

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

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 14946, CERTIFICATE)
5528 FROM AN UNDERGROUND SOURCE IN THE)
PAHRUMP BASIN (162), NYE COUNTY, NEVADA.)

RULING

4219

GENERAL

I.

Application 14946 was filed by B. F. Hatcher, on March 30, 1953, to appropriate the underground waters of the State of Nevada. Permit 14946 was approved on August 24, 1953, for 2.5 cubic feet per second (CFS) for irrigation and domestic purposes. Certificate 5528 under Permit 14946 was issued on April 26, 1963, for 0.78 CFS, not to exceed 367 acre-feet annually (AFA), for irrigation purposes. The point of diversion is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 5, T.20S., R.53E., M.D.B.&M., and the place of use is 73.4 acres, 40.0 acres of which are located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, and 33.4 acres are located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 5, all within Nye County, Nevada.¹

II.

On December 30, 1991, Permit 56277 was issued to Darrell and Barbara McIntire, which changed the point of diversion of a portion of Permit 14946, Certificate 5528.² The portion that was changed amounts to 0.07 cfs, not to exceed 33.5 acre feet of water for the irrigation of 6.7 acres located within a 10 acre parcel of land identified as APN 36-031-11, which is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 5. Permit 56277 is presently held by Neal and Elissa Couch. The water right appurtenant to APN 36-031-11, is not a part of this forfeiture action. See Figure 1 for the Nye County Assessor's Parcel Map from Book 36, page 031, showing all of the lots referenced in this Ruling.

¹ File No. 14946, official records in the Office of the State Engineer.

² File No. 56277, official records in the Office of the State Engineer.

III.

On September 24, 1993, George and Ruby White filed an application for extension of time to prevent the forfeiture of a portion of Permit 14946, Certificate 5528.³ The application is for a portion of the water right appurtenant to 4.93 acres located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 5, and identified as APN 36-031-17.

IV.

On May 26, 1994, a hearing was held to consider the possible forfeiture of a portion of Permit 14946, Certificate 5528.⁴ The request for extension of time was also considered at the hearing.

It was determined prior to the hearing, from an examination of the annual pumping records for the Pahrump Valley Groundwater Basin, that 20 acres, a portion of the place of use of Permit 14946, Certificate 5528, was irrigated in 1989.⁴ The 20 acres can be identified as APN 36-031-08, located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 5. The water right appurtenant to this 20 acres (0.21 cfs, not to exceed 100 acre feet) is not considered in this forfeiture action.

The hearing, which began on May 26, 1994, was continued to July 20, 1994.⁵

FINDINGS OF FACT

I.

The State Engineer conducts a formal program of monitoring the annual quantity of groundwater pumped in the Pahrump Valley Groundwater Basin. A representative of the State Engineer's Office visited the place of use of Permit 14946, Certificate 5528, each

³ Exhibit No. 4, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

⁴ Exhibit No. 1, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

⁵ Exhibit No. 7, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

year from 1983 through 1992.⁶ For each of those years, the representatives of the Office of the State Engineer testified that they observed that no irrigation had occurred on the place of use of Permit 14946, Certificate 5528, except the 20 acres identified as APN 36-031-08.⁷ Their observations of no irrigation are recorded in the annual pumpage inventories for the Pahrump Valley Groundwater Basin.⁸ The parcels of land on which no irrigation was observed from 1983 through 1992, are identified as APN 36-031-10, 36-031-13, 36-031-14, 36-031-15, 36-031-16, 36-031-17, 36-031-18, 36-031-19 and 36-031-20, which are all located within the S $\frac{1}{2}$ SW $\frac{1}{4}$ of said Section 5.⁹

Mrs. Kennedy testified that she lived on the subject property from 1980¹⁰ through 1986, and that she personally performed the work of irrigating the parcels identified as APN 36-031-08, 36-031-10, 36-031-11, 36-031-18, 36-031-19 and 36-031-20, during the years 1982 through 1986.¹¹ In 1987, she moved from the property.¹² The State Engineer finds that this eyewitness testimony is credible and that the parcels identified as APN 36-031-08, 36-031-10, 36-031-11, 36-031-18, 36-031-19 and 36-031-20, were irrigated during the years 1982 through 1986. However, for the years 1987 through 1992, there is no evidence or testimony on the record indicating that any of

⁶ Transcript pp. 15 and 71, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

⁷ Transcript pp. 23-25 and 72-74, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

⁸ Exhibit No. 3, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

⁹ Exhibit No. 6, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

¹⁰ Transcript p. 94, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

¹¹ Transcript pp. 90-91, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

¹² Transcript p. 98, Public Administrative Hearing before the State Engineer, May 26, 1994 and July 20, 1994.

the above parcels, except the 20 acres identified as parcel 36-031-08, were irrigated.

The State Engineer finds that the pumpage inventories for the years 1987 through 1992, the testimony of the individuals who performed the inventories, together with the testimony of Mrs. Kennedy, present clear and convincing evidence that the place of use of Permit 14946, Certificate 5528, with the exception of APN 36-031-08 and 36-031-11, was not irrigated during this six year period. This period of non-use applies to 0.50 cfs, not to exceed 233.5 acre-feet annually, for the irrigation of 46.7 acres.

II.

The request for extension of time to prevent a forfeiture for a portion of Permit 14946, Certificate 5528, filed by Mr. and Mrs. White, was received on September 24, 1993.¹ This was after the six year period of non-use. The State Engineer finds that the request for extension of time was filed after the expiration of the time necessary to work a forfeiture and after the time allowed in NRS 534.090.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.¹³

II.

Failure for a period of five successive years to beneficially use underground water for the purpose for which it was acquired works a forfeiture of the water right.¹³

The State Engineer bears the burden of proving by clear and convincing evidence that the statutory period of non-use has occurred.¹⁴

¹³ NRS 534.090.

¹⁴ Town of Eureka v. Office of the State Engineer of Nevada, 108 Nev, 826 P.2d 948 (1992).

III.

The State Engineer may, upon the timely request of the holder of an underground water right, extend the time necessary to work a forfeiture. The request must be made before the expiration of the time necessary to work the forfeiture.¹³

IV.

That portion of Permit 14946, Certificate 5528, appurtenant to APN 36-031-11, consisting of 0.07 cfs and not to exceed 33.5 acre feet for the irrigation of 6.7 acres, was changed by Permit 56277, issued on December 30, 1991. The State Engineer concludes that the water right appurtenant to APN 36-031-11 is not a part of this forfeiture action.

V.

That portion of Permit 14946, Certificate 5528 appurtenant to APN 36-031-08, consisting of 0.21 cfs and not to exceed 100 acre feet for the irrigation of 20 acres, was irrigated in 1989. The State Engineer concludes that the water right appurtenant to APN 36-031-08 was not subject to forfeiture at the time of the hearing.

VI.

There is clear and convincing evidence on the record that the place of use of Permit 14946, Certificate 5528, except APN 36-031-08, was not irrigated for a six year period from 1987 through 1992, based on the pumpage inventories, the testimony of the individuals who performed the inventories, and the testimony of Mrs. Kennedy. The State Engineer concludes that the required period of non-use has occurred and that the portion of Permit 14946, Certificate 5528, appurtenant to APN 36-031-10, 36-031-13, 36-031-14, 36-031-15, 36-031-16, 36-031-17, 36-031-18, 36-031-19 and 36-031-20, is forfeited. The quantity of water that is forfeited is 0.50 cfs, not to exceed 233.5 acre-feet annually, for the irrigation of 46.7 acres.

VII.

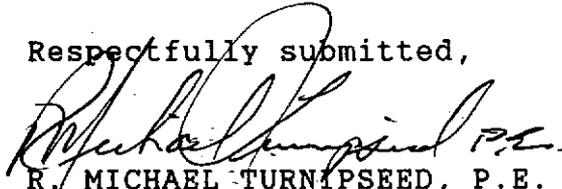
The State Engineer concludes that the request for extension of time to prevent a forfeiture, filed for Mr. and Mrs. White, for the water right appurtenant to APN 36-031-17, was filed after the

expiration of the time necessary to work a forfeiture. Therefore, the request for extension of time must be denied and the water right appurtenant to the parcel forfeited.

RULING

That portion of Permit 14946, Certificate 5528, consisting of 0.50 cfs not to exceed 233.5 acre-feet annually for the irrigation of 46.7 acres, located within the S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 5, T.20S., R.53E., M.D.B.&M. and identified by APN 36-031-10, 36-031-13, 36-031-14, 36-031-15, 36-031-16, 36-031-17, 36-031-18, 36-031-19 and 36-031-20, is hereby declared forfeited for failure for a period exceeding five successive years to place the water to beneficial use. The application for extension of time to prevent a forfeiture filed by Mr. and Mrs. White is hereby denied because it was not timely filed as required under NRS. 534.090.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GWQ/pm

Dated this 11th day of
October, 1995.

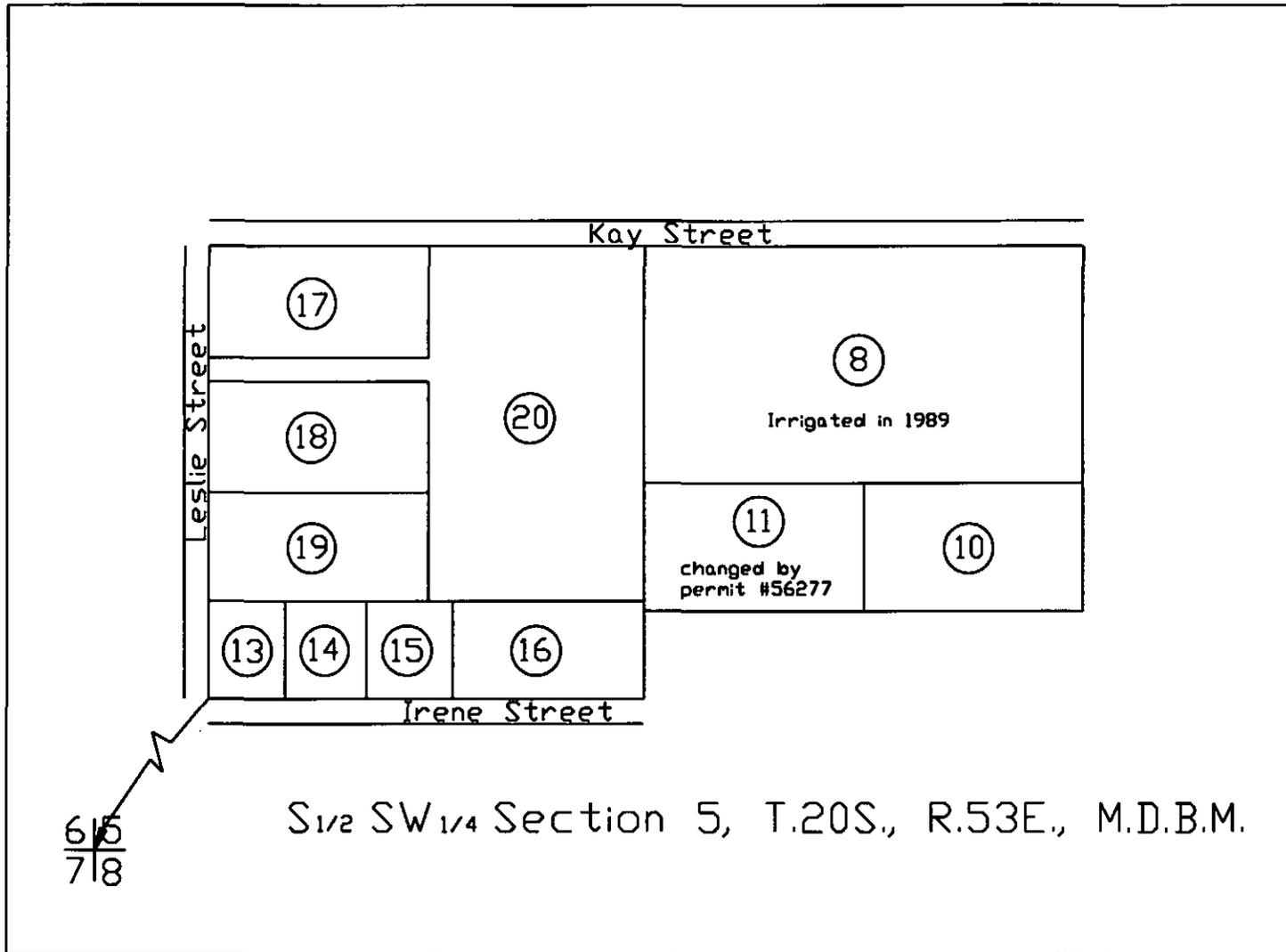


Figure 1. Place of use of Permit #14946 Certificate #5528

Nye Co.. Assessor parcel no.s are from Book 36, page 031