within a specific place of use that is depicted on its supporting map. Map No. 53069 illustrates this area as a 313.38' x 236.37' lot located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 23, T.19S., R.60E.,M.D.B.&M., which is identical to the area comprising Clark County Parcel 125-23-302-003.<sup>2</sup> The records of the Clark County Assessor's office indicate that this parcel is currently owned by the Chesnoff Family Trust (Chesnoff). Immediately north of the Chesnoff parcel, is Clark County Parcel 125-23-302-002, which is owned by Cox.<sup>3</sup> The State Engineer finds any water diverted under Permit 53069 must be confined to the Chesnoff parcel.

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<sup>1</sup> File No. 78373, official records in the Office of the State Engineer.

<sup>2</sup> File No. 50369, official records in the Office of the State Engineer.

<sup>3</sup> Clark County Assessor's Office online Property Information, June 14, 2012.

## II.

In many instances the Southern Nevada Branch of the Office of the State Engineer conducts field investigations at the proposed points of diversion and places of use of water right applications that are pending within the Las Vegas Valley Artesian Hydrographic Basin. A field report generated on March 16, 1987, contains several observations germane to Application 50369. At the time of the visit, an existing well and pressure tank were present on Parcel 125-23-302-003; it was also observed that two houses were under construction. Initially it was thought that the place of use illustrated on the map supporting Application 50369 was incorrect, in that it failed to include the residential parcel lying to the north.<sup>2</sup> A more accurate statement would have been that the supporting map was correct and the northern most parcel and residence were outside of the place of use.

## III.

A second field investigation, conducted on December 19, 2008, determined that a portion of the water pumped from the well constructed under Permit 50369 was being delivered to Clark County Parcel 125-23-302-002, which was outside of its place of use.<sup>2</sup> Nevada Revised Statute (NRS) 534.080(2) states "The State Engineer may, upon written notice sent by registered or certified mail, return receipt requested, advise the owner of a well who is using water therefrom without a permit to appropriate the water to cease using the water until the owner has complied with the laws pertaining to the appropriation of water." Accordingly, by letter dated March 25, 2009, Chesnoff and Cox were notified by the Nevada Division of Water Resources, that water from the well construction under Permit 50369, was being used on Clark County Assessor's Parcel No. 125-23-302-002, without the benefit of a water right permit. In order to comply with the NRS, both parties were ordered that the use of any and all water outside of the place of use of Permit 50369 must cease and desist immediately.<sup>2</sup> The State Engineer finds that the water issued under Permit 50369 cannot be used for any purpose within the Cox parcel.

## IV.

The intent of Application 78373 may have been to divide the water approved under Permit 50369 into two portions, to service the Chesnoff and Cox parcels equally. Once approved, water use within the Cox parcel would now be sanctioned under an active water right. Prior to any consideration of this request, it must be determined that title to the portion of Permit 50369

requested for change is held by Cox. The Nevada Division of Water Resources maintains a water right title database. Contained within this record is an accounting of the Reports of Conveyances and transfer documents that have been submitted to the office. A search of the title database specific to Permit 50369, identifies two attempts to secure title to this permit. On December 22, 2008, the Chesnoff submitted its title package, which was followed by a similar submittal by Cox on April 4, 2009.<sup>4</sup>

By letter dated September 8, 2009, both parties were advised that their Reports of Conveyances could not be confirmed and that the Nevada Division of Water Resources was unable to resolve conflicting claims to ownership of a water right. They were also informed that resolution to title disputes could only be made by a court of competent jurisdiction, which in this instance was the Clark County District Court.

Cox chose to pursue this option, as reflected by Case No. A-10-611302-J, Department XVII, District Court, Clark County, Nevada. On May 15, 2012, the District Court Judge, Michael P. Villani, issued The Findings of Fact And Conclusions of Law, which stated that, "Title to Permit 50369 is quieted in favor of the owner of Lot 2, Chesnoff."<sup>2</sup> The State Engineer finds that H. Bruce Cox and Sue Ann Cox do not hold title to any portion of Permit 50369; therefore, the change represented by Application 78373 cannot be considered.

### **CONCLUSIONS**

#### **I.**

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

#### **II.**

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>6</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;

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<sup>4</sup> Nevada Division of Water Resources Title Database, June 14, 2012, official records in the Office of the State Engineer.

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

<sup>6</sup> NRS § 533.370(2).

- C. the proposed use or change conflicts with protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that to grant a permit under change application 78373 when the Applicants do not own any portion of the water right under Permit 50369, which forms the basis for the change application, would threaten to prove detrimental to the public interest.

**RULING**

Application 78373 requests the transfer of a portion of an existing water right that the Applicants do not hold title to; therefore, Application 78373 is hereby denied.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 20th day of  
July, 2012.