

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

IN THE MATTER OF THE FORFEITURE OF )  
PERMIT 18788, CERTIFICATE 5758 FILED )  
TO APPROPRIATE THE WATERS OF AN )  
UNDERGROUND SOURCE IN THE DIAMOND )  
VALLEY GROUNDWATER BASIN (153), )  
EUREKA COUNTY, NEVADA. )

RULING

# 4206

GENERAL

I.

Application 18788 was filed by Bruce A. DuBose on May 2, 1960, to appropriate 5.4 cfs of water from an underground source for irrigation and domestic purposes within the S $\frac{1}{4}$  of Section 13, T.21N., R.53E., M.D.B.&M. The point of diversion is described as being within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 13. Certificate 5758 was issued under Permit 18788 on August 31, 1964, for 5.01 cfs, not to exceed 1280 acre-feet annually for the irrigation of 320 acres within the abovementioned place of use.<sup>1</sup>

II.

The owner of record, in the State Engineer's office, of the subject certificate, at the time of the forfeiture determination, was Bruce A. DuBose, who is deceased. The owner, according to the Eureka County Assessor's office, of the land on which the subject certificate is appurtenant, is his widow, Juanita Ruthel Martin.<sup>2</sup>

III.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of the forfeiture of Certificate 5758 was held before representatives of the State Engineer on January 24, 1990, in Eureka, Nevada.<sup>3</sup>

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<sup>1</sup> Official records in the Office of the State Engineer under Permit 18788.

<sup>2</sup> Transcript p. 12, Public Administrative Hearing before the State Engineer January 24, 1990.

<sup>3</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer January 24, 1990.

FINDINGS OF FACT

I.

The State Engineer has taken annual pumpage inventories in the Diamond Valley Groundwater Basin since 1967 for the purpose of overall basin management. The annual groundwater pumpage inventory for the Diamond Valley Groundwater Basin is traditionally conducted during the fall of the year in order to obtain post-irrigation water level measurements. The Diamond Valley basin inventory shows that the pump was removed from the well in 1984 and no water was used under Permit 18788, Certificate 5758 during the 1984 through 1988 irrigation seasons.<sup>4</sup>

Mrs. Martin testified that water was used on the place of use of Permit 18788, Certificate 5758 in 1983 and 1984.<sup>5</sup> At the end of the 1984 irrigation season, the production of the well dropped to about 150 gallons per minute and the pump was removed for maintenance.<sup>5</sup> This explains the notation in the 1984 inventory that the pump was removed, and the well appeared inoperable.

In 1985, a pivot was installed to irrigate a portion of the place of use of Permit 18788, Certificate 5758. The well used for the new pivot was not the same well described as the point of diversion of Permit 18788, Certificate 5758.<sup>6</sup> In 1987, a second pivot was installed to irrigate another portion of the certificated place of use, again from a well that is not the point of diversion of Permit 18788, Certificate 5758.<sup>5</sup>

The State Engineer finds that portions of the place of use of Permit 18788, Certificate 5758 were irrigated in 1984, 1985 and 1987. The State Engineer furthers finds that the wells used in 1985 and 1987 were not the certificated points of diversion.

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<sup>4</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer January 24, 1990.

<sup>5</sup> Transcript p. 14, Public Administrative Hearing before the State Engineer January 24, 1990.

<sup>6</sup> Transcript 15, Public Administrative Hearing before the State Engineer January 24, 1990.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter.<sup>1</sup>

II.

Failure for a period of five consecutive years after the issuance of the certificate, on the part of a water right holder, to use beneficially all or any part of the underground water for the purpose for which the right is acquired works a forfeiture of the water right to the extent of the nonuse.<sup>1</sup>

III.

Portions of the place of use of Permit 18788, Certificate 5758 were irrigated in 1984, 1985 and 1987. Therefore, this water right cannot be declared forfeited.

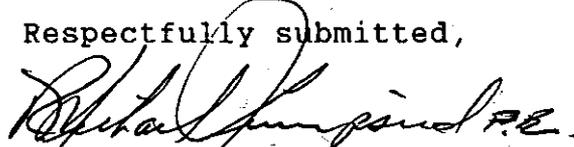
IV.

If the water right holder wishes to continue to use the alternate wells rather than the certificated point of diversion to irrigate the place of use of Permit 18788, Certificate 5758, then appropriate change applications must be filed.

RULING

The right to beneficially use water as granted under Permit 18788, Certificate 5758 is hereby declared not to be forfeited for the period of this determination, 1984 through 1988.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/pm

Dated this 5th day of  
July, 1995.

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<sup>1</sup> NRS 533.090.