

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

IN THE MATTER OF FORFEITURE OF WATER RIGHTS)
UNDER PERMIT 18606, CERTIFICATE 5633 AND)
PERMIT 18607, CERTIFICATE 5634 FROM AN)
UNDERGROUND SOURCE IN THE PAHRUMP VALLEY)
BASIN (162), NYE COUNTY, NEVADA.)

RULING
4176

GENERAL

I.

Application 18606 was filed by Delpha M. Jewell, on March 3, 1960, to appropriate the underground waters of the State of Nevada. Permit 18606 was approved on October 21, 1960 for 0.06 cubic feet per second (CFS) for irrigation and domestic purposes. Certificate 5633 under Permit 18606 was issued on October 22, 1963, for 0.06 cfs, and not to exceed 43.43 acre-feet annually (AFA), for the irrigation of 14.5 acres. The point of diversion is located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15., T.20S., R.53E., M.D.B.&M., and the place of use is within the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 15.¹

Application 18607 was filed by Delpha M. Jewell, on March 3, 1960, to appropriate the underground waters of the State of Nevada. Permit 18607 was approved on October 21, 1960, for 0.06 cfs for irrigation and domestic purposes. Certificate 5634 under Permit 18607 was issued on October 22, 1963, for 0.06 cfs, and not to exceed 43.43 AFA for the irrigation of 10 acres. The point of diversion is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 15, T.20S., R.53E., M.D.B.&M. The place of use is 10 acres within the same place of use for Certificate 5633, described above.²

¹ File 18606, official records of the Office of the State Engineer.

² File 18607, official records in the Office of the State Engineer.

II.

A public hearing to consider the possible forfeiture of Permit 18606, Certificate 5633 and Permit 18607, Certificate 5634 (the subject permits and certificates) was held on December 13, 1988.³ At this hearing, there was no representation from the Horseshoe Club Operating Company, the current owner of record of the subject permits.⁴

III.

The State Engineer ruled on July 26, 1989 that the right to appropriate and beneficially use water to irrigate the lands described under the place of use of the subject permits and certificates had been forfeited because of failure for five successive years, on the part of the holder of the rights, to beneficially use the underground water for the purposes for which the subject rights were acquired.⁵

IV.

Due to a noticing deficiency claimed by the Horseshoe Club Operating Company a second administrative hearing on remand was held on January 16, 1990 to supplement the record pursuant to Order No. 11260, dated September 18, 1989, by the Fifth Judicial District Court, State of Nevada.⁶

³ Exhibit No. 1, Public Administrative Hearing before the State Engineer, December 13, 1988.

⁴ Files 18606 and 18607, official records in the Office of the State Engineer.

⁵ State Engineer's Ruling No. 3630 and 3631, dated July 26, 1989, official records in the Office of the State Engineer.

⁶ Exhibit No. 2, Public Administrative Hearing before the State Engineer, January 16, 1990.

FINDINGS OF FACT

I.

The State Engineer began a formal program of monitoring the groundwater pumping in the Pahrump Basin in 1962. A Division of Water Resources staff engineer testified that he visited the locations of the two wells and the places of use specified on both permits late in the years during the period 1982 through 1987 inclusive, late in 1989 and, again, in early 1990, immediately preceding the hearing.⁷ He observed limited irrigation during the years 1982 through 1989 inclusive, primarily for the irrigation of an orchard and grasses.⁷ The State Engineer finds that some use of water for irrigation purposes was observed at the time the staff engineer made his annual inspection.

II.

Witnesses for the Horseshoe Club Operating Company testified that the wells under the subject permits and certificates, had been used to flood irrigate the subject property early in the irrigation seasons and had been followed later in the same seasons during the years 1982 through 1987 inclusive.⁸ They also testified that the wells had been maintained and repaired during this same period.⁹ The State Engineer finds that testimony and evidence establish that the lands described under the subject permits and certificates, were cultivated or irrigated during the period 1982 through 1987 inclusive, and that water was diverted from the source and placed to beneficial use under the subject permits and certificates, during this time period.

⁷ Transcript pp. 16-19, Public Administrative Hearing before the State Engineer, January 16, 1990.

⁸ Transcript pp. 42-44, 49-56, Public Administrative Hearing before the State Engineer, January 16, 1990.

⁹ Transcript pp. 26-31, 37-39, Public Administrative Hearing before the State Engineer, January 16, 1990.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.¹⁰

II.

Failure for five successive years to use the underground water works a forfeiture to the use of that water.¹⁰

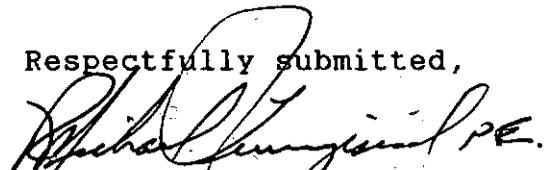
III.

The record provides substantial evidence that for the period between January 1, 1982 through December 31, 1987 (6 consecutive years), water from the underground source described was beneficially used for the purpose for which the water rights were acquired under the subject permits and certificates.

RULING

The right to beneficially use water for irrigation and domestic purposes under Permit 18606, Certificate 5633 and Permit 18607, Certificate 5634, has not been forfeited because the record provides substantial evidence that, for the period between 1982 and 1987, water from the underground source described has been beneficially used for the purposes for which the water rights were acquired. Accordingly, Ruling Nos. 3630 and 3631 are hereby reversed.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GWQ/pm

Dated this 29th day of
March, 1995.

¹⁰ NRS 534.090.