

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

IN THE MATTER OF THE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 20000,)
CERTIFICATE 6991 AND PERMIT 24605,))
CERTIFICATE 7078, FILED WITHIN THE)
DIAMOND VALLEY GROUNDWATER BASIN,)
EUREKA COUNTY, NEVADA.)

RULING

3895

GENERAL

I.

Application 20000 was filed by Lloyd W. Kelly on July 24, 1961, to appropriate 4.5 c.f.s. of water from an underground source for irrigation and domestic purposes, within the NE1/4, Section 34, T.21N., R.53E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4, Section 34, T.21N., R.53E., M.D.B.&M. A permit was approved under Application 20000 on September 5, 1963 for 2.7 c.f.s. of water for irrigation and domestic purposes. Certificate 6991 was issued under Permit 20000 on April 18, 1969, for 2.7 c.f.s., not to exceed 624 acre feet annually for the irrigation of 156 acres of land within the NE1/4, Section 34, T.21N., R.53E., M.D.B.&M.¹

II.

Application 24605 was filed by Lloyd W. Kelly on July 25, 1968, to change the point of diversion of a portion of the underground waters heretofore appropriated under Permit 19378. The proposed point of diversion under Application 24605 is identical to the existing point of diversion under Permit 20000. A permit was approved under Application 24605 on December 16, 1968, for 1.33 c.f.s. of water for irrigation and domestic purposes. Certificate 7078 was issued under Permit 24605 on July 15, 1969, for 0.874 c.f.s., not to exceed 316 acre feet annually, for the irrigation of 79 acres of land within the NW1/4, Section 34, T.21N., R.53E., M.D.B.&M.²

1 Public records in the office of the State Engineer under Permit 20000.

2 Public records in the office of the State Engineer under Permit 24605.

FINDINGS OF FACT

I.

The owner of record of Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, in the office of the State Engineer is Shady Meadows, Inc.²

II.

The 1990 owner of record in the Eureka County Assessor's Office of the lands described within the places of use under Certificate 6991 and Certificate 7078 was Van Klaveren Dairy.³

III.

Failure for five successive years on the part of the holder of any right to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture.⁴

IV.

The State Engineer's office has maintained pumpage, water level and water use inventories on an annual basis in the Diamond Valley Groundwater Basin since 1967. The State Engineer finds, based on records on file within his office, that the waters under Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, were not placed to beneficial use from 1983 through 1987, a period of five successive years.³

V.

The entire annual duty represented by 624 acre feet of water utilized for the irrigation of 156 acres of land under the place of use of Permit 20000, Certificate 6991, was subject to the forfeiture determination.³

³ Transcript of the hearing held January 24, 1990, in the matter of Permits 20000 and 24605, hereinafter referred to as Transcript or Exhibit, See State's Exhibit No. 1.

⁴ NRS 534.090 (1).

VI.

The entire annual duty represented by 316 acre feet of water utilized for the irrigation of 79 acres of land under the place of use of Permit 24605, Certificate 7078, was subject to the forfeiture determination.³

VII.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of forfeiture of the subject rights was held on January 24, 1990, before representatives of the State Engineer in Eureka, Nevada. Evidentiary presentations were made on behalf of the permittee at the hearing and the State Engineer took administrative notice of the matters more fully set forth in the record.⁵

VIII.

The State Engineer finds that testimony and evidence established that the lands described under Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, were cultivated and irrigated during the 1987 irrigation season, and that water was diverted from their common point of diversion and placed to beneficial use under Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, during this time period.⁶

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁷

II.

Evidence, information and data brought forth during the course of the January 24, 1990, hearing established that water was used beneficially for the purposes for which rights were

5 Transcript, page 4.

6 Transcript, pages 11-18, Applicant's Exhibits 3-7.

established under Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, within the NE1/4, NW1/4 Section 34, T.21N., R.53E., M.D.B.&M., during the 1987 irrigation season.

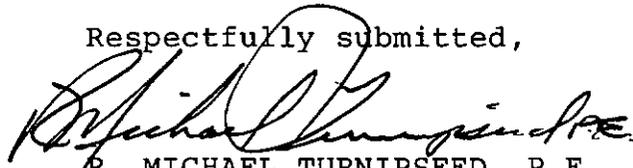
III.

The State Engineer concludes that five successive years of non-use have not occurred within the 1982 through 1988 time frame.

RULING

The record indicates that there is insufficient evidence to establish a forfeiture of the right to beneficially use the water granted under Permit 20000, Certificate 6991, and Permit 24605, Certificate 7078, respectively, and said Permits and Certificates are declared not forfeited.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 8th day of
July, 1992.