

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

IN THE MATTER OF THE DETERMINATION )  
OF FORFEITURE OF WATER RIGHTS UNDER)  
PERMIT 18911, CERTIFICATE 6814, )  
PERMIT 33668, CERTIFICATE 9386, AND)  
PERMIT 33669, CERTIFICATE 9387, )  
FILED TO APPROPRIATE THE WATERS OF )  
AN UNDERGROUND SOURCE WITHIN THE )  
DIAMOND VALLEY GROUND WATER BASIN, )  
EUREKA COUNTY, NEVADA. )

**RULING**

#3820

**GENERAL**

Application 18911 was filed by Howard T. Sherwood on June 8, 1960, to appropriate underground water for irrigation and domestic purposes. The point of diversion under Application 18911 is within the SE1/4 SW1/4 Section 16, T.21N., R.54E., M.D.B.&M. A permit was issued under Application 18911 on April 26, 1961 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6814 was issued under said permit on October 16, 1968, for 5.25 c.f.s. not to exceed 1176.0 acre feet per year for the irrigation of 294.0 acres of land within the W1/2 Section 16, T.21N., R.54E., M.D.B.&M.<sup>1</sup>

Application 33668 was filed by Dalton and Penelope Wilson on September 19, 1977 to appropriate underground water for irrigation and domestic purposes. The point of diversion under Application 33668 is within the NW1/4 NE1/4 Section 20, T.21N., R.54E., M.D.B.&M. A permit was issued under Application 33668 on May 10, 1978 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 9386 was issued under said permit on January 7, 1980 for 3.974 c.f.s., not to exceed 1223.744 acre feet per year for the irrigation of 305.936 acres of land within the NE1/4 and SE1/4, Section 20, T.21N., R.54E., M.D.B.&M.<sup>2</sup>

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1 Public records in the office of the State Engineer, under Permit 18911.

2 Public record in the office of the State Engineer under Permit 33668.

Application 33669 was filed by Dalton and Penelope Wilson on September 19, 1977, to appropriate underground water for irrigation and domestic purposes purposes. The point of diversion under Application 33669 is within the SE1/4 SE1/4 Section 20, T.21N., R.54E., M.D.B.&M. A permit was issued under Application 33669 on May 10, 1978, for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 9387 was issued under said permit for 2.719 c.f.s., not to exceed 1223.744 acre feet per year for the irrigation of 305.936 acres of land within the NE1/4 and SE1/4 Section 20, T.21N., R.54E., M.D.B.&M.<sup>3</sup>

FINDINGS OF FACT

I.

Several ownership changes have occurred under these permits and certificates and are reflected in the records of the State Engineer's office. On January 23, 1990, the ownership of the above mentioned permits and certificates was reflected in the records of the State Engineer's office to be in the name of James A. Arnold.<sup>4</sup>

II.

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 of file within the State Engineer's office indicate that the water granted under the subject permits and certificate was not placed into beneficial use from 1982 to 1988, a period of seven consecutive years.<sup>5</sup>

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<sup>3</sup> Public records in the office of the State Engineer under Permit 33669.

<sup>4</sup> Public records in the office of the State Engineer under Permits 18911, 33668 and 33669.

<sup>5</sup> Transcript of hearing held January 23, 1990 in the matter of Permits 18911, 33668 and 33669 hereinafter referred to as Transcript or Exhibits, See State's Exhibit 2.

III.

The entire duties and places of use represented by said permits and certificates were subject to the forfeiture determination.<sup>5</sup>

IV.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of forfeiture of the subject water rights was held on January 23, 1990 before representatives of the State Engineer in Eureka, Nevada. Evidentiary presentations were made by the permittee at the hearing and the State Engineer took administrative notice of other matters more fully set forth in the record.<sup>6</sup>

V.

Testimony and evidence establish that the land described under Permit 18911 was cultivated and irrigated during the irrigation seasons of 1984 through 1988, inclusive and that water was diverted from the source and placed into beneficial use under Permit 18911, Certificate 6814 during these time periods.<sup>7</sup>

VI.

Testimony and evidence establish that the lands described under Permit 33668, Certificate 9386 and Permit 33669, Certificate 9387 were cultivated and irrigated during the irrigation seasons of 1986 and 1987 and that water was diverted from the source and placed into beneficial use under Permit 33668, Certificate 9386 and Permit 33669, Certificate 9387 during these time periods.<sup>8</sup>

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<sup>6</sup> State's Exhibit 1.

<sup>7</sup> Transcript, See pages 13-19.

<sup>8</sup> Transcript, See page 27.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.<sup>9</sup>

II.

Evidence, information and data available establish that water was used beneficially for the purposes for which rights were established under Permit 18911, Certificate 6814, Permit 33668, Certificate 9386 and Permit 33669, Certificate 9387 on the entire places of use represented by said permits. There is insufficient evidence to establish a period of (5) five consecutive years of non-use.

RULING

The record indicates that there is insufficient evidence to establish a forfeiture of the right to beneficially use water on the places of use under Permit 18911, Certificate 6814, Permit 33668, Certificate 9386 and Permit 33669, Certificate 9387 and said Permits and Certificates are declared in good standing.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/pm

Dated this 30th day of  
July, 1991.

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<sup>9</sup> NRS Chapters 533 and 534.