

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

IN THE MATTER OF FORFEITURE OF WATER RIGHTS)
UNDER PERMIT 19453, CERTIFICATE 6007 FROM)
AN UNDERGROUND SOURCE IN THE PAHRUMP BASIN)
(162), NYE COUNTY, NEVADA.)

RULING

#4189

GENERAL

I.

Application 19453 was filed by George L. Cranmer, on January 18, 1961, to appropriate the underground waters of the State of Nevada. Permit 19453 was approved on August 14, 1961 for 2.7 cubic feet per second (CFS) for irrigation and domestic purposes. Proof of beneficial use was filed for 1.12 CFS, not to exceed 400 acre-feet annually (AFA), for the irrigation of 80 acres, located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 14, T.21S., R.53E., M.D.B.&M. Certificate 6007 under Permit 19453 was issued on April 4, 1966. The point of diversion is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14.¹

II.

A hearing to consider the possible forfeiture of Permit 19453, Certificate 6007 was held on December 9, 1987 and continued to June 6, 1990.^{2,3}

¹ File 19453, official records in the Office of the State Engineer.

² Exhibit No. 1, Public Administrative Hearing before the State Engineer, December 9, 1987.

³ Exhibit No. 1, Public Administrative Hearing before the State Engineer, June 6, 1990.

FINDINGS OF FACT

I.

A portion of Permit 19453, Certificate 6007, consisting of 50 acre feet annually (AFA) to irrigate 10 acres of land, was abrogated by Change Application 38084. Additionally, 75 AFA to irrigate 15 acres of land, was relinquished to the State of Nevada for approval of a subdivision, leaving 275 AFA to irrigate 55 acres of land under the subject permit and certificate. The State Engineer finds that this remaining portion is subject to a forfeiture determination.^{4,5}

II.

The State Engineer began a formal program of monitoring the groundwater pumping in the Pahrump Valley in 1963. The State Engineer's records show that no water was pumped from the well under Permit 19453, Certificate 6007 during the years 1982 through 1986.⁶ A Division of Water Resources staff engineer testified at both the December 9, 1987 hearing and the June 6, 1990 hearing that he visited the place of use of the subject permit and certificate during the period from 1982 through 1986 and observed no irrigation taking place. He did note, however, that the well under the subject permit and certificate was connected to a power source and was in operating condition.⁷

⁴ Exhibit No. 12, Public Administrative Hearing before the State Engineer, June 6, 1990.

⁵ Transcript, pp. 29-34, Public Administrative Hearing before the State Engineer, June 6, 1990.

⁶ File 19453, official records in the Office of the State Engineer.

⁷ December 9, 1987, Transcript p. 252, testimony by Robert Coache.

Therefore, the State Engineer finds based on his own records that the remaining portion of Permit 19453, Certificate 6007 was not used for a 5 year continuous period of time from 1982 through 1986.

III.

Witnesses representing various owners of parcels of land within the area subject to a forfeiture determination, testified and presented evidence at both the December 1987 hearing and the June 1990 hearing, that there had been some water use on a portion of the remaining place of use of Permit 19453, Certificate 6007.

Dr. Karl Hazeltine testified and presented evidence consisting of photographs and electrical power bills that proved the irrigation of his parcel of land consisting of 35 acres within the subject place of use between the years 1982 through 1986.^{8,9} This parcel is located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14, and can be identified as Assessor's Parcel No. (APN) 44-621-02.

Mr. John Raetz, who worked for Dr. Hazeltine at the Pahrump property, testified that he had personal knowledge of water used for irrigation purposes on Karl and Barbara Hazeltine's 35 acres between the years 1982 and 1986.¹⁰ The State Engineer finds that water was beneficially used for irrigation purposes on the 35 acres previously identified as parcel APN 44-621-02, belonging to Karl and Barbara Hazeltine between the years 1982 and 1986.

Ms. Teddy Anne Umfleet testified that she used water on her parcel of land, consisting of 5 acres identified as APN 44-621-03,

⁸ Exhibit No. 12, Public Administrative Hearing before the State Engineer, June 6, 1990.

⁹ Transcript pp. 212-223 and Exhibit No. 8, Public Administrative Hearing before the State Engineer, December 9, 1987. Transcript pp. 40-44 and Exhibit No. 15, Public Administrative Hearing before the State Engineer, June 6, 1990.

¹⁰ Transcript pp. 259-262, Public Administrative Hearing before the State Engineer, December 9, 1987.

located in the N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 14. The property was used for commercial raising of animals and birds between the years 1982 and 1986.¹¹ This water was pumped from a domestic well located on the Umfleet property, not the permitted well, located on the Hazeltine property (APN 44-621-02).¹² Ms. Umfleet stated that she did not irrigate the five acres during her ownership, since 1985.¹³ The groundwater pumping records in the office of the State Engineer show no irrigation of this property during the years 1982 through 1986.^{6,7} The State Engineer finds that there was some water use for the commercial raising of animals and birds on the five acres comprising parcel APN 44-621-03, during the years 1982 through 1986. The State Engineer further finds that no water for irrigation was used on Parcel No. 44-621-03 during this five year time period.

IV.

There was no testimony or evidence presented that would establish any beneficial use of water on the remaining 15 acres for the years 1982 through 1986.¹¹ This land is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.21S., R.53E., M.D.B.&M.. The 15 acres have been subdivided into parcels identified by the following Assessor Parcel Numbers: 44-621-05 (west half), 44-621-10 (east half), 44-621-20, 44-621-21, 44-621-23, 44-621-24, 44-621-28, 44-621-29 and 44-621-32.¹⁴

¹¹ Transcript pp. 33-39, Public Administrative Hearing before the State Engineer, June 6, 1990.

¹² Transcript p. 37, Public Administrative Hearing before the State Engineer June 6, 1990.

¹³ Transcript p. 36, Public Administrative Hearing before the State Engineer June 6, 1990.

¹⁴ Exhibit No. 12, Public Administrative Hearing before the State Engineer, June 6, 1990.

Lacking any evidence to the contrary, the State Engineer finds that a continuous period of non-use of water has occurred on the above parcels, beginning in 1982 and continuing through 1986.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.¹⁵

II.

Failure for a period of five consecutive years, to beneficially use underground water for the purpose for which it is acquired works a forfeiture of the water right.¹⁶

III.

Evidence and testimony on the record indicates that water was used during the years 1982 through 1986 for irrigation of 35 acres on the Hazeltine property, identified as APN 44-621-02. Therefore, there is not a forfeiture of water right appurtenant to this parcel.

IV.

Water from a domestic well was used for commercial purposes on the Umfleet property, identified as APN 44-621-03. However, no irrigation occurred during the years 1982 through 1986. Since Permit 19453, Certificate 6007 was issued for irrigation, water was not used under this right for the purpose for which it was acquired for a period of five consecutive years. Therefore, the water right for the irrigation of the five acres comprising APN 44-621-03 is forfeited.

V.

A portion of the water under Permit 19453, Certificate 6007, that being 75 AFA, for the irrigation of 15 acres previously

¹⁵ NRS Chapters 533 and 534.

¹⁶ NRS 534.090.

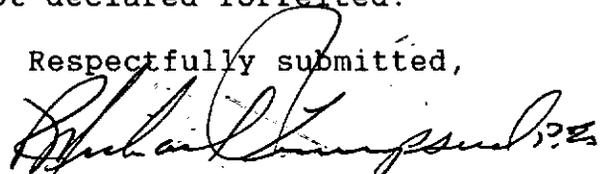
identified by their Assessor Parcel Numbers, was not beneficially used between 1982 through 1986. Therefore, the water under this portion of the water right was not placed to beneficial use for a continuous period of five years and a forfeiture of said water right has occurred.

RULING

The right to beneficially use a portion of Permit 19453, Certificate 6007 is hereby declared forfeited for failure for a period of five consecutive years, to use the water for irrigation purposes. The forfeited portion of Permit 19453, Certificate 6007 is 100 acre feet appurtenant to 20 acres identified as APN 44-621-03, 44-621-05, 44-621-10, 44-621-20, 44-621-21, 44-621-23, 44-621-24, 44-621-28, 44-621-29 and 44-621-32.

That portion of Permit 19453, Certificate 6007, which is appurtenant to APN 44-621-02 is not declared forfeited.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GWQ/pm

Dated this 5th day of

May, 1995.