

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 24413, CERTIFICATE)
7629, OF THE WATERS OF AN)
UNDERGROUND SOURCE IN PAHRUMP)
VALLEY, NYE COUNTY, NEVADA.)

RULING

FINDINGS OF FACT

I.

Application 24413 was filed by Earl Burson on March 20, 1968, to appropriate underground water for irrigation and domestic purposes. The proposed place of use is W1/2, Section 12, T.21S., R.53E., M.D.B.&M. A permit was issued under Application 24413 on September 16, 1968, for 2.7 c.f.s. of water for irrigation and domestic purposes.¹ Certificate 7629 was issued under said permit on June 7, 1971, for 1.12 c.f.s. and 197.75 acre-feet per year for the irrigation of 39.55 acres of land.²

II.

The portion of Permit 24413, Certificate 7629, subject to the forfeiture determination is 25 acre-feet of water for the irrigation of 5 acres within the W1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M., with the owner of record in the office of the State Engineer being Roman J. and Gertrude Gonzales, Sam Gonzales and Felix Gonzales; 25 acre-feet of water for the irrigation of 5 acres within the E1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.B.B.&M., with the owner of record in the office of the State Engineer being Sylvio G. and Nancy Barile (an undivided 1/2 interest) and Raymond and Margaret Richardson (an undivided 1/2 interest); and

¹ State Exhibit No. 18-D: Public administrative hearings were held before the State Engineer in the matter of the subject permit and others on and at the following dates and places:

December 8, 1987
December 9, 1987
December 10, 1987

Pahrump, Nevada
Pahrump, Nevada
Pahrump, Nevada

Transcripts are a matter of Public record in the office of the State Engineer.

² State Exhibit No. 20-D, December 10, 1987, Transcript.

97.55 acre-feet of water for the irrigation of 19.55 acres of land within the N1/2 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. with the owner of record in the office of the State Engineer being Zolin G. and Shirley M. Burson, Laramie L. and Mary J. Burson.³

III.

Deeds have been submitted to the State Engineer's office to transfer the 5 acres of land described as Parcel 4 on Parcel Map File No. 07492 recorded July 13, 1979, on Official Records in Nye County, Nevada, from Nancy Barile and Raymond and Margaret Richardson to Richard B. and S. Elizabeth Jorgensen.³ Deeds have been submitted to the State Engineer's office to transfer the agricultural water rights that go with Parcel 1 as shown by Parcel Map recorded July 13, 1979, as File No. 07492 of Official Records, Nye County, Nevada, from Trahern and Bursons, et al. to Adam and Linda Mickelson.³

IV.

Evidence and testimony were received into the record at public hearings before the State Engineer, (see Footnote 1), and the State Engineer took administrative notice of various matters as more specifically set forth.⁴

V

An application for an Extension of Time to work a forfeiture under a portion of Permit 24413, Certificate 7629, was submitted to the State Engineer's office on December 30, 1986, by Adam Mickelson, stating that the owner of record of the above mentioned certificate was Adam and Linda Mickelson.³ An application for Extension of Time to work a forfeiture again under a portion of Permit 24413, Certificate 7629, was submitted to the State Engineer's office on December 23, 1987, by John Burns, agent for the stated owner of record; Mickelson, Gonzales and Burson.³

VI.

Testimony and evidence establish that the 5 acres of land in the W1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. in the name of Gonzales, et al.; the 5 acres of land in the E1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. in

³ Public record in the office of the State Engineer, See File 24413.

⁴ See Transcript of December 10, 1987, p. 293.

the name of Barile and Richardson; and the 19.55 acres of land in the N1/2 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. in the name of Burson, et al., were not cultivated and irrigated during the period of 1982 through 1986, inclusive and that no water was diverted from the source and placed to beneficial use under those portions of Permit 24413, Certificate 7629.⁵

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁶

II.

The water right under Permit 24413, Certificate 7629, is a "permitted right" and a "determined right" as described in NRS 534.090 and one therefore subject to the provisions of that statute.

III.

Forfeiture of a water right does not become final until expiration of time of appeal of a ruling declaring such right forfeited.⁷

IV.

The record provides substantial evidence that, during the period between January 1, 1982, through December 31, 1986, (five (5) successive years) a portion of the water from the underground source described was not beneficially used for the purpose for which the water right was acquired under Permit 24413, Certificate 7629.

⁵ Testimony of Robert Coache, Hydraulic Engineer for the Division of Water Resources Southern Nevada Branch Office, see Transcript, pages 312 through 314, inclusive and pages 324 and 325. Testimony of Roman J. Gonzales, see Transcript, page 326 through 331, inclusive. Testimony of Linda Mickelson and Juhn Burns, see Transcript, pages 332 through 340, inclusive. The record indicates no response from anyone else having an interest in Permit 24413, Certificate 7629, see Transcript pages 290, 371 and 372.

⁶ NRS 534.090.

⁷ NRS 534.090(4) and NRS 533.450.

V.

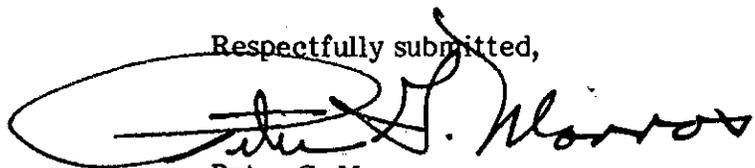
The application for Extension of Time to work a forfeiture submitted by Adam Mickelson was made before the expiration of time necessary to work a forfeiture for the portion of Permit 24413, Certificate 7629, being in the N1/2 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M.⁸

RULING

The right to appropriate and beneficially use water on the 5 acres of land in the W1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. (Gonzales, et al.) and the 5 acres of land in the E1/2 SE1/4 SW1/4 SW1/4, Section 12, T.21S., R.53E., M.D.B.&M. (Barile and Richardson) being a portion of the place of use under Permit 24413, Certificate 7629, 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 application for Extension of Time to work a forfeiture for the 19.55 acres in the N1/2 SW1/4 SW1/4, Section 12, T.21S., R53E., M.D.B.&M. being a portion of the place of use under Permit 24413, Certificate 7629, (Burson, et al.) was timely filed in conformance with NRS 534.090(2) and the State Engineer hereby grants the Extension of Time to work a forfeiture until December 30, 1987, a copy of the approved Extension of Time is attached and made a part of this ruling.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/HR/bk

Dated this 19th day of
April, 1988.

⁸ NRS 534.909(2) and Transcript, see pages 337 and 338.