

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

IN THE MATTER OF APPLICATIONS FOR)
EXTENSION OF TIME TO AVOID THE)
WORKING OF A FORFEITURE UNDER)
PERMIT 26776, CERTIFICATE 9540,)
AND PERMIT 42916, CERTIFICATE)
10365, FILED WITHIN THE SPANISH)
SPRINGS GROUNDWATER BASIN, WASHOE)
COUNTY, NEVADA.)

RULING

3876

GENERAL

I.

Application 26776 was filed by Ralph M. Tucker on June 15, 1972, to appropriate underground water for irrigation and domestic purposes. The proposed point of diversion under Application 26776 is within the W1/2 NW1/4, Section 6, T.20N., R.21E., M.D.B.&M. A permit was approved under Application 26776 on December 29, 1972 for 3.0 c.f.s. of water for irrigation and domestic purposes. Certificate 9540 was issued under said permit on March 12, 1981 for 2.0 c.f.s., not to exceed 668.00 acre-feet annually, for the irrigation of 167.00 acres of land within portions of lots 2-6, Section 6, T.20N., R.21E., M.D.B.&M.¹

II.

Application 42916 was filed by Ralph M. Tucker on December 4, 1980 to change the point of diversion of a portion of the waters of an underground source heretofore appropriated under Permit 26775. The proposed point of diversion is described as being within Lot 5, Section 6, T.20N., R.21E. A permit was approved under Application 42916 on September 10, 1981 for irrigation and domestic purposes. On September 27, 1982, Certificate 10365 was issued under Permit 42916 in the amount of 1.34 c.f.s., not to exceed 668.00 acre feet annually for the irrigation of 167.00 acres within Lots 2-6, of Section 6, T.20N., R.21E., M.D.B.&M.²

¹ State's Exhibit No. 2, public administrative hearing before representatives of the State Engineer, May 31, 1991, hereinafter referred to as Exhibit or Transcript.

² State Exhibit No. 3.

FINDINGS OF FACT

I.

Several ownership changes have occurred under the subject permits and certificates, more specifically the parcels of land representing the subject of the forfeiture extensions under Permits 26776 and 42916 have been assigned to various individuals and businesses. The records of the State Engineer's office reflect partial ownership of parcels APN-84-270-04 and APN 84-270-05 to be in the name of Scott Tucker and Marilyn Tucker, respectively.³

II.

The holder of any ground water right put to beneficial use works a forfeiture of that right after five successive years of nonuse has occurred.⁴

III.

The State Engineer may extend the time necessary to work a forfeiture upon the request of the holder of the right, prior to the expiration of the time necessary to work a forfeiture; provided the State Engineer determines the conditions set forth in NRS 534.030(2) are met.

IV.

The forfeiture determination is limited to 3.3 acre feet within the NW1/4 SW1/4 of Section 6, T.20N., R.21E., more specifically that portion of APN 84-270-04 currently assigned to Scott Tucker and 30.96 acre feet within the SW1/4 NW1/4 of Section 6, T.20N., R.21E., M.D.B.&M., more specifically that portion of APN 84-270-05 currently assigned to Marilyn Tucker.⁵

³ Public records in the office of the State Engineer, See Permit 26776 and Permit 42916.

⁴ NRS 534.090 (1).

⁵ Applicant's Exhibit No. 24.

V.

Applications for Extension of Time to Avoid the Working of a Forfeiture have been filed and granted on an annual basis for each of the subject permits since 1987.⁶

VI.

An administrative hearing in the consideration of the September 1988, Applications for Extension of Time filed under Permits 26776 and 42916 was held before representatives of the State Engineer in Carson City, Nevada on April 25, 1989.⁷

VII.

Based on the record of evidence and testimony received at said hearing, the State Engineer extended the due date to receive the required proofs and maps, under Permits 26776 and 47790 to September 1990. This approval covered only the 3.3. acre feet and 30.96 acre feet portions of Permit 26776 and 42916.⁸

VIII.

Applications for Extension of Time to Avoid the Working of a Forfeiture under the aforementioned portions of Permits 26776 and 42916 were timely filed by Tim Tucker on September 26, 1990. The applications explained the following.⁹

⁶ Public record in the office of the State Engineer, See Permits 26776 and 42916.

⁷ State's Exhibit No. 1, record of administrative hearing in the matter of Applications 26776 and 42916, held April 25, 1989, Carson City, Nevada.

⁸ Public record in the office of the State Engineer, See October 26, 1989 letter from Hugh Ricci to Ross de Lipkau, filed under Permit 42916.

⁹ State's Exhibits Nos. 17 and 18, Applications for Extension of Time to Avoid the Working of a Forfeiture under Permit 42916 and 26776, respectively.

Pursuant to NRS 534.090(2), the permittee wishes to bring the following information to the State Engineer's attention:

- (a) Permittee has shown good cause for its failure to use the water to a beneficial use for the reason that the permittee owns no real property. Permittee has spent considerable time in attempting to place water to a beneficial use.
- (b) Since permittee owns no real property, the inability of being capable of placing the water to a further beneficial use is beyond the control of permittee.
- (c) By reason of great confusion existing with the Washoe County Commissioners and the various special use permits, changes of zoning and similar items, permittee is having difficulty placing the water to a beneficial use.
- (d) Efficient means of utilizing the water for irrigation purposes were utilized in that a sprinkler system, being non-center pivot, was utilized.
- (e) On April 25, 1989, an administrative hearing was held before Larry Reynolds, Hearing Officer. The State Engineer has not yet rendered a decision on the application for extension of time filed in September, 1988. Accordingly, permittee is not in a position to utilize the water by reason of the uncertainty of same.

Permittee did not own any real property within Spanish Springs Valley until August, 1990. Accordingly, permittee could not place the certified water to a beneficial use as depicted on the certificate. Permittee has, however, been diligently attempting to place the water to beneficial use through either negotiations with private entities or through Washoe County.

In addition thereto, ownership of the real property surrounding the point of diversion, or well site, is clouded. The matter is now the subject of a quiet title action between David Frehr (sic) and his various

corporations, and Brookside Savings & Loan. Brookside Savings & Loan is now a defunct savings and loan.

Attempts to utilize the well owned by Washoe County did not reach an agreement. The cost required by Washoe County far exceed the cost of any crops that could reasonably be grown with the water appurtenant to the well site.

Attempts to acquire the land through the defunct Brookside Savings & Loan Association should have closed in the Spring of 1990. Due to various delays, not caused by permittee, the real property transactions did not close until August 1990.

Wherefore, based upon the foregoing, it is respectfully requested the State Engineer exercise his statutory authority and grant an extension of time for one year within which to place the water to a beneficial use.

IX.

After all parties with standing in the subject matter were properly noticed, an administrative hearing in the matter of consideration of the September 1990, Applications for Extensions of Time to Avoid the Working of a Forfeiture was held before representatives of the State Engineer on May 31, 1991, in Carson City, Nevada.¹⁰

X.

At the hearing of May 31, 1991, the following facts were put into evidence.

1. Brookside Savings and Loan Association held title (in 1989) to the parcels of land and wells which represent the places of use and points of diversion of portions of the permits in question.¹¹

¹⁰ Transcript, page 5.

¹¹ Transcript, page 63.

2. Attempts by the Tucker family to secure an agricultural lease for the areas under the forfeiture determination from Brookside Savings and Loan Association failed in 1989.¹²

3. Brookside Savings and Loan Association dedicated their interests in the wells under Permits 26776 and 42916 to Washoe County, to serve future development in 1989.¹²

4. The Tucker family purchased Brookside Savings and Loan Association's property with the intention of placing the Tucker portion of Permit 26776 and Permit 42916 into beneficial use by irrigation within parcels 84-270-04 and 84-270-05.¹³

5. The Tucker family reached an agreement with Washoe County which allows pumpage of water from Washoe County wells (Permits 26776 and 42916) for the irrigation of the lands within the aforementioned parcels of land.¹³

6. As of May 30, 1991, a total of 16.3 acre-feet of water has been utilized for irrigation purposes within the Tucker parcels of land.¹⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the subject matter contained herein.¹⁵

II.

The State Engineer concludes that sufficient evidence and testimony has been entered to warrant the granting of additional extensions of time for a one year period to avoid a forfeiture on the subject permits.

¹² Transcript, page 64.

¹³ Transcript, pages 64-66.

¹⁴ Transcript, page 67.

¹⁵ NRS 534.090.

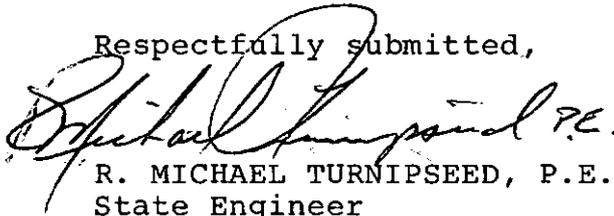
III.

The record of evidence and testimony established that the permittees have proceeded in good faith and with reasonable diligence in their attempts to bring their respective portions of Permit 26776, Certificate 9450 and Permit 42916, Certificate 10365 into beneficial use.

RULING

For the foregoing reasons the Applications for Extension of Time to Work a Forfeiture as submitted September 26, 1990 are hereby approved for the one year period from September 26, 1990 to September 26, 1991. This approval covers only that portion of Permit 26776, Certificate 9540 and Permit 42916, Certificate 10365 more specifically described as 3.3 acre-feet of water right in the parcel described as APN 84-270-04 and 30.96 acre-feet of water right in the parcel described as APN 84-270-05.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 16th day of
March, 1992.