

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

IN THE MATTER OF FORFEITURE OF WATER )  
RIGHTS UNDER PERMITS 11538, 11539, 23942 )  
AND 23943, CERTIFICATE NOS. 4997, 4998, )  
7039 AND 7040, RESPECTIVELY, OF THE )  
WATERS FROM AN UNDERGROUND SOURCE IN )  
PAHRUMP VALLEY, NYE COUNTY, NEVADA. )

RULING

# 3829

GENERAL

I.

Application 11538 was filed by H.H. Costerisan on April 4, 1946, to appropriate underground water for irrigation purposes. The proposed place of use was 160 acres within the NW1/4 of Section 21, T.19S., R.53E., M.D.B.&M. A permit was issued on Application 11538 on February 18, 1949, for 2.0 c.f.s. of water for the irrigation of 160 acres. Certificate 4997 was issued on said permit on February 19, 1960, for 2.0 c.f.s. and 150 acre-feet per season (March 1 to November 1 of each year) for the irrigation of 30 acres within the NE1/4 NW1/4 Section 21, T.19S., R.53E., M.D.B.&M.<sup>1</sup>

II.

Application 11539 was filed by H.H. Costerisan on April 4, 1946, to appropriate underground water for irrigation purposes. The proposed place of use was 160 acres within the SW1/4 of Section 21, T.19S., R.53E., M.D.B.&M. A permit was issued on Application 11539 on February 18, 1949, for 2.0 c.f.s. of water for the irrigation of 160 acres. Certificate 4998 was issued on said permit on February 19, 1960, for 2.0 c.f.s. of water and 410 acre-feet per season (March 1 to November 1 of each year) for the irrigation of 82 acres, specifically described as 40 acres SE1/4 SW1/4, 30 acres SW1/4 SW1/4, 10 acres NE1/4 SW1/4 and 2.0 acres NW1/4 SW1/4 all located within Section 21, T.19S., R.53E., M.D.B.&M.<sup>1</sup>

<sup>1</sup>Public record in the office of the State Engineer.

III.

Application 23942 was filed by Carberry Crop Dusters, Inc., on June 15, 1967, for permission to change the place of use of waters heretofore appropriated under Permit 18727. The proposed place of use under Application 23942 was the NW1/4, SW1/4, SW1/4 NE1/4 and the NW1/4 SE1/4 all located within Section 21, T.19S., R.53E., M.D.B.&M. A permit was issued under Application 23942 on October 2, 1967, for 2.5 c.f.s. of water for the irrigation of 320 acres. Certificate 7039 was issued on said permit on June 2, 1969, for 1.63 c.f.s. and 386 acre-feet per year for the irrigation of 77.2 acres, specifically described as 30 acres NE1/4 SW1/4, 2.2 acres NW1/4 SW1/4, 10 acres SW1/4 SW1/4 and 35.0 acres NW1/4 SE1/4 all within Section 21, T.19S., R.53E., M.D.B.&M.<sup>1</sup>

IV.

Application 23943 was filed by Carberry Crop Dusters, Inc., on June 15, 1967, for permission to change the place of use of waters heretofore appropriated under Permit 18728. The proposed place of use under Application 23943 was the W1/2, the SW1/4 of the NE1/4 and the NW1/4 of the SE1/4, Section 21, T.19S., R.53E., M.D.B.&M. A permit was issued under Application 23943 on October 2, 1967, for 2.5 c.f.s. of water for the irrigation of 320 acres. Certificate 7040 was issued on said permit on August 8, 1973, for 2.5 c.f.s. of water and 729.5 acre-feet per year for the irrigation of 145.9 acres, specifically described as 10 acres NE1/4 NW1/4, 40 acres NW1/4 NW1/4, 15.9 acres SW1/4 NW1/4, 40 acres SE1/4 NW1/4 and 40 acres SW1/4 NE1/4 all located within Section 21, T.19S., R.53E., M.D.B.&M.<sup>1</sup>

V.

Deeds and other official documents were submitted to the State Engineer's office transferring the ownership of Permits 11538, 11539, 23942 and 23943, Certificates 4997, 4998, 7039 and 7040,

respectively, from the original permittees to Hollis L. and Joyce C. Harris.<sup>2</sup>

FINDINGS OF FACT

I.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held before the State Engineer in the matter of the subject permits.<sup>3</sup> Evidence and testimony were received into the record at the hearing and the State Engineer took administrative notice of various matters as more specifically set forth herein.<sup>4</sup> Transcripts of the hearing are a matter of public record in the office of the State Engineer.

II.

The entire portion of Permit 11538, Certificate 4997, consisting of 150 acre-feet for the irrigation of 30 acres within the NE1/4 NW1/4 Section 21, T.19S., R.53E., M.D.B.&M. is subject to a forfeiture determination.<sup>5</sup>

III.

The portion of Permit 11539, Certificate 4998, consisting of 210 acre-feet of water for the irrigation of 42 acres, specifically described as 30 acres SW1/4 SW1/4, 10 acres NE1/4 SW1/4 and 2.0 acres NW1/4 SW1/4 within Section 21, T.19S., R.53E., M.D.B.&M., is subject to a forfeiture determination.<sup>6</sup>

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<sup>2</sup>Public record of the State Engineer, see file Nos. 11538, 11539, 23942 and 23943.

<sup>3</sup>The State Engineer held a public hearing in the matter of the subject permits on June 6, 1990, in Pahrump, Nevada, State Exhibit No. 1.

<sup>4</sup>June 5, 1990, transcript, pg. 8.

<sup>5</sup>State Exhibit No. 4, June 6, 1990, transcript.

<sup>6</sup>State Exhibit No. 4, June 6, 1990, transcript of public hearing.

IV.

The portion of Permit 23942, Certificate 7039, consisting of 211 acre-feet of water for the irrigation of 42.2 acres, specifically described as 30 acres NE1/4 SW1/4, 2.2 acres NW1/4 SW1/4 and 10 acres SW1/4 SW1/4 all located within Section 21, T.19S., R.53E., M.D.B.&M., is subject to a forfeiture determination.<sup>7</sup>

V.

The portion of Permit 23943, Certificate 7040, consisting of 529.5 acre-feet of water for the irrigation of 105.9 acres, specifically described as 10 acres NE1/4 NW1/4, 40 acres NW1/4 NW1/4, 15.9 acres SW1/4 NW1/4 and 40 acres SE1/4 NW1/4 all located within Section 21, T.19S., R.53E., M.D.B.&M., is subject to a forfeiture determination.<sup>8</sup>

VI.

The State Engineer finds that testimony and evidence establish that all or part of the lands described under Permits 11538, 11539, 23942 and 23943, Certificates 4997, 4998, 7039 and 7040, respectively, were not cultivated or irrigated during the period 1982 through 1987 inclusive, and that water was either not diverted or partially diverted from the source and either not or partially placed to beneficial use under Permits 11538, 11539, 23942 and 23943, Certificates 4997, 4998, 7039 and 7040, respectively, during this time period.<sup>9</sup>

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<sup>7</sup>State Exhibit No. 7, June 6, 1990, transcript of public hearing.

<sup>8</sup>State Exhibit No. 7, June 6, 1990, transcript of public hearing.

<sup>9</sup>Testimony of Robert Coache, Division of Water Resources, pages 9 through 16, inclusive, June 6, 1990, transcript.

VII.

The State Engineer finds that the owner of the subject permits offered nothing to rebut the evidence that the wells had not been used, in fact concurred that the forfeiture has occurred.<sup>10</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.<sup>11</sup>

II.

The water rights under Permits 11538, 11539, 23942 and 23943, Certificates 4997, 4998, 7039 and 7040, respectively, are "permitted rights" and "determined rights" as described in NRS 534.090 and are 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.<sup>12</sup>

IV.

The record provides substantial evidence that, for the period between January 1, 1982, through December 31, 1987 (6 successive years), water from the underground source described has either not been or has partially been beneficially used for the purposes for which the water rights were acquired under Permits 11538, 11539, 23942 and 23943, Certificates 4997, 4998, 7039 and 7040, respectively.

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<sup>10</sup>Testimony of Hollis Harris page 16 (June 6, 1990), transcript of public hearing.

<sup>11</sup>NRS 534.090.

<sup>12</sup>NRS 534.090 and 533.450.

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The right to appropriate and beneficially use water on the 30 acres of land in the NE1/4 of the NW1/4, Section 21, T.19S., R.53E., M.D.B.&M., that being the place of use under Permit 11538, Certificate 4997, has been forfeited because of failure for five (5) successive years, on the part of the holder of the right, to beneficially use the underground water for the purposes for which the subject right was acquired.

The right to appropriate and beneficially use water on 30 acres SW1/4 SW1/4, 10 acres NE1/4 SW1/4 and 2.0 acres NW1/4 SW1/4 a total of 42 acres located within Sections 21, T.19S., R.53E., M.D.B.&M., that being a portion of the place of use under Permit 11539, Certificate 4998, has been forfeited because of failure for five (5) successive years, on the part of the holder of the right, to beneficially use the underground water for the purposes for which the subject right was acquired.

The right to appropriate and beneficially use water on the 30 acres NE1/4 SW1/4, 2.2 acres NW1/4 SW1/4 and 10.0 acres SW1/4 SW1/4 a total of 42.2 acres located within Section 21, T.19S., R.53E., M.D.B.&M., that being a portion of the place of use under Permit 23942, Certificate 7039, has been forfeited because of failure for five (5) successive years, on the part of the holder of the right, to beneficially use the underground water for the purposes for which the subject right was acquired.

The right to appropriate and beneficially use water on the 10 acres NE1/4 NW1/4, 40.0 acres NW1/4 NW1/4, 15.9 acres SW1/4 NW1/4 and 40 acres SE1/4 NW1/4 a total of 105.9 acres located within Section 21, T.19S., R.53E., M.D.B.&M., that being a portion of the place of use under Permit 23943, Certificate 7040, has been forfeited because of failure for five (5) successive years, on the

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part of the holder of the right, to beneficially use the underground water for the purposes for which the subject right was acquired.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "R. Michael Turnipseed PE.", is written over the typed name.

R. MICHAEL TURNIPSEED  
State Engineer

RMT/GWQ/bk

Dated this 13th day of  
September, 1991.