

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

IN THE MATTER OF THE FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 28125, CERTIFICATE)
11590, PERMIT 28126, CERTIFICATE 11591,)
PERMIT 28128, CERTIFICATE 11592 AND)
PERMIT 28129, CERTIFICATE 11593 FILED TO)
APPROPRIATE THE WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE BUENA VISTA GROUND)
WATER BASIN, PERSHING COUNTY, NEVADA.)

RULING

3832

GENERAL

Application 28125 was filed by Monarch Royalty, Inc. on February 20, 1974, to appropriate underground water for mining, milling and domestic purposes. The point of diversion under said application is within the SW1/4 SW1/4 Section 35, T.29N., R.34E., M.D.B.&M. A permit was issued under Application 28125 on September 23, 1975, for 1.0 c.f.s. of water for mining, milling and domestic purposes, within lots 7, 8, 11 and 12, Section 1, T.28N., R.34E., M.D.B.&M. Certificate 11590 was issued on October 24, 1986, for 0.12 c.f.s., with an annual duty not to exceed 10.14 million gallons.¹

Application 28126 was filed by Monarch Royalty, Inc. on February 20, 1974, to appropriate underground water for mining, milling and domestic purposes. The point of diversion under said application is within the NW1/4 SW1/4 Section 35, T.29N., R.34E., M.D.B.&M. A permit was issued under Application 28126 on September 23, 1975, for 1.0 c.f.s. of water for mining, milling and domestic purposes, within lots 7, 8, 11 and 12, Section 1, T.28N., R.34E., M.D.B.&M. Certificate 11591 was issued on October 24, 1986, for 0.13 c.f.s., with an annual duty not to exceed 10.98 million gallons.²

1 See State Engineer's filed under Permit 28125.

2 See State Engineer's file under Permit 28126.

Application 28128 was filed by Monarch Royalty, Inc. on February 20, 1974, to appropriate underground water for mining, milling and domestic purposes. The point of diversion under said application is within the SE1/4 SE1/4 Section 34, T.29N., R.34E., M.D.B.&M. A permit was issued under Application 28128 on September 23, 1975, for 1.0 c.f.s. of water for mining, milling and domestic purposes, within lots 7, 8, 11 and 12, Section 1, T.28N., R.34E., M.D.B.&M. Certificate 11592 was issued on October 24, 1986, for 0.23 c.f.s., with an annual duty not to exceed 19.42 million gallons.³

Application 28129 was filed by Monarch Royalty, Inc. on February 20, 1974, to appropriate underground water for mining, milling and domestic purposes. The point of diversion under said application is within the SE1/4 SE1/4 Section 34, T.29N., R.34E., M.D.B.&M. A permit was issued under Application 28129 on September 23, 1975, for 1.0 c.f.s. of water for mining, milling and domestic purposes, within lots 7, 8, 11 and 12, Section 1, T.28N., R.34E., M.D.B.&M. Certificate 11593 was issued on October 24, 1986, for 0.23 c.f.s., with an annual duty not to exceed 19.42 million gallons.⁴

FINDINGS OF FACT

I.

Several ownership changes have occurred under the subject permits and certificates, and these are reflected in the records of the State Engineer's Office. On October 1, 1990, the ownership of the permits and certificates in question stood in the name of Esther Bennett in the records of the State Engineer's Office.⁵

³ See State Engineer's file under Permit 28128.

⁴ See State Engineer's file under Permit 28129.

⁵ See State Engineer's file under Permit 28125.

II.

On June 17, 1988, the State Engineer's Office received a written request by James L. Noble requesting the State Engineer to initiate a forfeiture action against the subject certificates.⁶

III.

Certificates 11590, 11591, 11592 and 11593 were issued by the Nevada Division of Water Resources on October 24, 1986.⁷

IV.

A forfeiture determination can proceed only after five successive years of non use have occurred after certification of the permitted water right.⁸

V.

After proper notice was given to all interested parties, an administrative hearing in the matter of determination of forfeiture of the subject certificates was held on October 1, 1990, before representatives of the State Engineer in Winnemucca, Nevada.⁹

VI.

All parties of interest in the subject matter were notified by certified letter of the specific time and place of the administrative hearing.¹⁰

⁶ Transcript of hearing held October 1, 1990, in the matter of Permit 28125 et al., hereinafter referred to as Transcript or Exhibit. See State's Exhibit 1A.

⁷ See State's Exhibits 2, 3, 4 and 5.

⁸ NRS. 534.090.

⁹ Transcript, page 6.

¹⁰ See certified mail, Return Receipt No. P 448 147 572 filed under 28125, public record in the office of the State Engineer.

VII.

The State Engineer received no requests for continuance of the October 1, 1990, hearing from any party with standing in the matter.¹¹

VIII.

James L. Noble, Betty C. Noble and or their designated representatives failed to appear at the proper time and place set forth in the hearing notice.¹²

IX.

Subsequently no evidence and testimony was received to support their contention that a forfeiture had occurred under the subject certificates.¹³

X.

Evidence and testimony on behalf of the permittee revealed that the water granted under Certificates 11590 through 11593; inclusive, had been placed into beneficial use during the period of forfeiture claimed by the Nobles.¹⁴

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁵

¹¹ See State Engineer's file under Permit 28125.

¹² Transcript, See pages 6 and 77.

¹³ Transcript, See pages 6 through 97; inclusive.

¹⁴ Transcript, pages 77 through 82; inclusive. See Applicant's Exhibits 35, 36 and 37.

¹⁵ NRS 533.

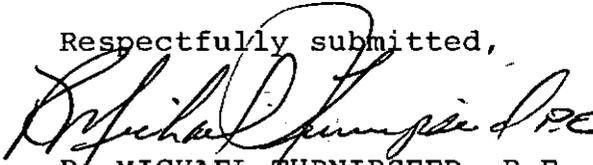
II.

The State Engineer concludes that at the time of the forfeiture request, the subject certificates were not subject to a forfeiture determination, since the statutory five years of non-use after certification of the rights had not occurred. This fact coupled with the Noble's unexcused failure to appear after proper notice, leads to the conclusion that a forfeiture should not be made on Certificates 11590 through 11593; inclusive.

RULING

Accordingly, for the foregoing reasons, the right to beneficially use water granted under Permit 28125, Certificate 11590, Permit 28126, Certificate 11591, Permit 28128, Certificate 11592 and Permit 28129, Certificate 11593 is declared to be in good standing and no finding of forfeiture can be made.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 17th day of
September, 1991.