

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

IN THE MATTER OF THE OWNERSHIP OF )  
PERMIT 10795 (CERTIFICATE 3153) )  
TO APPROPRIATE THE PUBLIC WATERS )  
OF THE STATE OF NEVADA FROM AN )  
UNDERGROUND SOURCE IN THE LAS VEGAS )  
ARTESIAN BASIN IN CLARK COUNTY, )  
NEVADA. )

RULING

GENERAL

I.

Application 10795 was filed on March 21, 1942 by Herbert M. Dixon of Las Vegas, Nevada requesting permission to appropriate up to 4 c.f.s. of the underground waters of the State of Nevada for irrigation purposes on portions of the N1/2 NE1/4 Section 27, and N1/2 of Section 26 all in T.19S., R.60E., M.D.B.&M. The well was to be located in the NE1/4 NE1/4 of said Section 27. A permit was issued by the State Engineer on January 25, 1943 as requested, with the provision that proof of beneficial use be filed on or before August 25, 1947. A one year extension of time was requested and granted to August 25, 1948. On August 7, 1948, a proof of beneficial use was filed on behalf of the permittee attesting to the fact that 0.501 c.f.s. of water had been placed to beneficial use on 21.6 acres of land in the NE1/4 NE1/4 of said Section 27 and 3 acres of land in the NW1/4 NW1/4 of said Section 26 for a total of 24.6 acres.<sup>1</sup>

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<sup>1</sup> Permit 10795 Public Record on file in the office of the State Engineer; and Exhibit 2. State Engineer's Hearing May 1, 1989.

The period of use was described as January 1 to December 31 of each year. Certificate of Appropriation No. 3153 was duly issued under said permit, as limited by the proof of beneficial use, on December 6, 1948, pursuant to the then pertaining laws of this state being Section 72 Chapter 46 Stats of 1937, for a diversion rate of 0.246 c.f.s. but not to exceed 177.78 acre-feet per year on the precise lands described and on no other land.<sup>2</sup> The cultural map filed on August 7, 1948, which supports the Proof of Beneficial Use also shows precisely on which acreage the water was used.<sup>3</sup>

On January 9, 1970, the Las Vegas Valley Water District, having obtained a portion of the water right under Permit 10795 (being 0.195 c.f.s or 141.25 acre-feet), filed Application 25426 to change the point of diversion, manner and place of use of its portion to a District well located in the NE1/4 SW1/4 Section 11, T.20S., R.60E., M.D.B.&M. The proposed use was to be municipal, and the place of use was to be the District Service Area. The water right so

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<sup>2</sup> Certificate of Appropriation No. 3153, Exhibit 2, State Engineer's Hearing May 1, 1989. (Attention is also directed to the last paragraph of this Certificate which states:

"The right to water hereby determined is limited to the amount which can be beneficially used, not to exceed the amount above specified, and the use is restricted to the place where aquired and to the purpose for which aquired."

<sup>3</sup> Cultural Map filed in support of Proof of Beneficial Use for Permit 10795, Exhibit 6. State Engineer's Hearing May 1, 1989.

removed was stripped from land not here pertinent but shown on the map and application for 25426. This Application was granted a permit on June 12, 1970.<sup>4</sup> No challenge to this transaction is made in this proceeding by the petitioners.

On June 2, 1988, D.A. Enterprises Inc. filed Application 52177 requesting permission to change the point of diversion, place of use and manner of use of a portion, of the remainder of Permit 10795, and Application 52178 requesting permission to change the point of diversion and place of use of a portion of the remainder of Permit 10795. The point of diversion under both 52177 and 52178 is the same well which is located approximately 250 feet south of the existing well under Permit 10795. The place of use is as shown on the supporting map under Permit 10795. The manner of use stated in application 52177 is changed to conform to present day use. (Permits were granted under 52177 and 52178 on September 14, 1988.)<sup>5</sup>

D.A. Enterprises Inc. submitted a deed to 4.67 acres of land within the original place of use shown on the cultural map described under Permit 10795, Certificate 3153. The transfer of 33.45 acre-feet of water appurtenant to the 4.67 acres from Ila U. Taylor and Robert M. Taylor to D.A. Enterprises, Inc. was consummated by deed of September 3, 1980, as shown on the records of the State Engineer. This

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<sup>4</sup> Permit No. 25426 Public Record on file in the Office of the State Engineer.

<sup>5</sup> Permit Nos. 52177 and 52178; Public Record on file in the Office of the State Engineer.

title transfer was first challenged in a telephone conversation between R. Steven Young, counsel for Ila Taylor, and the Southern Nevada Branch Office of the State Engineer on December 16, 1988, and by Mr. Young's letter of December 20, 1988.<sup>6</sup>

The State Engineer then set the matter for hearing in Las Vegas, Nevada on May 1, 1989,<sup>7</sup> when and where such hearing was duly held; with D.A. Enterprises, Inc. (hereinafter Respondent) representatives and Ila Taylor (hereinafter Petitioner) both present and both represented by counsel. Evidence and sworn testimony was received and heard, and briefing was scheduled. Briefs were timely received on July 7, 1989, from Respondent, and Petitioner on July 10, 1989; and the matter stood submitted for this decision.

The chain of title summarized on State's Exhibit 3 in evidence in this proceeding reflects the various deeds that are on file and of record in the State Engineer's office, relating to the instant water right. All such transactions are unchallenged except for the Ila U. Taylor and Robert M. Taylor to D.A. Enterprises, Inc. transaction of September 3, 1980, which is the subject of this ruling.

It should also be noted at the outset that Nevada Law pertaining to the duty allowed for appropriation of this

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<sup>6</sup> Exhibit 4. State Engineer's Hearing of May 1, 1989.

<sup>7</sup> Exhibit 1. State Engineer's Hearing of May 1, 1989.

state's waters at the time the subject right was acquired (March 21, 1942) was set by the legislature and was one (1) c.f.s. per 100 acres. or 0.01 c.f.s per acre; 0.01 c.f.s will equal 0.0198 acre-feet in 24 hours. Thus, if an appropriator's season is year round he is entitled to a duty of 7.23 acre-feet per acre per year ( $0.0198 \times 365 = 7.227$ ) and  $7.227$  (acre-feet per acre)  $\times$  24.6 (total acres) = 177.78 acre-feet, as shown on the "Amount of Appropriation" item on Certificate 3153.<sup>8</sup>

#### FINDINGS OF FACT

##### I.

The uncontroverted evidenced in this matter shows that on September 3, 1980, Petitioner and her then husband sold by Grant Bargain and Sale deed that portion of land situated in the NE1/4 NE1/4 Section 27, T.19S., R.60E., M.D.B.&M. shown as parcel one by map thereof in File 32 of Parcel Maps, page 67, in the Office of the County Recorder, Clark County, Nevada; together with all and singular the tenements hereditaments and appurtenances therewith belonging or in anyway appertaining.<sup>9</sup> This deed was recorded in the Clark County Recorder's office on October 30, 1980.<sup>9</sup>

Also unchallenged is a copy of Escrow Instructions dated September 3, 1980,<sup>10</sup> from which the September 3, 1980, deed evolved.

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<sup>8</sup> Exhibit 2. State Engineer's Hearing May 1, 1989.

<sup>9</sup> Exhibit BB. State Engineer's Hearing May 1, 1989.

<sup>10</sup> Exhibit AA. State Engineer's Hearing May 1, 1989.

Neither of these documents in any way mention any reservation of water rights.

II.

Attached to Petitioner's Counsel's letter to this office dated December 20, 1988,<sup>11</sup> is a document entitled "Agreement" dated December 5, 1980, which Petitioner insists shows that the parties did not transfer any water rights by virtue of the September 3, 1980 deed.

However, a reading of the entire document indicates that this "Agreement" was only to provide for use of water from the well on Petitioners property for use on Respondent's property. In fact item 4 line 29-32 of said "Agreement" provides that Respondent could and would drill its own well for its own use under certain conditions. Interpretating this agreement in the best light for Petitioner, it appears that at most it could have been an agreement to transfer the already transferred water right back to Petitioner. However, if this is so, there is no evidence that such agreement was ever consummated by the proper conveyencing document required to transfer a water right. The established rule that a water right is treated as a real property right and ownership can only be transferred in a manner appropriate for a transfer of real property interests<sup>12</sup> is so well settled that further discussion is unnecessary.

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<sup>11</sup> Exhibit 4. State Engineer's Hearing May 1, 1989.

<sup>12</sup> Zolezzi v. Jackson, 72 Nev. 150, 297 P2d 1081 (1956)  
Hale v. McCammon Ditch Co., 72 Idaho 478, 244 P.2d 151 (1952).

III.

After careful review of the evidence and exhibits in this case, it is found to be a fact that:

1. The 4.67 acres with all appurtenances sold to Respondent on September 3, 1980, is a portion of the Certificated place of use of the water right evidenced by Permit 10795 (Certificate 3153);
2. Such appurtenant right had not been sold or removed therefrom prior to September 3, 1980, and thus such portion of the water right was still appurtenant thereto on the date of execution of the September 3, 1980 deed; and
3. Such appurtenant water right could be and was transferred to the Grantee (Respondent herein) by said deed.

IV.

The rule of law in this state from time immemorial as recognized in Zolezzi v. Jackson<sup>13</sup> is that a water right becomes appurtenant to the piece of land on which it is used. Ownership of the right transfers as an appurtenance with the land when the land is described in a proper deed, unless said water right is specifically reserved to the grantor in such deed of transfer.

Accordingly in the instant matter it is specifically found as a matter of fact that by operation of law ownership of the 33.45 acre-feet of water right appurtenant to 4.67

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<sup>13</sup> Zolezzi v. Jackson, 72 Nev. 150, 297 P2d 1081 (1956).

acres of land described in the deed of September 1980 transferred to Respondent, on September 3, 1980.

V.

Petitioner through testimony and exhibits maintains that Grantors did not intend to transfer the water right when they sold the land to Respondent. However, the testimony of Mrs. Taylor and Mr. Anderson, the only persons testifying who were involved with the September 3, 1980 transaction, shows no discussion of water rights.<sup>14</sup> Evidence of water right value and expressions of intent, both received by way of testimony at a hearing occurring eight years after the transaction are of no value as to the frame of mind at the time of such transaction. This evidence does not suffice to show a mistake necessary to take the drastic action of reforming a deed. Accordingly, it is found that there was no clear mistake in the drafting of the September 3, 1980 deed.

Both parties were represented by Counsel at the time the conveyance was set to writing. There is no evidence or even allegation of fraud, misrepresentation, or overreaching at the time of the September 1980 transaction. If the Grantors had not meant to convey the subject water right in September of 1980, they could have reserved it at that time and they clearly did not do so.

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<sup>14</sup> Transcript of May 1, 1989 Hearing pages (Anderson) 22-39; pages (Taylor) 78-86.

VI.

Petitioner alternatively suggests that the subject water right be spread over the entire acreage owned by Petitioner and then proportioned to Petitioner and Respondent accordingly.

As discussed above, the laws of this state do not allow an appropriator to spread a water right over all the land owned by him. As set forth on Certificate 3153<sup>15</sup> the water right herein can only be used on the land on which it was used beneficially at the time of proof of beneficial use unless otherwise changed pursuant to law. Thus, this alternative cannot lawfully be accomplished.

CONCLUSIONS

The State Engineer has jurisdiction to determine the ownership of water rights of record in his office so that he may conduct the business of his office in a orderly fashion and discharge the lawful duties of his office properly; and accordingly has jurisdiction over the subject matter of this proceeding.<sup>16</sup>

II.

The deed dated September 3, 1980,<sup>17</sup> transferred by operation of law without reservation the subject 4.67 acres of land and appurtenant water right evidenced by Permit 10795 (Certificate 3153) from the Taylors to D.A. Enterprises, Inc.

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<sup>15</sup> Exhibit 2. State Engineer's Hearing of May 1, 1989.

<sup>16</sup> NRS Chapter 533.

<sup>17</sup> Exhibit BB, State Engineer's Hearing May 1, 1989.

III.

The agreement of December 5, 1980, was entered into after the execution of the deed referred to in Paragraph II next hereinabove; appears to be an agreement relating to the use of the water from the well located on Petitioner's property for use on Respondent's property; is not a conveyance required by law to transfer water rights; and does not change ownership of the instant water right which was at that time (December 5, 1980) vested in D.A. Enterprises, Inc.

IV.

Evidence of value and frame of mind at a point in time eight years after execution of the subject deed is irrelevant and immaterial to show mistake at the time of execution.

V.

There is no evidence of fraud, misrepresentation or overreaching that would require reformation of the September 3, 1980 deed.

VI.

The State Engineer acted at all times in accordance with the rules of law set forth in NRS Chapters 533 and 534; and the common law of the State of Nevada; and without stealth or subterfuge, or lack of due process.

VII.

Nevada water law provides that a water right is appurtenant to the place of use described in the certificate.

Thus, the water right under consideration herein could not in the past and cannot now be lawfully apportioned over all the land owned by Petitioner and is not described within the place of use.

VIII.

The Petitioner's claim to the 33.45 acre-feet of water at issue herein must be rejected.

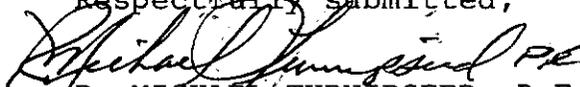
IX.

The records of the State Engineer's Office showing ownership of the water right under Permit 10795 (Certificate 3153) and appropriate applications to change thereunder, existing as of the date of the hearing on May 1, 1989, must remain unchanged.

RULING

Being fully advised in the premises it is ORDERED that the claim of Ila Taylor to more than 3.08 acre-feet of water under Permit 10795 (Certificate 3153) shall be and it hereby is REJECTED and the record of ownership of the water right under Permit 10795 (Certificate 3153) is confirmed unchanged. Accordingly, 141.25 acre-feet is owned by Las Vegas Valley Water District; 33.45 acre-feet is owned by D.A. Enterprises, Inc.; and 3.08 acre-feet is owned by Ila U. Taylor.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/LCR/pm

Dated this 9th day of  
March, 1990.