

IN THE MATTER OF APPLICATION 36125 TO)
CHANGE UNDERGROUND WATER HERETOFORE)
APPROPRIATED UNDER PERMIT 29181 IN RED)
ROCK VALLEY IN WASHOE COUNTY, NEVADA.)

R U L I N G

FINDINGS OF FACT

99

I

Application 36125 was filed November 3, 1978, by Jeffrey Pimpl and Rena Pimpl to change a portion of Permit 29181 (1.35 c.f.s.) to a new point of diversion in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 11, T.23N., R.18E., M.D.B. & M. and a new place of use containing 80 acres in portions of the NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 11, T.23N., R.18E., M.D.B. & M. The proposed manner of use is irrigation and domestic. 1/

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 date 1917.

"Jeff Pimpl 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 residence, 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." 2/

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. 3/

IV

The records of the State Engineer indicate that Permit 29181 is the only appropriative water right on the existing point of diversion and place of use as described in Application 36125.

Permit 29181 was issued July 23, 1975, for 2.7 c.f.s. for irrigation and domestic purposes on 160 acres of land located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 11, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12 all in T.23N., R.18E., M.D.B. & M. The point of diversion is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12 of said township and range. The status of this application at the time Application 36125 was filed was Proof of Beneficial Use being due February 23, 1979, and the owner of record being Earnest L. Puett.

The records of the State Engineer also indicate that no appropriative water rights exist on the proposed point of diversion or place of use described under Application 36125 and the nearest existing water rights to the proposal under Application 36125 are Permits 30267 and 30268 in the name of Charles G. and Wanda B. Brown located between $\frac{1}{4}$ and $\frac{1}{2}$ of a mile north of the proposed point of diversion and place of use. 4/

V

Proof 03111 was filed January 29, 1979, in the name of Betty Miller. It claims a vested right for the waters of the well which is subject of Permit 29181. The proof claims the well was completed in approximately 1910 and was used for irrigation, domestic, and stock watering purposes on the same land described under Permit 29181. 5/

VI

Evidence indicates that at the time Application 29181 was filed, Earnest L. Puett had authority to do so by virtue of an Agreement for Purchase and Sale. 6/ No substantiated evidence was submitted as to

execution of purchase under this agreement or as to the voiding of the or the agreement through failure to comply with its terms and conditions.

VII

A deed dated October 10, 1978, was filed in the State Engineer's office on November 9, 1978, which assigned the portion of Permit 29181 proposed to be changed by Application 36125 from Earnest L. Puett to Jeffrey Pimpl and Rena Pimpl. //

VIII

The agent for the protestant, Arthur Richards, was informed in August or September, 1978, by the State Engineer's office of the status and ownership of Permit 29181. At that time, Permit 29181 stood in the name of Earnest L. Puett prior to the filing of the "Puett to Pimpl" deed.

CONCLUSIONS

I

The State Engineer has jurisdiction under NRS 533.025 and 533.030, subsection 1.

II

NRS 533.345 and NRS 533.370 provide for changing the point of diversion, manner of use, or place of use of water already appropriated. Such change does not constitute a new appropriation.

III

The validity and extent of the vested water right claimed under Proof 03111 can only be established through an adjudication procedure as per NRS 533.

IV

The subdivision of property on which the proposed place of use of Application 36125 is located does not preclude use of water for irrigation also.

V

In the absence of evidence to the contrary, the assignment of a portion of Permit 29181 from Earnest L. Puett to Jeffrey Pimpl and Rena Pimpl by deed dated October 10, 1978, is considered valid.

VI

The State Engineer has no jurisdiction or authority to determine the legal status of the Puett Agreement for Purchase and Sale. No evidence was submitted of default of this agreement or of its being rescinded, revoked, or withdrawn.

VII

Permit 29181 appears to have been applied for and approved during the period when the Agreement for Purchase and Sale was in effect, and in accordance with the provision of that agreement.

VIII

The State Engineer could not have known of the title transfer of the 80 acres of water right under Permit 29181 to Pimpls at the time of the protestant's August or September, 1978, inquiry, since the deed was not filed of record in the State Engineer's office until November 9, 1978.

RULING

The protest to the granting of Application 36125 is herewith overruled and a permit will be issued thereunder with the understanding that no determination is made by the State Engineer as to the ownership of Permit 29181 or portions thereof.

Respectfully submitted,

William J. Newman

William J. Newman
State Engineer

WJN/TFH/ja

Dated this 27th day
of MAY, 1980.

FOOTNOTES

1. Application No. 36125 in File No. 36125.
2. Protest of Betty Miller in File No. 36125.
3. Report of Field Investigation No. 686 in the office of the State Engineer.
4. Water permit records in the office of the State Engineer.
5. Public records in the office of the State Engineer.
6. Copy of Agreement on file in the State Engineer's office under File No. 29181.
7. Copy of deed on file in File No. 29181.