

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

IN THE MATTER OF THE FORFEITURE OF )  
WATER RIGHTS UNDER PERMIT 19760, )  
CERTIFICATE 6797, FILED WITHIN THE )  
DIAMOND VALLEY GROUNDWATER BASIN, )  
EUREKA COUNTY, NEVADA. )

RULING

# 4013

GENERAL

I.

Application 19760 was filed by Jo Inez Hellweg on April 18, 1961, to appropriate 5.4 c.f.s. of water from an underground source for irrigation and domestic purposes within the E½ Section 8, T.21N., R.54E., M.D.B.&M. The point of diversion is described as being within the SE¼ SE¼, Section 8, T.21N., R.54E., M.D.B.&M. A permit was approved under Application 19760 on November 27, 1961, for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6797 was issued under Permit 19760 on October 1, 1968, for 5.4 c.f.s., with an annual duty not to exceed 1,276 acre feet, for the irrigation of 319 acres of land within the E½ of Section 8, T.21N., R.54E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

At the time of the forfeiture determination, the ownership of the subject Certificate stood in the names of Perry and Madeline Burnham in the records of the State Engineer's office.<sup>1</sup>

II.

The owners of record in the Eureka County Assessor's office of the lands described under the subject Certificate's place of use during the same time frame were Perry and Madeline Burnham.<sup>2</sup>

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<sup>1</sup> Public records in the office of the State Engineer under Permit 19760, Certificate 6797.

<sup>2</sup> State's Exhibit No. 1, public administrative hearing in the matter of the forfeiture determination of Permit 19760, Certificate 6797, January 25, 1990, Eureka, Nevada, hereinafter referred to as Exhibit or Transcript.

III.

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. Records on file within the State Engineer's office indicate that the water granted under Certificate 6797 was not placed into beneficial use from 1982 through 1988, a period of seven successive years of nonuse.<sup>2</sup>

IV.

Failure for five successive years on the part of the holder of any right to use beneficially all or part of the underground water for the purposes for which the right is acquired, works a forfeiture.<sup>3</sup>

V.

The entire annual duty and associated acreage under the place of use of Permit 19760, Certificate 6797, representing 1276.0 acre feet for the irrigation of 319.0 acres of land within the E $\frac{1}{2}$ , of Section 8, T.21N., R.54E., M.D.B.&M., was subject to the forfeiture determination.<sup>2</sup>

VI.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of forfeiture of Certificate 6797 was held before representatives of the State Engineer on January 25, 1990 in Eureka, Nevada.<sup>4</sup>

VII.

Robert E. Burnham provided testimony and evidence which challenged the nonuse designation assigned to the 1982 through 1988 time period. In particular, the witness testified that during the 1985 season the acreage under Certificate 6797 was disked and seeded with a crop of barley. This crop matured to harvest and was

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<sup>3</sup> NRS 534.090.

<sup>4</sup> Transcript, page 4.

cut during the following year.<sup>5</sup> Additional testimony disclosed that a similar crop had been cultivated during the 1989 season.<sup>6</sup> Mr. James Arnold testified that he had utilized the stubble from this crop as forage for his sheep during 1989.<sup>7</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.<sup>8</sup>

II.

The State Engineer concludes that the testimony and evidence brought forth during the course of the January 25, 1990 hearing, establishes that water was beneficially used for the purposes for which rights were established under Permit 19760, Certificate 6797, during the 1985 and 1989 irrigation seasons, within the certificated place of use.

III.

The State Engineer concludes that the required five successive years of nonuse necessary to establish a forfeiture have not occurred within the subject time frame (1982-1988) of this determination.

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<sup>5</sup> Transcript, pages 32-37 and 39-40.

<sup>6</sup> Transcript, pages 41-42.

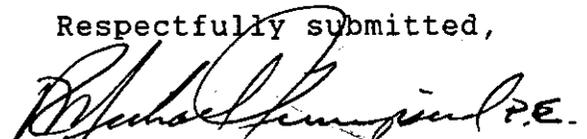
<sup>7</sup> Transcript, pages 43-44.

<sup>8</sup> NRS 534.090.

RULING

The right to appropriate and beneficially use the water to the lands described under the place of use under Permit 19760, Certificate 6797 has not been forfeited, and said right is declared to be in good standing for the period of the forfeiture determination.

Respectfully submitted,

  
E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/pm

Dated this 2nd day of  
July, 1993.