

IN THE MATTER OF THE REQUEST OF)
ELWYN F. FREEMONTH, ET AL., TO)
DETERMINE THE OWNERSHIP OF CERTAIN)
UNDERGROUND WATER RIGHTS LOCATED)
WITHIN THE LEMMON VALLEY)
DESIGNATED GROUND WATER BASIN)
UNDER PERMIT NOS. 17418, 24677,)
24678, 26216, 26217, 26404, 27646,)
34762, 34763, 34764 AND APPLICATION)
TO APPROPRIATE 41540.)

RULING

GENERAL

Application 17418¹ was filed on October 14, 1957 by James E. Banks to appropriate 1.5 c.f.s. of underground water for irrigation purposes within the Lemmon Valley Ground Water Basin. A permit was granted under this application on May 28, 1958 for 1.5 c.f.s. for irrigation purposes. The Proof of Beneficial Use and supporting cultural map were filed¹ in the office of the State Engineer under Permit 17418 on January 13, 1965, and subsequently Certificate 5908 was issued¹ on June 9, 1965 for 0.25 c.f.s. for irrigation purposes on 37.28 acres of land within the NE1/4 NE1/4 Section 26, T.21N., R.18E., M.D.B.&M. The certificate was additionally limited to an annual duty of 149.12 acre-feet. Permit 17418, Certificate 5908, was transferred into the ownership of Silver Knolls Mutual Water Co., an undivided 48.06% interest and Morsweg, an undivided 51.94% interest through a series of deeds filed¹ with the State Engineer's office as follows:

1. On May 20, 1958, James E. Banks to Howard Murphy and Aline Marie Murphy, his wife. Deed filed May 23, 1958 under Permit 17418.

2. On December 3, 1962 by Howard Murphy and Aline Murphy to James C. Sweger and Don S. York. Deed filed January 31, 1963 under Permit 17418.

3. On November 30, 1971 by James C. Sweger and Don S. York to Green Valley Ranch, Inc. Deed filed February 25, 1972 under permit 17418.

4. On April 18, 1979 by Green Valley Ranch, Inc., to Morsweg. Deed filed August 20, 1979 under Permit 34762.

¹Public record in the office of the State Engineer under Permit 17418, Certificate 5908.

5. On September 6, 1979 by Morsweg to Silver Knolls Mutual water Co., an undivided 48.06%. Deed filed on October 11, 1979 under Permit 34762.

On November 16, 1971, Application 26404 was filed² by James C. Sweger and Don S. York to change the manner and place of use of water heretofore appropriated under Permit 17418, Certificate 5908. A permit was issued on February 10, 1972 for 0.25 c.f.s. for quasi-municipal purposes and was limited to an annual duty of 48.59 million gallons which converts to 149.12 acre-feet. Transfer of title¹ of Permit 26404 was accomplished on November 30, 1971 by James C. Sweger and Don S. York to Green Valley Ranch, Inc. Permit 26404 was subsequently cancelled on March 14, 1978 by stipulation³ which will be discussed and described later in this ruling.

On September 6, 1968 James C. Sweger and Silver Hills, a limited liability partnership, and Don S. York filed⁴ Applications 24677 and 24678 to appropriate underground water within the Lemmon Valley Ground Water Basin. Permits were approved⁴ under Applications 24677 and 24678 on November 3, 1969 for 3.0 c.f.s. for irrigation and domestic purposes under each application. The permits were issued supplemental to each other to irrigate 320 acres within the W1/2 of Section 23, T.21N., R.18E., M.D.B.&M. The permits further carried the condition that they were not to exceed a yearly duty of 4.0 acre-feet per acre of land irrigated from any and/or all sources.

On July 15, 1971, Applications 26216 and 26217 were filed⁵ by James C. Sweger and Silver Hills, a limited partnership, to change the point of diversion of Permits 24677 and 24678, respectively. Permits were approved under Applications 26216 and 26217 on February 10, 1972, thereby abrogating Permits 24677 and 24678. On March 14, 1978, Permits 26216 and 26217 were cancelled on the records of the State Engineer's office by stipulation³ between the parties which will be discussed later in this ruling.

On July 20, 1973, Green Valley Ranch, Inc., a Nevada

²Public record in the office of the State Engineer under Permit 26404.

³Freemonth Exhibit No. 3, Public Hearing before the State Engineer, September 20, 1983.

⁴Public record in the office of the State Engineer under Permits 24677 and 24678.

⁵Public record in the office of the State Engineer under Permits 26216 and 26217.

Corporation, filed⁶ Application 27646 to change the point of diversion, manner and place of use of a portion of water heretofore appropriated under Permit 26217. This application was subsequently approved on November 28, 1973, and a permit was issued in the amount of 0.0015 c.f.s. for irrigation and domestic purposes thereby abrogating a portion of Permit 26217. The permit was further specifically limited to an annual duty of 0.365 million gallons. On March 14, 1978, Permit 27646 was cancelled on the records of the office of the State Engineer by stipulation³ between the parties.

On December 22, 1977, Applications 34762, 34763 and 34764 were filed⁷ by Green Valley Ranch, Inc., to change the point of diversion, manner and place of use of a portion of water heretofore appropriated under Permit 17418, Certificate 5908. Permits were subsequently granted under Applications 34762, 34763 and 34764 on March 14, 1978 in the amount of 0.0625 c.f.s. for quasi-municipal purposes under Applications 34763 and 34764, respectively, and in the amount of 0.125 c.f.s. under Application 34762, and in compliance with the stipulation entered into on March 14, 1978, between the Green Valley Ranch, Inc., Joyce E. Sweger, Executrix of the Estate of James C. Sweger, and the State Engineer. Permit 34762 was specifically limited to an annual duty of 45.23 acre-feet and Permits 34763 and 34764 were specifically limited to an annual duty of 90.43 acre-feet each, with the further condition that the total combined annual duty of water under permits 34762, 34763 and 34764 would not exceed 149.12 acre-feet.

On September 30, 1976, an action was initiated in Department No. 3 of the Second Judicial District Court of the State of Nevada in and for the County of Washoe titled, "Green Valley Ranch, Inc., a Nevada Corporation and Joyce E. Sweger, Executrix of the Estate of James C. Sweger vs. Roland D. Westergard, State Engineer No. 317447." This action was a petition for judicial review under the provisions of NRS 533.450 as a result of the denial by the State Engineer of requests for extension of time to file Proof of Application of Water to Beneficial Use under Permits 26216, 26217, 26404 and 27646. On March 14, 1978, the Petitioners, Green Valley Ranch, Inc., a Nevada Corporation and Joyce E. Sweger, Executrix of the Estate of James C. Sweger entered into a stipulation³ and agreement with the State Engineer, Roland D. Westergard, which resulted in the

⁶Public record in the office of the State Engineer under Permit 27646.

⁷Public record in the office of the State Engineer under Permits 34762, 34763 and 34764.

cancellation of Permits Nos. 26216, 26217, 26404 and 27646, and the approval of permits under Applications to Change 34762, 34763 and 34764. On March 21, 1978, an order to dismiss the above action was entered by District Judge John E. Gabrielli, Second Judicial District Court of the State of Nevada in and for Washoe County Department No. 3. Prior to the Court's order on March 8, 1973, a deed⁸ was executed by James C. Sweger and Joyce E. Sweger, his wife, as parties of the first part and Elwin F. Freemonth and Billie M. Freemonth, his wife, as joint tenants as to an undivided 78.192% interest; C. William Geyer and Jean Geyer, his wife, as joint tenants as to an undivided 10.904% interest and James H. Keller dba as Keller Realty Company, as to an undivided 10.904% interest, parties of the second part. The deed did grant bargain sell and convey to the parties of the second part, certain property within the Lemmon Valley Ground Water Basin described under Exhibit "A" of the deed, being a portion of the NE1/4 of the SE1/4 of Section 25, T.21N., R.18E., M.D.B.&M., and consisting of approximately 16 acres. The deed conveyed "together with all the singular the tenements, hereditments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders grants, issues and profits thereof". The deed contained no language reserving any appurtenant water rights to the parties of the first part or the seller. Subsequent to the execution of the deed there was executed on March 14, 1973, an assignment⁹ of legal and beneficial interest in and to water rights between Green Valley Ranch, Inc., a Nevada Corporation, referred to as the assignor and C. William Geyer, Jean Geyer, James H. Keller dba Keller Realty Company and Elwyn F. and Billie Freemonth as purchasers of a parcel of land lying within the boundaries of the Silver Knolls Subdivision and described as that same land set forth in the deed described above. The assignment of legal and beneficial interest in and to water rights specifically conveyed to the purchaser water for irrigation and domestic use in an amount not to exceed 16,000 gallons of water per day. Additionally, attached to the assignment, was an exhibit identified as Exhibit "C" entitled "Limitations and Conditions stated by Applicant".

On September 20, 1983, at the request ¹⁰ Charles M. McGee, legal counsel for Elwyn F. Freemonth and his wife, William Geyer and his wife, and Mr. James Keller, a public administrative

⁸Freemonth Exhibit No. 1, public hearing before the State Engineer, September 20, 1983.

⁹Freemonth Exhibit No. 2, Public hearing before the State Engineer, September 20, 1983.

¹⁰State of Nevada Exhibit No. 1, public hearing before the State Engineer, September 20, 1983.

hearing was held before the State Engineer in the matter of ownership to the certain underground water rights located in Lemmon Valley Ground Water Basin. All parties were duly notified¹¹ of the time and place of the public hearing and the State Engineer received testimony and evidence prior to any determination in this matter.

FINDINGS OF FACT

I

Permits 24677, 24678, 26216, 26217, 26404, 27646, are deemed cancelled, null and void on the records of the State Engineer in accordance with the stipulation³ entered into on March 14, 1978, between Green Valley Ranch, Inc., a Nevada Corporation; Joyce E. Sweger, Executrix of the Estate of James C. Sweger and Roland D. Westergard, State Engineer and subsequent order by the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

II

Permits 34762, 34763 and 34764 were approved on March 14, 1978, by the State Engineer as Applications to Change the Point of Diversion, Manner and Place of Use of water heretofore appropriated under Permit 17418, Certificate 5908 in compliance with the stipulation. The permits presently stand in the name of Morsweg, an undivided 51.94% interest, and Silver Knolls Mutual Water Co., an undivided 48.06% interest. The permit granted under 34763 was limited to a change in the manner and place of use. The place of use under Applications 34762, 34763 and 34764 is described as all of Sections 13, 23 and 25, the W1/2 and the NW1/4 of the NE1/4 and the NW1/4 of the NE1/4 of Section 35, and the SE1/4 of Section 15, all within T.21N., R.18E., M.D.B.&M. The permits are presently in good standing with the proof of beneficial use and supporting proof of beneficial use map due in the office of the State Engineer on or before April 14, 1984. Permit 34762 is limited to a diversion rate of 0.0625 c.f.s. not to exceed 45.23 acre-feet annually. Permit 34763 is limited to a diversion rate not to exceed 0.125 c.f.s. and not to exceed 90.43 acre-feet annually. Permit 34764 is limited to a diversion rate of 0.0625 c.f.s. not to exceed 45.23 acre-feet annually.

In addition, the total combined annual duty of water under Permits 34762, 34763 and 34764 shall not exceed 149.12 acre-feet.

¹¹State of Nevada Exhibit No. 1, public hearing before State Engineer, September 20, 1983.

III

Elwyn F. Freemonth and Billie M. Freemonth, as joint tenants; C. William Geyer and Jean Geyer, as joint tenants and James H. Keller as Keller Realty Company purchased certain properties set forth under the grant, bargain and sale deed⁸ executed on March 8, 1973, and further identified as document No. 278872 on the records of the Washoe County Recorder in Book 715, page 315. The properties described within the deed lie within the described place of use under Permits 34762, 34763 and 34764.

IV

An assignment of legal and beneficial interest in and to water rights was executed on March 14, 1973, by James C. Sweger, President of Green Valley Ranch, Inc., to Elwyn F. Freemonth, Billie Freemonth, C. William Geyer, Jean Geyer and James H. Keller, assigning and conveying water for irrigation and domestic use in the amount not to exceed 16,000 gallons of water per day. The record¹ shows that ownership of Permit 17418, Certificate 5908, was in the name of Green Valley Ranch, Inc., at the time the transfer was executed. Green Valley Ranch, Inc., is the "Assignor" under the assignment⁹ of legal and beneficial interest in and to water rights to Elwyn F. Freemonth, et al. James C. Sweger is further identified as President of Green Valley Ranch, Inc.

V

The statute¹² is specific in that ownership of water rights may be assigned on the record "but no such assignment is binding except between the parties thereto (underlining added) unless filed for record in the office of the State Engineer". The State Engineer entered into the stipulation and agreement³ in good faith and without knowledge of the assignments to the Freemonth interests. Further, there was no evidence or testimony¹³ presented at the public hearing that would dispute or disqualify the deed or assignment of water rights as sufficient documents to accomplish transfer.

VI

At the time the deed and assignment were executed, Permit 26404 (see assignment) was in effect in the name of Green Valley

¹²NRS 533.385.

¹³Transcript of public hearing before the State Engineer, September 20, 1983.

Ranch, Inc.² The issuance of this permit abrogated Permit 17418, Certificate 5908, on February 10, 1972. The cancellation of Permit 26404 on March 14, 1978 resulted in reversion to Permit 17418, Certificate 5908.

VII

It could possibly be argued that the intent of the Green Valley Ranch interests was to transfer only that portion of the right appurtenant to the 16 acres deeded to Freemonth, et al., in the absence of any express grant or exclusion of water rights as a condition contained in the deed. In the absence of the assignment of water rights subsequent to the land ownership transfer, this argument would have merit. Legal counsel for Freemonth, et al., presents a compelling argument in his post hearing brief that there is no evidence that the deed and assignment did not in fact occur and that it was binding between the parties.

CONCLUSIONS

I

The State Engineer has jurisdiction¹⁴ of the parties and subject matter of this action.

II

On March 8, 1973, a deed was executed by James C. Sweger and Joyce E. Sweger, his wife, transferring ownership to certain properties within the Lemmon Valley Ground Water Basin to Elwyn F. Freemonth and Billie M. Freemonth, his wife, as joint tenants as to an undivided 78.192% interest; C. William Geyer and Jean Geyer, his wife, as joint tenants as to an undivided 10.904% interest and James H. Keller dba as Keller Realty Company as to an undivided 10.904% interest. The deed conveyed "together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders grants, issues and profits thereof." The deed contained no language reserving any appurtenant water rights to the parties of the first part or the seller. Subsequent to the execution of the deed, there was executed on March 14th, 1973, an assignment of legal and beneficial interest in and to water rights between Green Valley Ranch, Inc., a Nevada Corporation, referred to as the assignor and C. William Geyer, Jean Geyer, James H. Keller dba Keller realty Company and Elwyn F. and Billie Freemonth as purchasers of

¹⁴NRS Chapters 533 and 534.
NRS 533.385.

a parcel of land lying within the boundaries of the Silver Knolls Subdivision and described as that same land set forth in the deed described above. The assignment of legal and beneficial interest in and to water rights specifically conveyed to the purchaser water for irrigation and domestic use in an amount not to exceed 16,000 gallons of water per day. Additionally, attached to the assignment, was an exhibit identified as "Exhibit No. 1" entitled "Limitations and Conditions stated by Applicant".

III

The State Engineer concludes that the assignment of legal and beneficial interest in and to water rights is a declaration of assignors intent as to appurtenant water rights to the properties described and set forth under the executed grant, bargain and sale deed. The record shows that ownership of Permit 17418, Certificate 5908, was in the name of Green Valley Ranch, Inc., at the time the transfer was executed. Green Valley Ranch, Inc., is the "Assignor" under the assignment of legal and beneficial interest in and to water rights to Elwyn F. Freemonth, et al. James C. Sweger is further identified as President of Green Valley Ranch, Inc.

IV

The statute¹² is specific in that ownership of water rights may be assigned on the record "but no such assignment is binding except between the parties thereto (underlining added) unless filed for record in the office of the State Engineer". There was no evidence or testimony presented at the public hearing that would dispute or disqualify the deed or assignment of water rights as sufficient documents to accomplish transfer.

V

Permit 26404 as a change in manner and place of use of Permit 17418, Certificate 5908, was in effect at the time the deed of transfer and assignment of legal and beneficial interest of water rights was executed. It is, therefore, concluded that the Elwyn F. Freemonth, et al., interests are entitled to ownership of a portion of Permit 17418, Certificate 5908, not to exceed 16,000 gallons of water per day which converts to 17.92 acre-feet annually. The diversion rate would necessarily be a pro rata portion of 0.25 cubic feet per second or 0.03 cubic feet per second.

RULING

The evidence, public record and testimony establish the ownership of a portion of Permit 17418, Certificate 5908, in the name of Elwyn F. and Billie M. Freemonth as joint tenants as to an undivided 78.192% interest; C. William and Jean Geyer as joint tenants as to an undivided 10.904% interest and James H. Keller dba as Keller Realty Company as to an undivided 10.904%

interest. The ownership can be established on the record of the State Engineer's office upon submission of transfer fees as required under NRS 533.435 and is limited to a diversion rate not to exceed 0.03 cubic feet per second and an annual duty of 17.92 acre-feet. Permit 17418, Certificate 5908 has been totally abrogated by Permits 34762, 34763 and 34764, therefore ownership, in accordance with this Ruling, will be reflected on the record under Permits 34762, 34763 and 34764.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/bl

Dated this 26th day of
JANUARY, 1984.