

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

IN THE MATTER OF THE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 22449,)
CERTIFICATE 7888 AND PERMIT 22450,)
CERTIFICATE 7889 FILED WITHIN THE)
DIAMOND VALLEY GROUNDWATER BASIN)
(153), EUREKA COUNTY, NEVADA.)

RULING

4183

GENERAL

I.

Application 22449 was filed by Edward A. Melka on February 22, 1965, to appropriate 5.4 cfs of water from an underground source for irrigation and domestic purposes within portions of the NE $\frac{1}{4}$, SE $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$, Section 24, T.20N., R.53E., M.D.B.&M. The point of diversion is described as being within Lot 4, Section 24, T.20N., R.53E., M.D.B.&M. A permit was approved under Application 22449 on April 11, 1967, for 5.4 cfs of water for irrigation and domestic purposes. Certificate 7888 was issued under Permit 22449 on September 1, 1972, for 2.312 cfs, not to exceed 530.4 acre feet annually, for the irrigation of 137.6 acres of land represented by 80.0 acres within W $\frac{1}{2}$ NE $\frac{1}{4}$, 29.1 acres within Lot 4 and 28.5 acres within Lot 5, Section 24, T.20N., R.53E., M.D.B.&M.¹

II.

Application 22450 was filed by Edward A. Melka on February 22, 1965, to change the point of diversion, manner of use and place of use of a portion of the underground waters heretofore appropriated under Permit 17226. The proposed point of diversion is identical to the point of diversion granted under Application 22449, that being within Lot 4, Section 24, T.20N., R.53E., M.D.B.&M. The

¹ Public record in the office of the State Engineer under Permit 22449.

proposed manner and place of use is for the irrigation of 66.9 acres of land represented by 9.3 acres within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 29.1 acres within Lot 4 and 28.5 acres within Lot 5, Section 24, T.20N., R.53E., M.D.B.&M. A permit was approved under Application 22450 on March 20, 1967, for 0.79 cfs of water for irrigation and domestic purposes. Certificate 7889 was issued under Permit 22450 on September 1, 1972, for 0.79 cfs, not to exceed 267.6 acre feet annually, for the irrigation of the aforementioned 66.9 acres of land.²

III.

The total combined amount of water under Certificate 7888 and Certificate 7889 is to 2.312 cfs and not to exceed 530.4 AFA.²

IV.

A portion of the place of use under Permit 22449, Certificate 7888 and Permit 22450, Certificate 7889 is also irrigated from the waters of Hunter Creek, aka Italian Creek. Water from this surface water source was appropriated under Permit 28284, Certificate 9808, for 1.10 cfs and not to exceed 316 acre feet annually, for the irrigation of 79 acres located within the W $\frac{1}{2}$ NE $\frac{1}{4}$, Lot 4, and Lot 5 of Section 24, T.20N., R.53E., M.D.B.&M. Water under Permit 28284, Certificate 9808 is commingled with the underground waters under Permit 22449, Certificate 7888 and Permit 22450, Certificate 7889.³

V.

After proper notice was given to all interested parties, an administrative hearing in the matter of the determination of forfeiture of Certificate 7888 and Certificate 7889 was held before representatives of the State Engineer on January 24, 1990, in Eureka, Nevada.⁴

² Public records in the office of the State Engineer under Permit 22450.

³ File No. 28284, official records in the office of the State Engineer.

⁴ Transcript, page 4.

VI.

At the time of the forfeiture determination, the ownership of the subject certificates stood in the names of Stephen A. Auch, Sharon A. Auch and Gary Leonard in the records of the State Engineer's Office.⁵

VII.

The owners of record in the Eureka County Assessor's Office of the lands described under the subject certificated places of use, during the same time frame was Stephen A. Auch, Sharon Auch and Gary Leonard.⁵

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 Ground Water Basin since 1967. Records on file within the State Engineer's Office indicate that only 20 acres of the total of 137.6 acres were irrigated from 1982 through 1985. None of the acreage was irrigated in 1986 and 1987.⁶

Stephen A. Auch testified that prior to his purchase of the property, water had been beneficially used on the place of use of Permit 22449, Certificate 7888 and Permit 22450, Certificate 7889, during the 1984 irrigation season.⁷ Notes on the pumpage inventory indicated that in 1984, the well was equipped with a pump and motor and there was an electrical power meter in place.⁶ The State Engineer finds that water was beneficially used under Permit 22449,

⁵ Transcript of the hearing held January 24, 1990, in the matter of Permit 22449 and Permit 22450, hereinafter referred to as Transcript or Exhibit, see State's Exhibit 1.

⁶ Exhibit No. 1, Public Administrative Hearing before the State Engineer, January 24, 1990.

⁷ Transcript, pages 11-15.

Certificate 7888, and Permit 22450, Certificate 7889, during the 1984 irrigation season. The State Engineer further finds that a continuous period of five years of non-use did not occur.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.⁸

II.

Failure for five successive years on the part of the holder of any right to use beneficially all or part of the underground water for the purposes for which the right is acquired, works a forfeiture.⁹

III.

The State Engineer concludes that the record of evidence and testimony brought forth during the course of the January 24, 1990, hearing, establishes that water was used beneficially for the purpose for which rights were established under Permit 22449, Certificate 7888 and Permit 22450, Certificate 7889, during the 1984 irrigation season.

IV.

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.

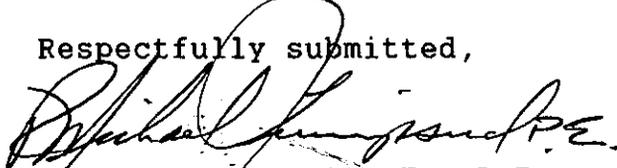
⁸ NRS 534.090.

⁹ NRS 534.090.

RULING

The right to beneficially use the water to irrigate the lands described under the places of use under Permit 22449, Certificate 7888 and Permit 22450, Certificate 7889 is not declared forfeited.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 2nd day of
May, 1995.