

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

IN THE MATTER OF THE FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 21045, CERTIFICATE)
7668, FILED TO APPROPRIATE THE WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE PAHRUMP)
VALLEY GROUNDWATER BASIN, NYE COUNTY,)
NEVADA.)

RULING
3907

GENERAL

I.

Application 21045 was filed by Alma F. Birkholz on February 14, 1963, to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the E $\frac{1}{2}$ of Section 3, T.21S., R.53E., M.D.B.&M. A permit was issued under Application 21045 on December 18, 1963, for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 7668 was issued under said permit on September 20, 1971 for 0.67 c.f.s. and 277.5 acre-feet per year for the irrigation of 36.9 acres located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and 18.6 within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ all within Section 3, T.21S., R.53E., M.D.B.&M.¹

II.

A deed was submitted to the State Engineer's office on February 15, 1968, transferring the ownership of all of Permit 21045, Certificate 7668, from Alma F. Birkholz to Donald B. Carberry.¹ On December 20, 1982, a deed was submitted to this office assigning 4.87 acres and 24.35 acre-feet from Donald B. Carberry to the Roman Catholic Bishop of Reno-Las Vegas a Corporation.¹

III.

Records in the Office provide evidence that a portion of Permit 21045, Certificate 7668, may be subject to forfeiture.² A

¹Public record in the Office of the State Engineer under Permit 21045.

²Records in the Office of the State Engineer. See pumpage inventories for the Pahrump Valley Ground Water Basin.

public administrative hearing was held June 27, 1989, to take additional evidence and testimony in the matter.³

FINDINGS OF FACT

I.

The portion of Permit 21045, Certificate 7668, subject to a forfeiture determination, is 84.5 acre-feet annually for the irrigation of 16.9 acres within the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T.21S., R.53E., M.D.B.&M.,⁴ with the owner of record in the office of the State Engineer being Donald B. Carberry owner of 12.03 acres and the Roman Catholic Bishop of Reno-Las Vegas, a corporation owner of 4.87 acres.¹

II.

An application for extension of time to work a forfeiture and abandonment was submitted to the State Engineer's office on February 9, 1989, by Donald B. Carberry.¹

III.

Testimony and evidence establish that the 16.9 acres subject to a forfeiture determination under Permit 21045, Certificate 7668, were not cultivated nor irrigated during the period 1982 through 1988 inclusive, and that no water was diverted from the source and placed to beneficial use on the subject acreage during this time period.⁵

³See transcript of public administrative hearing of June 27, 1989.

⁴State Exhibit No. 8.

⁵Testimony of Robert Coache, Hydraulic Engineer for the Division of Water Resources, Southern Nevada Branch Office; see Transcript pages 9 through 22, inclusive. Testimony of Donald B. Carberry, see Transcript, pages 23 through 28, inclusive.

CONCLUSIONS

I.

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

II.

The water right under Permit 21045, Certificate 7668, is a "permitted right" and a "determined right" as described in NRS 534.090 and one, therefore, subject to the provisions of that statute.

III.

Forfeiture of a water right does not become final until expiration of a time of appeal of a ruling declaring such right forfeited.⁷

IV.

The record provides substantial evidence that, for the period between January 1, 1982, through December 31, 1988 (7 successive years), water from the underground source described has not been beneficially used for the purpose for which the water rights were acquired under Permit 21045, Certificate 7668.

V.

The application for extension of time for forfeiture and abandonment submitted by Donald B. Carberry was filed after the 5 successive years of non-use; therefore, under the provisions of NRS 534.090(2), the State Engineer may not consider the application for extension of time.

RULING

That portion of Permit 21045, Certificate 7668, appurtenant to 16.9 acres in the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3, T.21S., R.53E., M.D.B.&M. for 84.5 acre-feet is hereby forfeited and returns to the public

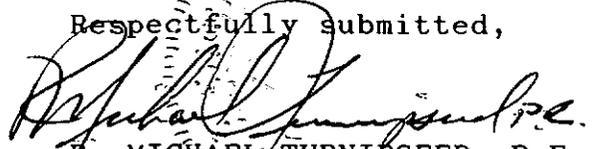
⁶NRS Chapter 534.

⁷NRS 534.090(4) and NRS 533.450.

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waters of the State of Nevada. The extension of time request is denied since it was filed after the forfeiture had occurred.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GWQ/bk

Dated this 5th day of
NOVEMBER, 1992.