

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

IN THE MATTER OF APPLICATION 59728 FILED)  
TO CHANGE THE POINT OF DIVERSION, PLACE, )  
TIME, AND MANNER OF USE OF A PORTION OF )  
THE UNDERGROUND WATERS OF THE LAS VEGAS )  
ARTESIAN BASIN (212), CLARK COUNTY, )  
NEVADA. )

RULING

# 4357

GENERAL

I.

Application 59728 was filed on January 28, 1994, by I.F.S. Industries, Inc., to change the point of diversion, time, place and manner of use of 0.4 cubic feet per second (cfs), not to exceed 169.5 acre feet annually, of water heretofore appropriated under Permit 13610, Certificate 4304. The proposed use of water under the application is for the irrigation of 33.9 acres at a cemetery located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 3, T.20S., R.60E., M.D.B.&M.<sup>1</sup> The proposed point of diversion is located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 3.

II.

The State Engineer initially described and designated a portion of the Las Vegas Artesian Basin on January 10, 1941, under the provisions of NRS 534.030, as a basin in need of additional administration.<sup>2</sup> The State Engineer subsequently extended the boundaries of the designated area of the Las Vegas Artesian Basin

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<sup>1</sup> File No. 59728, official records in the Office of the State Engineer.

<sup>2</sup> State Engineer's Order No. 175, dated January 10, 1941, official records in the Office of the State Engineer.

on February 29, 1944,<sup>3</sup> November 22, 1946,<sup>4</sup> April 18, 1961,<sup>5</sup> May 25, 1964,<sup>6</sup> and December 27, 1983.<sup>7</sup> Since March 24, 1955, new permits issued within the designated boundaries of the Las Vegas Artesian Basin are revocable water rights for the temporary use of ground water, and subject to revocation when water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water.<sup>8</sup> Water rights issued before March 24, 1955, or based on a chain of transfer to a water right issued before March 24, 1955, are identified as non-revocable water rights, and they do not fall under the provisions of NRS 534.120(3)(a).

#### FINDINGS OF FACT

##### I.

Application 13610 was filed on January 24, 1951. Permit 13610 was issued on July 10, 1951. Certificate 4304 was issued under Permit 13610 on February 16, 1956, and allowed for the use of 0.4

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<sup>3</sup> State Engineer's Order No. 182, dated February 29, 1944, official records in the Office of the State Engineer.

<sup>4</sup> State Engineer's Order No. 189, dated November 22, 1946, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Order No. 249, dated April 18, 1961, official records in the Office of the State Engineer.

<sup>6</sup> State Engineer's Order No. 275, dated May 25, 1964, official records in the Office of the State Engineer.

<sup>7</sup> State Engineer's Order No. 833, dated December 27, 1983, official records in the Office of the State Engineer.

<sup>8</sup> NRS 534.120(3)(a).

cfs of water, not to exceed 338 acre feet annually, for domestic purposes and the irrigation of 67.53 acres of land located within the NW¼ NE¼; NE¼ NW¼; and SE¼ NW¼, Section 11, T.22S., R.61E., M.D.B.&M.<sup>9</sup> The State Engineer finds that as Permit 13610 predates the 1955 legislation which allowed the State Engineer to issue revocable permits, Permit 13610, Certificate 4304, was issued as a non-revocable water right, meaning the permit holder could not be required to give up the use of ground water if an entity such as a water district or municipality could provide water service.

## II.

Application 34637 was filed by Clark Hartwell on November 21, 1977, requesting permission to change the point of diversion, place and manner of use of 0.4 cfs, but not to exceed 169.5 acre feet annually,<sup>10</sup> of the waters previously appropriated under Permit 13610, Certificate 4304. Permit 34637 was granted on October 23, 1979, for the irrigation of 33.9 acres located in the NE¼ SW¼ Section 2, T.22S., R.61E., M.D.B.&M.<sup>11</sup> In September 1981, Clark Hartwell agreed to sell his interest in Permit 34637 to I.F.S.

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<sup>9</sup> File No. 13610, official records in the Office of the State Engineer.

<sup>10</sup> Certificate 4304 and Certificate 4305 were issued by the State Engineer for a combined total duty of 338 acre feet annually. Resulting from a separate series of change applications only 169.5 acre feet annually actually existed for change under Application 34637. Certificates 4304 and 4305, issued February 16, 1956, official records in the Office of the State Engineer.

<sup>11</sup> File No. 34637, official records in the Office of the State Engineer.

Industries.<sup>11</sup> The State Engineer finds that as Application 34637 was based on a change of a non-revocable water right, it to was given non-revocable status when permitted.

III.

When a permit is granted on an application to change the point of diversion, place or manner of use of a water right, the records in the Office of the State Engineer are marked to show that the underlying permit is abrogated, meaning abolished by authoritative action. The State Engineer finds that Permit 13610, Certificate 4304, was abrogated by Permit 34637.<sup>9</sup>

IV.

Application 44352 was filed on August 25, 1981, requesting permission to change the point of diversion, place and manner of use of water previously appropriated under Permit 34637. The application requested to change 0.4 cfs, not to exceed 169.5 acre feet annually, or rather, the entire diversion rate and annual duty of the water allowed under Permit 34637.<sup>12</sup> The place of use under Permit 44352 is located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ ; E $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ ; NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 3, T.20S., R. 60E, M.D.B.&M.<sup>12</sup> The State Engineer finds that Application 44352 was based on a request to change a non-revocable water right; thus, it was given non-revocable status when Permit 44352 was granted on April 13, 1982. The State Engineer further finds that Permit 34637 was abrogated by Permit 44352.<sup>12</sup>

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<sup>12</sup> File No. 44352, official records in the Office of the State Engineer.

V.

Nevada water law provides that once a permit is granted on a water right application, certain things must happen within the time frames set forth in the permit terms<sup>13</sup>; otherwise, the permit will be cancelled. Those terms include filing proof of completion of the works of diversion and filing proof of beneficial use of the waters within the time frames set forth in the permit.<sup>14</sup> The deadline for filing the proof of beneficial use under the terms of Permit 44352 was May 13, 1986.<sup>12</sup> The State Engineer granted the permittee five different extensions of time to file the required proof of beneficial use.<sup>12</sup>

The permittee failed to file the proof of beneficial use on or before May 13, 1991, therefore, the State Engineer cancelled Permit 44352 on July 17, 1991, for failure to comply with the terms of the permit.<sup>12</sup> Notice of the cancellation of Permit 44352 and the process by which said cancellation could be appealed was sent by certified mail dated July 17, 1991, to the holder of Permit 44352 and its agent of record.<sup>12</sup> The certified receipts were returned to the Office of the State Engineer on July 22 and July 31, 1991.<sup>12</sup> The State Engineer finds that the owner of Permit 44352, I.F.S. Industries, Inc., did not appeal the cancellation of Permit 44352 as provided for by NRS 533.395; thus, the cancellation became final and the water returned to the public waters of the State.

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<sup>13</sup> NRS 533.380, 533.400.

<sup>14</sup>NRS 533.380, 533.390, 533.395.

VI.

Under Item #15, the remarks section of Application 59728, it is noted "This is a refile of cancelled permit No. 44352", while in the introductory part of the change application form, the applicant stated that it was requesting permission to change the point of diversion, manner, time and place of use of a portion of Permit 13610, Certificate 4304. The State Engineer finds that Application 59728 was filed to change a permit which had already been totally abrogated and, therefore, nothing remains to be changed.

VII.

Nevada law provides that all water beneficially used shall remain appurtenant to the place of use provided that if for any reason it should at anytime become impractical or uneconomical to use it at the place to which it is appurtenant, it may simultaneously be changed to other places of use in the manner provided.<sup>15</sup> The State Engineer finds that when Permit 34637 was issued, the water right was simultaneously stripped from the place of use under Permit 13610 and permission was granted to perfect the water right at the new place.

CONCLUSIONS

I.

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

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<sup>15</sup> NRS 533.040.

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

II.

When a permit is granted under a change application, use at the original location is abrogated and abolished. Even though the permittee is changing a certificated non-revocable water right, that permittee starts anew with the requirements of having to prove beneficial use according to the permit terms. Any right to the use of the water under the terms of the original permit or certificate is abrogated, and failure to comply with the new permit terms results in cancellation and loss of the water right. The underlying permit or certificate no longer exists once a permit is granted on a change application.

The water right represented by Permit 13610, Certificate 4304, was used for the irrigation of 67.53 acres of land within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ ; the NE $\frac{1}{4}$  NW $\frac{1}{4}$ ; and the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 11, T.22S., R.61E., M.D.B.&M. The State Engineer concludes that when Permit 34637 was granted allowing a change in the point of diversion, and place and manner of use of the water right for the irrigation of 33.9 new acres located in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, T.22S., R.61E., M.D.B.&M., any right to use the water as allowed under Permit 13610, Certificate 4304, was abrogated and abolished. Permit 13610, Certificate 4304, no longer existed as a valid water right, it was abrogated by the subsequent permit granted for this same water; therefore, no water right exists under Permit 13610, Certificate 4304, to support change by Application 59728.

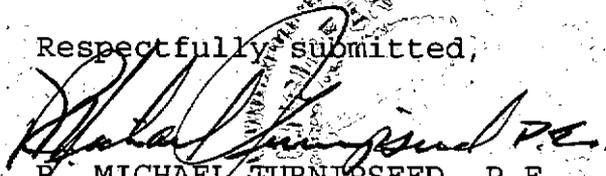
III.

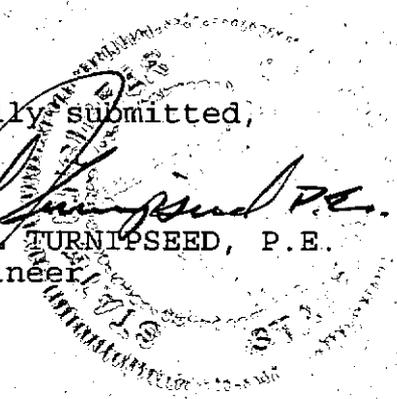
The State Engineer concludes that NRS 534.345(1) provides that an application can be filed to change the point of diversion, manner or place of use of water already appropriated. Water already appropriated, in reference to a change application refers to water represented by a permit or certificate in good standing.<sup>17</sup> Permit 13610, Certificate 4304, is not in good standing and cannot be used to support the change application.

RULING

Application 59728 is hereby denied on the grounds that the base right, Permit 13610, Certificate 4304, was abrogated and abolished by the subsequent permits and no longer exists to support a change application.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer



RMT/SJT/ab

Dated this 10th day of  
June, 1996.

<sup>17</sup> NRS 533.324.