

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

IN THE MATTER OF THE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 23272,)
CERTIFICATE 6303, FILED TO CHANGE)
THE POINT OF DIVERSION OF THE)
UNDERGROUND WATERS HERETOFORE)
APPROPRIATED UNDER PERMIT 18746)
WITHIN THE DIAMOND VALLEY)
GROUNDWATER BASIN, EUREKA COUNTY,)
NEVADA.)

RULING

3847

GENERAL

I.

Application 23272 was filed by Reta E. Williamsen on July 26, 1966, to change the point of diversion of the underground waters heretofore appropriated under Permit 18746. The proposed point of diversion under Application 23272 is within the SW1/4 SW1/4 Section 32, T.22N., R.54E., M.D.B.&M. A permit was issued under Application 23272 on March 20, 1967 for 5.0 c.f.s. of water for irrigation and domestic purposes. Certificate 6303 was issued under said permit on June 8, 1967 for 5.0 c.f.s., not to exceed 1280.0 acre-feet annually for the irrigation of 320.0 acres of land within the W1/2 of Section 32, T.22N., R.54E., M.D.B.&M.¹

FINDINGS OF FACT

I.

A review of the records of the State Engineer's office discloses that the ownership of Permit 23272 remains in the name of the original applicant, Reta E. Williamsen.¹

¹ Public records in the office of the State Engineer under Permit 23272.

II.

The owners of record in the Eureka County Assessor's Office of the land described under the subject Certificate's point of diversion and place of use are Robert O. Burnham and Elaine Burnham.¹

III.

The annual duty and place of use under Permit 23272, Certificate 6303 have been reduced through a series of abrogations to 640.0 AFA and 160 acres, respectively within the SW1/4 of Section 32, T.22N., R.54E., M.D.B.&M.¹

IV.

Failure for five successive years on the part of the holder of any right to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture.²

V.

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 remaining under Permit 23272, Certificate 6303 was not placed into beneficial use from 1984 to 1988 a period of five successive years.³

² NRS 534.090 (1).

³ Transcript of the hearing held January 25, 1990 in the matter of Permit 23272, hereinafter referred to as Transcript or Exhibits, See State's Exhibit 1.

VI.

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.³ 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.

VII.

Testimony and evidence established that the land described under Permit 23272, Certificate 6303, was 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 23272, Certificate 6303 during this time period.^{4, 5}

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁶

II.

Evidence, information and data available establish that water was used beneficially for the purposes for which rights were established under Permit 23272, Certificate 6303 within the SW1/4, Section 32, T.22N., R.54E., M.D.B.&M. There is insufficient evidence to establish a period of (5) five consecutive years of non-use.

4 Transcript, pages 10 through 45.

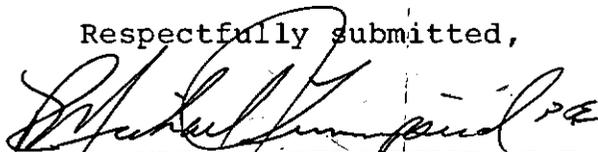
5 Applicant's Exhibit's A through I.

6 NRS 534.090.

RULING

The record indicates that there is insufficient evidence to establish a forfeiture of the right to beneficially use water on the 160.0 acres of land in the SW1/4, Section 32, T.22N., R.54E., M.D.B.&M., that being the place of use under Permit 23272, Certificate 6303, and said Permit and Certificate are declared not forfeited.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 25th day of
November, 1991.