

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

IN THE MATTER OF FORFEITURE OF WATER RIGHTS)  
UNDER PERMIT 20108, CERTIFICATE 5847 AND )  
PERMIT 20109, CERTIFICATE 5848 FROM AN )  
UNDERGROUND SOURCE IN THE TRUCKEE MEADOWS )  
BASIN, WASHOE COUNTY, NEVADA. )

RULING

# 3955

GENERAL

I.

Application 20108 was filed by Harold S. Chisholm, on September 29, 1961, to appropriate the underground waters of the State of Nevada. Permit 20108 was approved on February 20, 1962 for 0.5 cubic feet per second (cfs) for commercial and domestic purposes. Proof of beneficial use was filed for 0.25 cfs, and not to exceed 9.818 million gallons annually (MGA), to serve a mobile home park consisting of 130 units. Certificate 5847 under Permit 20108 was issued on February 23, 1965. The point of diversion is located in the SE1/4 NW1/4 Section 23, T.20N., R.19E., M.D.B.&M., and the place of use is within the NE1/4 and the S1/2 of the NW1/4 Section 23, T.20N., R.19E., M.D.B.&M.<sup>1</sup>

Application 20109 was filed by Harold S. Chisholm, on September 29, 1961, to appropriate the underground waters of the State of Nevada. Permit 20109 was approved on February 20, 1962, for 0.5 cfs for commercial and domestic purposes. The proof of beneficial use was filed for 0.5 cfs, to serve the same mobile home park described above. Certificate 5848 under Permit 20109 was issued on February 23, 1965. The water under this certificate is used in conjunction with the water under Certificate 5847, therefore, the total quantity of water from the two sources is limited to 9.818 MGA. The point of diversion is located in the NE1/4 NE1/4 Section 23, T.20N., R.19E., M.D.B.&M. The place of use

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<sup>1</sup> File 20108, official records in the office of the State Engineer.

is the same as that for Certificate 5847, described above.<sup>2</sup>

II.

A hearing to consider the possible forfeiture of Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 was held on October 5, 1989.<sup>3</sup>

FINDINGS OF FACT

I.

Sierra Pacific Power Company began serving water to the mobile home park located on the place of use of Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 on October 27, 1967.<sup>4,5</sup> The well under Permit 20109, Certificate 5848 was used occasionally in the 1970's during emergencies when the Sierra Pacific water service was interrupted.<sup>6</sup>

The State Engineer began a formal program of monitoring the groundwater pumping in the Truckee Meadows in 1985. The records show that no water was pumped from the wells under Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 during the years 1985, 1986, 1987, 1988 and 1989.<sup>7</sup> A Division of Water Resources staff engineer testified that he visited the location of the two wells in 1989 and observed that the well under Permit

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<sup>2</sup> File 20109, official records in the office of the State Engineer.

<sup>3</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, October 5, 1989.

<sup>4</sup> Exhibit No. 5, Public Administrative Hearing before the State Engineer, October 5, 1989.

<sup>5</sup> Transcript pp. 10-12.

<sup>6</sup> Transcript p. 31.

<sup>7</sup> Truckee Meadows Groundwater Pumpage, official records in the office of the State Engineer.

20108, Certificate 5847 was not equipped with a motor or pump. The well under Permit 20109, Certificate 5848, located inside a locked concrete block building did not have electric power serving it.<sup>8</sup>

The State Engineer finds that a continuous period of non-use, greater than 5 years, for Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 began in 1967, when Sierra Pacific began serving the Mobile Home Park, and continues to the present time.

## II.

Mr. Choy testified that, in 1987, he borrowed an electric generator<sup>9</sup> and placed a pump into the well under Permit 20108, Certificate 5847 and pumped water onto the ground for dust control.<sup>10</sup> The manner of use described in Permit 20108, Certificate 5847 is commercial, serving 130 trailer spaces.<sup>11</sup> While in some cases, dust control can be considered a beneficial use, the State Engineer finds that this one time pumping of the well does not constitute placing the water to beneficial use as described in Permit 20108, Certificate 5847.

## III.

Nevada First Bank made a loan to the owner of record of Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848, secured by a deed of trust in 1987.<sup>12</sup> Counsel for Nevada First Bank asserted that forfeiting the water rights under Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 would be inequitable to Nevada First Bank.<sup>12</sup> The period of non-use actually

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<sup>8</sup> Transcript pp.12-13, testimony by Steven Walmsley.

<sup>9</sup> Exhibit No. 9, Public Administrative Hearing before the State Engineer, October 5, 1989.

<sup>10</sup> Transcript pp. 42-46.

<sup>11</sup> Exhibit No. 2, Public Administrative Hearing before the State Engineer, October 5, 1989.

<sup>12</sup> Exhibit No. 15, Public Administrative Hearing before the State Engineer, October 5, 1989.

began in 1967 when Sierra Pacific Power Company began water service to the place of use of these water rights. The State Engineer finds that these water rights were forfeited prior to the time when the loan was partially secured by Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848.

IV.

Counsel for Nevada First Bank stated that the water rights at issue here are not subject to forfeiture because they are vested water rights.<sup>12</sup> The State Engineer finds that these applications were filed in 1961, approved in 1962 and perfected in 1965. The State Engineer finds that these water rights are subject to forfeiture if the non use has occurred.<sup>13</sup>

V.

Mr. Choy stated that a cloud on the title of Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 prevented him selling these water rights to someone who would place the water to beneficial use. Potential buyers withdrew after learning about the title problems.<sup>14</sup> Finally, in August, 1988, it was determined that Mr. Choy was the owner of these water rights.<sup>15</sup> The State Engineer agrees that a change application could not be approved until there was clear title to the water rights. However, there is a more overwhelming reason why these rights were not used and that is because Sierra Pacific was serving the place of use. Therefore, the State Engineer finds that the inability to sell or change these rights does not change the fact that these rights had not been used since 1967.

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<sup>13</sup> City Eureka case, Town of Eureka v. Office of State Engineer of Nevada, 108 Nev. \_\_\_\_, \_\_\_\_, 826 P.2d 948, 950 (1992).

<sup>14</sup> Transcript pp. 46-53.

<sup>15</sup> Exhibit No. 10, Public Administrative Hearing before the State Engineer, October 5, 1989.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.<sup>16</sup>

II.

Failure for a period of five consecutive years, to use beneficially the underground water for the purpose for which it is acquired works a forfeiture of the water right.<sup>17</sup>

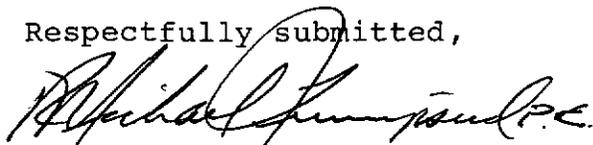
III.

The water under Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 has not been used since 1967, when Sierra Pacific began serving the place of use. Therefore, the water under these water rights was not placed to beneficial use for a continuous period greater than five years and a forfeiture of said water rights has occurred.

RULING

The right to beneficially use water for commercial and domestic purposes under Permit 20108, Certificate 5847 and Permit 20109, Certificate 5848 is hereby declared forfeited because of failure for a period exceeding five consecutive years on the part of the holder of the right to use the water for the purposes for which subject water right was acquired.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 7th day of  
April, 1993.

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<sup>16</sup> NRS Chapters 533 and 534.

<sup>17</sup> NRS 534.090.