

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

IN THE MATTER OF THE FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 29557, CERTIFICATE)
10090, FILED TO APPROPRIATE THE WATERS)
OF AN UNDERGROUND SOURCE WITHIN THE)
DIAMOND VALLEY GROUNDWATER BASIN,)
EUREKA COUNTY, NEVADA.)

RULING
#3833

GENERAL

Application 29557 was filed by Everett J. and Jean E. Phelps on July 29, 1975 to appropriate underground water for irrigation and domestic purposes. The proposed point of diversion under Application 29557 is within the SE1/4 SE1/4 Section 20, T.23N., R.54E., M.D.B.&M. A permit was issued under Application 29557 on March 16, 1976 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 10090 was issued under said permit on July 14, 1982 for 2.7 c.f.s., not to exceed 487.36 acre feet per season for the irrigation of 121.84 acres of land within the S1/2 of Section 20, T.23N., R.54E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Several ownership changes have occurred under Permit 29557, Certificate 10090 and are reflected in the records of the State Engineer's office. On January 25, 1990, the ownership of the above mentioned permit and certificate was reflected in the records of the State Engineer's office to be in the name of Everett J. and Jean E. Phelps.²

1 Public record in the office of the State Engineer under Permit 29557.

2 Public record in the office of the State Engineer under Permit 29557.

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 on file within the State Engineer's office indicate that the water granted under Permit 29557 was not placed into beneficial use from 1982 to 1988 a period of seven consecutive years.³

III.

After proper notice was given to all interested parties, an administrative hearing in the matter of determination of forfeiture of the subject right was held on January 25, 1990 before representatives of the State Engineer in Eureka, Nevada. Evidentiary presentations were made on behalf of the permittee at the hearing and the State Engineer took administrative notice of other matters more fully set forth in the record.³

IV.

The entire duty and place of use represented by Permit 29557, Certificate 10090 was subject to the forfeiture determination.³

V.

Testimony and evidence established that the lands described under Permit 29557, Certificate 10090, were cultivated and irrigated during the irrigation seasons of 1984 through 1988 inclusive; and that water was diverted from the source and placed to beneficial use under Permit 29557, Certificate 10090 during this time period.⁴

³ Transcript of the hearing held January 25, 1990 in the matter of Permit 29557, hereinafter referred to as Transcript or Exhibits, See State's Exhibit 1.

⁴ Transcript, pages 20 - 25.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.

II.

Evidence, information and data available establish that water was used beneficially for the purposes for which rights were established under Permit 29557, Certificate 10090 on the entire place of use represented by said permit. 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 121.84 acres of land in the S1/2, Section 20, T.23N., R.54E., M.D.B.&M., that being the place of use under Permit 29557, Certificate 10090, and said Permit and Certificate are declared not forfeited.

Respectfully submitted,


E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 19th day of
September, 1991.