

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

IN THE MATTER OF APPLICATION)
61991 FILED TO CHANGE THE PLACE)
OF USE OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
PERMITTED FOR APPROPRIATION UNDER)
PERMIT 53894 WITHIN THE TRACY)
SEGMENT HYDROGRAPHIC BASIN (083),)
STOREY COUNTY, NEVADA.)

RULING

#5483

GENERAL

I.

Application 61991 was filed on April 2, 1996, by the Rainbow Trust, to change the place of use of 728 acre-feet of Truckee River water heretofore permitted for appropriation under Permit 53894 (T.C.I.D. Serial No. 1073). The proposed manner and place of use is described upon the application as the irrigation and maintenance of an 18-hole golf course, that occupies 161.8 acres of land within portions of the E½ of Section 22 and portions of the NE¼, NW¼, SW¼, SE¼ of Section 23, T.20N., R.25E., M.D.B.&M. The existing place of use description on the application identifies the same 40-acre subdivisions found under the proposed place of use, however the acreage totals differ for each quarter - quarter, with the total acreage being 164.0.¹

FINDINGS OF FACT

I.

As with land, water rights are considered to be real property, title to which can be transferred from one party to another.² Although documents conveying title to land and water are required to be recorded in the County Recorder's office, the county recorder does not forward copies of such documentation to the State Engineer. It is the new owners responsibility to file such documents with the State Engineer's office in a timely manner according to the law. A Report of Conveyance provides water right

¹ File No. 61991, official records in the Office of the State Engineer.

² Nevada Revised Statute 111.167.

holders with a method and means to organize document submittals that will expedite processing in the Office of the State Engineer in accordance with Nevada Revised Statutes (NRS) requirements. The Office of the State Engineer will not consider a person as an owner of a water right until the Report of Conveyance is confirmed and the associated fees submitted.³ The ownership question is critical in any consideration given to the approval of Application 61991, since the applicant must hold title to the water right issued under Permit 53894 before it can be considered for transfer to a new place of use.

If the current records of the Office of the State Engineer are examined, it can be determined that title to Permit 53894 has not passed beyond the Town of Fernley, who acquired this water right permit on June 11, 1996. A formal assignment of title into the Town of Fernley's name was made in the records of the office of the State Engineer on November 30, 2001.⁴ A query of the State Engineer's title database failed to locate any pending transfer documents that would advance title beyond this point.⁵ Based upon the records of this office, the State Engineer finds that the Town of Fernley is the owner of record of Permit 53894.

To be eligible for transfer under the State Engineer's guidelines, the water right issued under Permit 53894 must be held by the same party that owns Application 61991. A search of the records of the Office of the State Engineer failed to produce any information that would indicate that the Rainbow Trust has acquired title to Permit 53894; therefore, the State Engineer finds that the applicant is requesting a transfer of a water right permit that it does not own.

II.

Under the provisions set forth under NRS § 533.435, prior to the issuance of a water right permit, the applicant must submit

³ Guidelines for Transferring Ownership of Water Rights, State Engineer's office, January 2003, official records in the Office of the State Engineer.

⁴ File No. 53894, official records in the Office of the State Engineer.

⁵ Water Right Title database, inquiry of February 8, 2005, official records in the Office of the State Engineer.

the required filing fee. To advise the applicant of this requirement, the Office of the State Engineer sends certified notices to the appropriate parties. Typically, this letter allows the applicant 60 days to submit the permit fee to the State Engineer's office, and also sets forth any additional obligations that must be met before the permit can be signed by the State Engineer. Accordingly, by letter dated July 19, 2004, the Town of Fernley, the Rainbow Trust and its agent were noticed at their respective addresses of record of the need to submit the permit fee associated with Application 61991. This letter also requested the submittal of a Report of Conveyance, abstract of title and the associated filing fee, that would transfer title in the subject application from the Rainbow Trust to the Town of Fernley.¹ The State Engineer finds that the approval of Permit 61991 was not only dependent upon the receipt of its associated filing fee, but also the transfer of title in Application 61991 to the Town of Fernley's name.

III.

Due to a lack of response generated by this mailing, a second request for the permit fee was sent to all of the parties on September 20, 2004. Signed receipts for the second certified mailing were received from the Town of Fernley and Rick Christian, as agent for the Rainbow Trust. The envelope containing the letter to the Rainbow Trust at its address of record, was returned to the Office of the State Engineer stamped, "Return to Sender, Addressee Unknown".¹

The requirement for submittal of the permit fee was met by the Town of Fernley with the filing of the requested permit fee on October 8, 2004. This was followed shortly by a letter from the City of Fernley's attorney, who addressed the title issue. Contained within this letter was an admission that Fernley could not easily obtain a new deed from the Rainbow Trust because the two parties had been involved in litigation. It was suggested; however, that since the Town of Fernley held title to Permit 53894, its ownership of this permit granted it control over any

subsequent change applications, specifically, Application 61991.⁶ The State Engineer's office was then urged to transfer title into the Town of Fernley's name, and approve Application 61991 based solely upon its ownership of Permit 53894. The State Engineer finds that any ownership transfers of water rights must follow a formal path, that requires a Report of Conveyance and supporting documents to be filed in the Office of the State Engineer and that this process cannot be replaced through other options. In addition, the State Engineer finds that ownership of an existing water right does not carry with it any right to claim title to any subsequent change application emanating from it.

IV.

The approval of Application 61991 was dependent upon two primary conditions that would be satisfied with the submittal of the appropriate permit fee and receipt of the necessary title documents that would assign title into the Town of Fernley's name. The subsequent filing of the permit fee, was not accompanied with the submittal of the Report of Conveyance packet, therefore, the State Engineer finds that this second condition has not been met and the permit fee must be remitted back to the sender.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

The State Engineer is prohibited by law from granting a permit under a change application where:

- A. there is no unappropriated water at the proposed source;
- B. the proposed use conflicts with existing rights;
- C. the proposed use conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or

⁶ Letter dated November 12, 2004, filed within File No. 61991, official records in the Office of the State Engineer.

⁷ NRS chapters 533.

D. the proposed use threatens to prove detrimental to the public interest.

III.

Application 61991 was filed by the Rainbow Trust and seeks a change in the place of use of Permit 53894, which is currently held by the Town of Fernley. As a condition of its approval, the applicant and the Town of Fernley were advised by the Office of the State Engineer that Application 61991 must be assigned in the proper manner to the Town of Fernley. A recent search through the records of the Office of the State Engineer indicates that this necessary transfer of title has not been submitted. Given this unresolved ownership problem, the State Engineer concludes that the transfer of a water right permit that the applicant has not established title to would threaten to prove detrimental to the public interest.

RULING

Application 61991 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 16th day of
March, 2005.