

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

IN THE MATTER OF THE FORFEITURE OF)
PERMIT 24987, CERTIFICATE 7551,)
FILED TO APPROPRIATE THE WATERS OF)
AN UNDERGROUND SOURCE WITHIN THE)
IMLAY GROUNDWATER BASIN (072),)
PERSHING COUNTY, NEVADA.)

RULING

4218

GENERAL

I.

Application 24987 was filed on April 1, 1969, by Henry D. Ott to appropriate 2.5 cfs of water from an underground source within the Imlay Groundwater Basin, Pershing County, Nevada. Permit 24987 was granted on August 27, 1969, for mining and domestic purposes. The proposed place of use is located within portions of Sections 23, 24, 26 and 34. T.33N., R.36E., M.D.B.&M., where the permittee had several unpatented placer claims and a mill site. Certificate 7551 was issued under Permit 24987 on February 8, 1971 for 0.267 cfs, to support sampling and sluicing operations throughout the certificated place of use.¹ The point of diversion is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 34, T.33N., R.36E., M.D.B.&M.

FINDINGS OF FACT

I.

Unpatented placer claims and mill sites located on federal land must be maintained in accordance with federal and state requirements. Federal requirements are prescribed by the Mining Law of 1872 and the Federal Land Policy Management Act of 1976 (FLPMA). The FLPMA outlines the federal filing requirements for unpatented mining claims. Through the federal assessment year ending September 1, 1991, the owner of any unpatented mining claim was required to file with the county and with the Bureau of Land Management (BLM) a notice of intent to hold, an affidavit of

¹ Records of the office of the State Engineer under Permit 24987, Certificate 7551.

assessment work or a detailed report of geological, geophysical or geochemical work. The failure to timely file the appropriate instrument in the county and with the BLM as required by FLPMA results in a conclusive presumption that the unpatented claim has been abandoned.²

Henry D. Ott failed to file the required Notice of Intent to Hold for the Buena Vista #1 mill site claim for the assessment year ending September 1, 1989. On August 5, 1993, the BLM declared Mr. Ott's millsite claim abandoned and void. In addition, Henry Ott's failure to file the required Affidavit of Annual Assessment of Work resulted in his remaining placer claims being abandoned and the land became subject to location by other parties on September 1, 1989. The last known water use under Certificate 7551 occurred in 1988, according to the Affidavit or Statement of Annual Assessment Work filed by Mr. Ott with the BLM, in 1988.¹ Since then, Mr. Ott did not occupy the property or place any water under Permit 24987, Certificate 7551 to beneficial use.

The State Engineer finds that a continuous period of non-use of water under Permit 24987, Certificate 7551, exceeding five years, has occurred.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter.³

II.

Failure for five successive years on the part of a holder of a water right, to use beneficially the underground water for the purpose for which the right was acquired, works a forfeiture of the water right.⁴

² 43 U.S.C. 1744(c) (1988) see also Ruth Irene Hackathorn 94 IBLA 194, 195 GFS (MIN) 74 (1986).

³ NRS 533 and 534.

⁴ NRS 534.090.

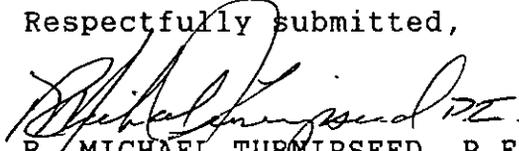
III.

The place of use under Permit 24987, Certificate 7551 is comprised of a group of unpatented placer claims and a dependent mill site which were abandoned in 1989. Mr. Ott has not occupied the property or used the water under Permit 24987, Certificate 7551 since 1988. Therefore, the State Engineer concludes that a continuous period of non-use, exceeding five years has occurred.

RULING

The right to the use of water under Permit 24987, Certificate 7551 is hereby declared forfeited on the grounds that the water has not been placed to beneficial use for a continuous period of time which exceeds five years.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/pm

Dated this 5th day of
October, 1995.

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