

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

IN THE MATTER OF THE QUANTITY OF)
WATER APPROPRIATED UNDER PERMIT)
17935, CERTIFICATE 5409, AND THE)
POSSIBLE FORFEITURE OF THIS WATER)
RIGHT.)

RULING

4098

GENERAL

I.

Application 17935 was filed by Nevada Ginning Company, on April 10, 1959, to appropriate the underground waters of the State of Nevada. Permit 17935 was approved on November 12, 1959, for 0.10 cubic feet per second (c.f.s.) for commercial (cotton ginning) purposes.¹ Proof of Beneficial Use (PBU) was filed on June 29, 1962.² Certificate 5409, under Permit 17935, was issued on November 15, 1962, for 0.10 c.f.s. for commercial (cotton gin) use.³ The specific annual quantity of water appropriated is not stated on the certificate.

II.

The current owners of record of Permit 17935, Certificate 5409, are Doris Binion (0.0875 c.f.s.), Joe Bob and L. Joan White, Anthony P. and Deborah R. Ford (0.0125 c.f.s.) and Central Nevada Utilities Company (0.00695 c.f.s.).⁴

III.

The owners of record of Permit 17935, Certificate 5409, assert that the total annual quantity of water appropriated under

¹ Exhibit 2, Public Administrative Hearing before the State Engineer, March 4, 1992.

² Exhibit 6, Public Administrative Hearing before the State Engineer, March 4, 1992.

³ Exhibit 3, Public Administrative Hearing before the State Engineer, March 4, 1992.

⁴ File No. 17935, official records in the office of the State Engineer.

Certificate 5409 is 72.4 acre-feet annually.⁵ The State Engineer's position is that the amount of water appropriated under Certificate 5409 is 11.2 acre-feet annually.⁶

IV.

On March 4, 1992, a hearing was held to receive evidence and testimony in order for the State Engineer to determine the total annual quantity of water appropriated under Certificate 5409.⁷ The hearing was also noticed to receive evidence and testimony regarding the possible forfeiture of the water right under Certificate 5409.

V.

After the hearing on March 4, 1992, the Hearing Officer left the record open for a period of time to allow the submission of additional evidence. Three exhibits were received and admitted into the record. Exhibit 22 is a letter dated April 30, 1992 from Central Nevada Utilities Company. Exhibit 23 is a letter dated April 7, 1992 from Jackie Ruud. Exhibit 24 is an affidavit dated May 8, 1992 from Richard Baughman.

FINDINGS OF FACT

I.

In determining the quantity of water allowed to be used under any water right, the State Engineer is guided by NRS 533.035, which states "Beneficial use shall be the basis, the measure and the limit of the right to the use of water." Because the total annual quantity of water allowed in Certificate 5409 is not stated on the certificate or the proof of beneficial use form, the State Engineer must determine the quantity of water that was actually put to beneficial use.

⁵ Exhibit 8, Public Administrative Hearing before the State Engineer, March 4, 1992.

⁶ Exhibit 9, Public Administrative Hearing before the State Engineer, March 4, 1992.

⁷ Exhibit 1, Public Administrative Hearing before the State Engineer, March 4, 1992.

A totalizing meter, originally required in the terms of Permit 17935, was later not required.⁸ Therefore, the State Engineer must rely on other information that defines the quantity of water used. In a letter dated April 24, 1959, filed in support of Application 17935, Mr. M.H. Connley, an employee of Nevada Ginning Company, stated that water would be required to serve water to two residences, (3,000 gallons per day [gpd]), one office (2,000 gpd), and the gin plant with cooling tower for engine, water sprinkler truck for ground area, water drums, etc. (5,000 gpd).⁹ The water anticipated to be consumed would be approximately 10,000 gpd, during the ginning season. The ginning season was about five months,¹⁰ so the water usage would average less than 10,000 gpd over the entire year. In response to inquiries from Jim and Charla Porter⁴ and Joe Bob White⁵, the State Engineer has stated that the quantity appropriated under Permit 17935, Certificate 5409, is 10,000 gpd or 11.2 acre feet annually (AFA).^{6,11}

Other documents on file in the office of the State Engineer point to water usage under Permit 17935. In the PBU form filed on June 29, 1962, Jacqueline L. Ruud, Secretary for the Nevada Ginning Co., stated that water was used for fire protection, domestic uses for personnel residing on gin property, and the watering of lawn and trees.² Ms. Ruud also stated that water was stored in a 3,000 gallon elevated storage tank. In investigating the beneficial use under Permit 17935, Mr. F.W. Thorne, of the Nevada Division of Water Resources, observed that trailer houses, lots of small trees, a gin building, and a cooling tower occupied the site.⁸ Mr. Thorne

⁸ Exhibit 7, Public Administrative Hearing before the State Engineer, March 4, 1992.

⁹ Exhibit 5, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁰ Exhibit 23, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹¹ Letter dated March 28, 1991 from Michael J. Anderson to Jim and Charla Porter, File No. 17935, official records in the office of the State Engineer.

also observed that the 3,000 gallon storage tank was filled every day. While no specific quantity of water was stated in the PBU form or in Mr. Thorne's PBU investigation memorandum, the uses described are consistent with those described in Mr. Connley's letter of April 24, 1959. There is no indication that water in excess of 10,000 gpd was ever used under Permit 17935.

The State Engineer finds that 10,000 gpd or a total of 11.2 AFA of water was appropriated under Permit 17935, Certificate 5409.

II.

At the hearing, Mr. White testified that prior to purchasing the property he examined Certificate 5409.¹² He noted that the quantity of water appropriated under Certificate 5409, was 0.1 c.f.s. and no total annual quantity of water was listed. He consulted with a water rights expert, Mr. Milton Sharp, and Mr. Sharp advised him that no limitation was placed on the total annual quantity of water in Certificate 5409. It is Mr. Sharp's position that the quantity must be calculated based upon the diversion rate.¹³ The diversion rate shown on Certificate 5409 is 0.1 c.f.s. Assuming that 0.1 c.f.s. is used continuously for 24 hours a day, 365 days a year, the total quantity of water would be 72.4 AFA. Mrs. Binion, likewise, consulted with Richard Baughman, a Water Rights Surveyor who advised that this method is the correct way to determine annual duty, when it is not stated on the certificate.¹⁴ The State Engineer finds that this method does not consider the quantity of water actually beneficially used, and therefore is not the correct method to determine the total quantity of water appropriated under Permit 17935, Certificate 5409. The State Engineer also finds that there is no evidence on the record to

¹² Transcript pp. 43-44, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹³ Exhibit 10, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁴ Exhibit 24, Public Administrative Hearing before the State Engineer, March 4, 1992.

support that water, in excess of 11.2 AFA, was ever used when the cotton gin was operating.

III.

After the cotton gin ceased operation, a feed store occupied the site and was served by the well under Permit 17935, Certificate 5409.^{15,16} Water from this well was also used for washing the barn and watering approximately 200 trees.¹⁷ Mr. White¹⁸ or Mr. Brown¹⁹ did not know how much water was used for these activities, but the water used can be estimated. Using approximately 1,000 gallons per day (gpd) for the feed store, 500 gpd for washing the barn, and 10 gpd for each of the 200 trees, a total annual use of 3.9 acre feet is calculated. The State Engineer finds that the water usage under Permit 17935, Certificate 5409, after the cotton gin ceased operation, is less than 11.2 AFA.

The State Engineer further finds that if any water right in excess of 11.2 AFA did exist under Permit 17935, Certificate 5409, then it was never placed to beneficial use during the life of the certificate.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the subject matter of this action.²⁰

¹⁵ Exhibit 19, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁶ Transcript p. 30, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁷ Transcript p. 34, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁸ Transcript p. 26, Public Administrative Hearing before the State Engineer, March 4, 1992.

¹⁹ Transcript p. 34, Public Administrative Hearing before the State Engineer, March 4, 1992.

²⁰ NRS 533 and 534.

II.

Beneficial use is the basis, the measure and the limit of a right to the use of water.²¹

III.

Failure for a period of five consecutive years, to use beneficially the underground water for the purpose for which it is acquired, works a forfeiture of the water right.²²

IV.

The State Engineer concludes that 11.2 AFA was appropriated under Permit 17935, Certificate 5409.

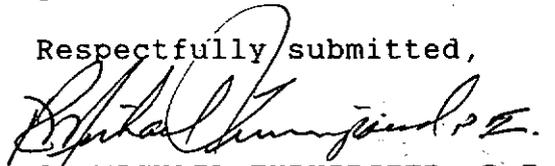
V.

If any quantity of water in excess of 11.2 AFA was considered to be appropriated under Permit 17935, Certificate 5409, then it was not placed to beneficial use for a period of time greater than five consecutive years. Therefore, the State Engineer concludes that any water right considered to exist under Permit 17935, Certificate 5409, in excess of 11.2 AFA, is forfeited.

RULING

The total quantity of water appropriated under Permit 17935, Certificate 5409 is 11.2 acre feet annually. Any quantity of water in excess of 11.2 AFA which might have been believed to exist under Certificate 5409 is hereby declared forfeited.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 16th day of
March, 1994.

²¹ NRS 533.035.

²² NRS 534.090.