

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

IN THE MATTER OF THE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 24608,)
CERTIFICATE 8643 AND PERMIT 24609,)
CERTIFICATE 7228 FILED WITHIN THE)
DIAMOND VALLEY GROUNDWATER BASIN)
(153), EUREKA COUNTY, NEVADA.)

RULING

4182

GENERAL

I.

Application 24608 was filed by J.H. Sewell-Liberty Livestock on July 25, 1968, to appropriate 4.0 cfs of water from an underground source for irrigation and domestic purposes within portions of the N $\frac{1}{2}$ of Section 29, T.21N., R.53E., M.D.B.&M. The point of diversion is described as being within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 29. Permit 24608 was approved on May 1, 1969, for 4.0 cfs of water for irrigation and domestic purposes. Certificate 8643 was issued under Permit 24608 on November 7, 1975, for 1.78 cfs, not to exceed 1099.2 acre feet annually, for the irrigation of 274.8 acres of land within Section 29, T.21N., R.53E., M.D.B.&M.¹

II.

Application 24609 was filed by J.H. Sewell-Liberty Livestock to change the point of diversion of the underground waters heretofore appropriated under Permit 18651. The proposed point of diversion is described as being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, T.21N., R.53E., M.D.B.&M. The proposed manner and place of use is for irrigation of 280.8 acres of land within the N $\frac{1}{2}$ of Section 29, T.21N., R.53E., M.D.B.&M. Permit 24609 was approved on April 28, 1969, for 4.0 cfs of water for irrigation and domestic purposes. Certificate 7228 was issued under Permit 24609 on December 2, 1969, for 1.531 cfs, not to exceed 1108.14 acre feet annually, for the irrigation of 280.8 acres of land.²

¹ Public record in the office of the State Engineer under Permit 24608, Certificate 8643.

² Public records in the office of the State Engineer under Permit 24609, Certificate 7228.

III.

Permit 24608, Certificate 8643 and Permit 24609, Certificate 7228 are supplemental underground rights which irrigate a common certificated place of use from two separate points of diversion.^{1,2}

IV.

At the time of the forfeiture determination, the ownership of the subject certificates stood in the names of J.H. Sewell-Liberty Livestock in the records of the State Engineer's Office. The owner of record in the Eureka County Assessor's Office of the lands described under the subject certificated place of use, during the same time frame was Daniel and Roberta Russell.³

V.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of forfeiture of Certificate 8643 and Certificate 7228 was held before representatives of the State Engineer on January 25, 1990, in Eureka, Nevada.⁴

FINDINGS OF FACT

I.

The State Engineer's Office has maintained pumpage, water level and water use inventories on an annual basis in the Diamond Valley Groundwater Basin since 1967. Records on file within the State Engineer's Office indicate that the place of use of Permit 24608, Certificate 8643 and Permit 24609 Certificate 7223 was irrigated from 1982 through 1988.³ The source of water was the well under Permit 24609, Certificate 7223 and the well under Permit 24608, Certificate 8643 was not used during this time period. However, these water rights are supplemental to each other and the place of use that was irrigated is common to both certificates. Therefore, the State Engineer finds that the place of use of Permit 24608, Certificate 8643 and Permit 24609, Certificate 7223 was

³ Transcript of the hearing held January 25, 1990, in the matter of Permit 24608 and Permit 24609, hereinafter referred to as Transcript or Exhibit, see State's Exhibit 1.

⁴ Transcript, page 4.

irrigated during the years 1982 through 1988. The State Engineer further finds that a continuous period of five years of nonuse did not occur.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁵

II.

The State Engineer concludes that the water was used beneficially for the purpose of which rights were established under Permit 24608, Certificate 8643 and Permit 24609, Certificate 7228, during the period of the forfeiture determination.

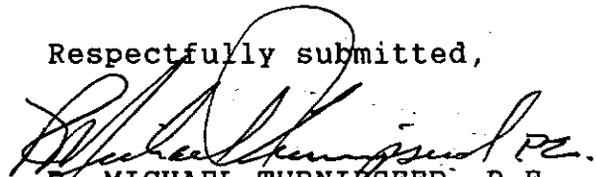
III.

The State Engineer concludes that the required five successive years of nonuse necessary to establish a forfeiture have not occurred within the subject time frame (1982-1988) of this forfeiture determination.

RULING

The right to appropriate and beneficially use the water to irrigate the lands described under the places of use under Permit 24608, Certificate 8643, and Permit 24609, Certificate 7228 is declared not forfeited.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 1st day of
May, 1995.

⁵ NRS 534.090.