

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF THE FORFEITURE OF)
PERMIT 19872, CERTIFICATE 5976, FOR THE)
WATERS OF AN UNDERGROUND SOURCE IN)
PAHRUMP VALLEY, NYE COUNTY, NEVADA.)

RULING

FINDINGS OF FACT

I.

Application 19872 was filed by John A. and Marie E. Harrell on May 26, 1961, for permission to change the point of diversion of waters heretofore appropriated under Permit 13722. The proposed place of use under Application 19872 was the NE1/4, Section 13, T.21S., R.53E., M.D.B.&M. A permit was issued under Application 19872 on January 30, 1962, for 1.67 c.f.s. of water for irrigation and domestic purposes.¹ Certificate 5976 was issued under said permit on February 1, 1966, for 1.67 c.f.s. and 657.65 acre-feet per year for the irrigation of 131.53 acres.²

II.

Application 44620 was filed by Roger Charboneau on October 13, 1981, for permission to change the point of diversion and place of use of a portion of water heretofore appropriated under Permit 19872, Certificate 5976. The amount requested to be changed was 0.882 c.f.s. and 347.20 acre-feet annually for the irrigation of 69.44 acres of land. The place of use of Application 44620 is Government Lot II and the SW1/4 NE1/4, Section 13, T.21S., R.53E., M.D.B.&M. Application 44620 was protested by Charles W. Deaner, Agent for George Specter on July 20, 1987. Application 44620 was ready for action on August 15, 1982.³

III.

Attempts have been made to assign a portion of the ownership of Permit 19872, Certificate 5976, and Application 44620. No assignments were made by the State Engineer's office.³

¹ State Exhibit No. 2-B: Public administrative hearings were held before the State Engineer in the matter of the subject permit and others on and at the following dates and places:

December 8, 1987	Pahrump, Nevada
December 9, 1987	Pahrump, Nevada
December 10, 1987	Pahrump, Nevada

Transcripts are a matter of public record in the office of the State Engineer.

² State Exhibit No. 4-B, December 8, 1987, Transcript.

³ Public record in the office of the State Engineer. See Permit 19872 and 44620.

IV.

The owner of record in the office of the State Engineer of Permit 19872, Certificate 5976 as of this date is John A. and Marie E. Harrell.³

V.

An application for extension of time to work a forfeiture under Permit 19872, Certificate 5976, was submitted to the State Engineer's office on April 20, 1987, by M. Kent Hafen.

VI.

Testimony and evidence were received into the record at public hearings before the State Engineer, (see footnote 1), and the State Engineer took administrative notice of various matters as more specifically set forth.⁴

VII.

Testimony and evidence establish that the lands described under the place of use of Permit 19872, Certificate 5976 were not cultivated and irrigated during the period from May of 1982 through 1986, and that water was diverted from the source and placed to beneficial use under Permit 19872, Certificate 5976, in May of 1982.⁵

CONCLUSIONS

I.

The State Engineer has jurisdiction in this subject matter.⁶

II.

The water right under Permit 19872, Certificate 5976 is a "permitted right" and a "determined right" as described in NRS 534.090 and are therefore subject to the provisions of that statute.

III.

Forfeiture of a water right does not become final until expiration of time of appeal of a ruling declaring such right forfeited.⁷

⁴ See transcript of December 8, 1987, Page 18.

⁵ Testimony of Robert Coache, Hydraulic Engineer for the Division of Water Resources, Southern Nevada Branch Office, see transcript pages 62 through 68, inclusive, and State of Nevada Exhibit 5, Volumes I, II and III. Testimony of M. Kent (Tim) Hafen, agent for the permittee, see transcript pages 82 through 87, inclusive, pages 99 through 112, inclusive and Permittee's 19872 Exhibits 1, 2 and 3.

⁶ NRS 534.090.

⁷ NRS 534.090(4) and NRS 533.450.

IV.

The record provides substantial evidence that, during the period between January 1, 1982, and December 30, 1986, (five (5) successive years) water from the underground source described was beneficially used for the purpose which the rights were acquired under Permit 19872, Certificate 5976.

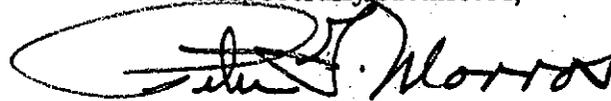
V.

The application for extension of time to work a forfeiture submitted by M. Kent Hafen was made before the expiration of the time necessary to work a forfeiture.⁸

RULING

The right to appropriate and beneficially use the water to the lands described under the place of use under Permit 19872, Certificate 5976 has not been forfeited for purposes for which the subject right was acquired. It is further the State Engineer's ruling that the application for Extension of Time to work a forfeiture under Permit 19872, Certificate 5976 was timely filed in conformance with NRS 534.090(2), and the State Engineer hereby grants the Extension of Time to work a forfeiture until May 1, 1988, a copy of the approved Extension of Time is attached and made a part of this ruling.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/HR/bk

Dated this 14th day of
April, 1988.

⁸ NRS 534.090(2).