It is further ordered that the Public Defender of Washoe County is appointed to represent appellant.

CARSON CITY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, APPELLANT, *v.* ESTATE OF SIMONE LOMPA, DECEASED, AND EVA LOMPA, RESPONDENTS.

No. 6705

October 6, 1972 501 P.2d 662

Appeal from condemnation judgment; First Judicial District Court, Carson City; Joseph O. McDaniel, Judge.

City sought to condemn parcel of real property and all water appropriated from point of diversion located thereon. The district court entered judgment on verdict fixing value of the water right, and city appealed. The Supreme Court held that water right was subject to condemnation.

Affirmed.

Michael E. Fondi, District Attorney, and *Ralph M. Crow,* Deputy District Attorney, Carson City, for Appellant.

Milton Manoukian, of Carson City, for Respondents.

EMINENT DOMAIN; WATERS AND WATER COURSES.

When a right to use water has become fixed either by actual diversion and application to beneficial use or by appropriation as authorized by the state water law, it is a right which is regarded and protected as real property, and is subject to condemnation. NRS 37.010, subd. 3.

OPINION

Per Curiam:

The City sought to condemn a parcel of real property and all water appropriated from the point of diversion located thereon as evidenced by Certificate No. 5404 issued by the State Engineer. The parties stipulated to the value of the parcel of real property and submitted to the jury only the task of deciding the value of the water right. The jury fixed that value at $33,000, which amount is not challenged. The appellant

does appear to contend, however, that a water right is not subject to condemnation.

When a right to use water has become fixed either by actual diversion and application to beneficial use or by appropriation as authorized by the state water law, it is a right which is regarded and protected as real property. In re Application of Filippini, 66 Nev. 17, 22, 202 P.2d 535 (1949); Nenzel v. Rochester Silver Corporation, 50 Nev. 352, 357, 259 P. 632 (1927); Adams-McGill Co. v. Hendrix, 22 Fed.Supp. 789, 791 (D. Nev. 1938); Dalton v. Bowker, 8 Nev. 190, 201 (1873). Indeed, NRS 37.010(3) specifically allows for a city to exercise its right of eminent domain to acquire water rights.

Other claimed errors have been examined and also are without merit.

Affirmed.

ROBERT ALLAN MENGELKAMP AND GARY MENGELKAMP, PETITIONERS, *v.* ROBERT LIST, ATTORNEY GENERAL OF THE STATE OF NEVADA, JOHN KOONTZ, SECRETARY OF STATE OF THE STATE OF NEVADA, AND H. K. BROWN, COUNTY CLERK OF WASHOE COUNTY, NEVADA, RESPONDENTS.

No. 6993

October 10, 1972 501 P.2d 1032

Original proceedings on petition for writ of mandamus commanding county clerk to place 19- and 18-year-old petitioners' names on ballots as candidates for State Senator and Assemblyman. The Supreme Court held that statute requiring that State Senators and Assemblymen be at least 21 years of age at time of their election does not violate State Constitution, though Constitution is silent as to age qualifications for such positions. The Court further held that clerk was not required to place names of petitioners on ballots, notwithstanding contention that any decision as to whether petitioners should sit in legislative bodies should be deferred to determination of body in which petitioners desired to serve.

Writ denied.

Charles E. Springer, of Reno, for Petitioners.