

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF FORFEITURE OF WATER)  
RIGHTS UNDER PERMIT 23840, CERTIFICATE)  
8549, OF THE WATERS OF AN)  
UNDERGROUND SOURCE IN PAHRUMP)  
VALLEY, NYE COUNTY, NEVADA. )

RULING

FINDINGS OF FACT

I.

Application 23840 was filed by Earl Burson on April 28, 1967, to appropriate underground water for irrigation and domestic purposes. The proposed place of use included the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 12, T.21S., R.53E., M.D.B.&M. A permit was issued under Application 23840 on February 8, 1968, for 2.7 c.f.s. of water for irrigation and domestic purposes.<sup>1</sup> Certificate 8549 was issued under said permit on July 29, 1975, for 0.44 c.f.s. and 95.0 acre-feet per year for the irrigation of 19.0 acres of land.<sup>2</sup>

II.

The portion of Permit 23840, Certificate 8549, subject to a forfeiture determination is 45 acre-feet of water for the irrigation of 9 acres more or less within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 12, T.21S., R.53E., M.D.B.&M., with the owner of record in the office of the State Engineer being John E. and Theresa Ann Thein.

III.

A deed has been submitted to the State Engineer's office to transfer the 9 acres of land described as Parcels 18, 19, 20 and 21 on Nye County Assessor's Parcel Map No. 44-55 and recorded July 10, 1980, as file No. 25836, Book 277, Page 158, of official records, Nye County, Nevada, from G. Patrick and Donna Kennedy to John E. and Theresa Ann Thein.<sup>3</sup>

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<sup>1</sup> State Exhibit No. 3: An administrative hearing was held before the State Engineer in the matter of the subject permit on October 24, 1988, at Las Vegas, Nevada. Transcripts are a matter of public record in the office of the State Engineer.

<sup>2</sup> State Exhibit No. 2, October 24, 1988, Transcript.

<sup>3</sup> Public record in the office of the State Engineer; See File 23840.

IV.

Evidence and testimony were received into the record at a hearing before the State Engineer (see Footnote 1), and the State Engineer took administrative notice of various matters as more specifically set forth.<sup>4</sup>

V.

Testimony and evidence were established into the record that the 9 acres of land in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 12, T.21S., R.53E., M.D.B.&M., in the name of John E. and Theresa Ann Thein, were cultivated and irrigated during the period of 1982 through 1986 and that water was diverted from a source other than the point of diversion specified for Permit 23840, Certificate 8549.<sup>5</sup>

VI.

There is no evidence that water was diverted and placed to beneficial use from the source described under Permit 23840, Certificate 8549, for the period January 1, 1982, through December 31, 1986 (five (5) successive years). The record provides substantial evidence that no water was diverted from the source described during the period of 1982 through 1987, inclusive, for that portion described in Finding II.<sup>6</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.<sup>7</sup>

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<sup>4</sup> See Transcript of hearing of October 24, 1988.

<sup>5</sup> Testimony of John E. Thein; see Transcript, pages 33 through 50, inclusive.

<sup>6</sup> Testimony of Robert Coache, Hydraulic Engineer for the Division of Water Resources, Southern Nevada Branch Office; see Transcript pages 8 through 33, inclusive.

<sup>7</sup> NRS Chapters 533 and 534.

II.

The water right under Permit 23840, Certificate 8549, is a "permitted right" and a "determined right" as described in NRS 534.090 and one therefore subject to the provisions of that statute.<sup>8</sup>

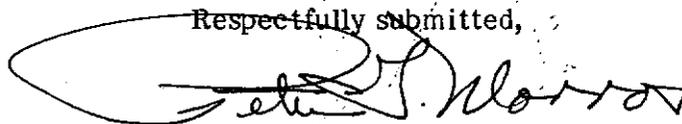
III.

The record provides substantial evidence that, during the period between January 1, 1982, through December 31, 1986, (five (5) successive years), a portion of the water under Permit 23840, Certificate 8549, from the underground source described was not beneficially used for the purpose for which the water right was acquired.

RULING

The right to appropriate and beneficially use a portion of the water to the lands described under the place of use under Permit 23840, Certificate 8549, has been forfeited because of failure for five successive years on the part of the holder of the right to beneficially use the underground water for which the subject right was acquired.

Respectfully submitted,



PETER G. MORROS  
State Engineer

PGM/GWQ/bk

Dated this 27th day of

December, 1989.

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<sup>8</sup> NRS 534.090.