

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

IN THE MATTER OF THE POSSIBLE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 12744, CERTIFICATE)
5105 FROM AN UNDERGROUND SOURCE, PAHRUMP)
VALLEY GROUNDWATER BASIN (162), NYE COUNTY,)
NEVADA.)

RULING

4455

GENERAL

I.

Application 12744 was filed by Charles B. Eisenberg on December 1, 1948, to appropriate the underground waters of the Pahrump Valley Groundwater Basin, Nye County, Nevada. Permit 12744 was approved on February 3, 1950, for 0.5 cubic foot per second (cfs) for irrigation and domestic use. Certificate 5105 under Permit 12744 was issued on April 18, 1961, for 0.5 cfs of water, not to exceed 100 acre feet annually (AFA) for the irrigation of 20.0 acres of land, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20S., R.53E., M.D.B.&M. The point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15.

On September 2, 1982, a portion of Permit 12744, Certificate 5105, consisting of 67.65 AFA appurtenant to 13.53 acres, was relinquished to the State of Nevada. The current owners of record of the remaining portion are Harry and Mary Ford, holding 5.0 AFA appurtenant to 1.0 acre and Nye County, holding 27.35 AFA appurtenant to 5.47 acres.¹

II.

On December 8, 1995, an Application for Extension of Time to Prevent a Forfeiture of Permit 12744, Certificate 5105 was filed by Nye County. Action on said application was deferred until after a hearing to consider the possible forfeiture of the water right.¹

¹File No. 12744, official records in the Office of the State Engineer.

III.

On September 18, 1996, a hearing was held to consider the possible forfeiture of Permit 12744, Certificate 5105.² At the hearing, the hearing officer stated that the records of the Office of the State Engineer indicated that the 1.0 acre of land, held by the Ford's, has been irrigated and no forfeiture action is being considered regarding this property.³ The hearing was held to consider the possible forfeiture of the 27.35 AFA of water right appurtenant to 5.47 acres held by Nye County.

At the hearing, administrative notice was taken of all records in the Office of the State Engineer.⁴

FINDINGS OF FACT

I.

The annual pumpage inventories for the Pahrump Valley Groundwater Basin show that the place of use of Permit 12744, Certificate 5105 was not irrigated during the years 1990 through 1994.⁵ Mr. Robert Coache conducted the field investigations for the pumpage inventories and prepared the annual reports. Mr. Coache testified that he observed no irrigation when he inspected the property in September 1990.⁶

An Application for Extension of Time to Prevent a Forfeiture of Permit 12744, Certificate 5105 was filed on December 8, 1995.¹ On Line 4, it is stated that the last beneficial use occurred in

²Exhibit No. 1, Public Administrative Hearing before the State Engineer, September 18, 1996.

³Transcript pp. 3-4, Public Administrative Hearing before the State Engineer, September 18, 1996.

⁴Transcript pp. 5-6, Public Administrative Hearing before the State Engineer, September 18, 1996.

⁵Exhibit No. 4, Public Administrative Hearing before the State Engineer, September 18, 1996.

⁶Transcript pp. 8-9, Public Administrative Hearing before the State Engineer, September 18, 1996.

1990. In order to resolve this contradiction, Nye County presented evidence and testimony regarding the irrigation of the property in 1990. Mr. Harry Ford, who owned the property at that time, testified that the 7.5 horsepower pump used in the certificated well, failed in the early part of 1990.⁷ Therefore, he was unable to get a full crop that year as he had in previous years. He installed a smaller pump and irrigated the property as best he could.⁷ He was able to keep the alfalfa and the grain crops alive, but did not get sufficient growth to harvest the crops. Instead, he turned his cattle out onto the field and allowed them to consume the crops, after he discontinued the irrigation and removed the water lines.⁸ By September 1990, when Mr. Coache inspected the property, the cattle had been removed and no evidence of the irrigation that took place earlier in the year was visible.⁹ Mr. Coache agreed that irrigation could have occurred early in 1990 that would not have been observed in September, when he inspected the property.¹⁰ The State Engineer finds that the beneficial use occurred under Permit 12744, Certificate 5105 in 1990.

II.

The Application for Extension of Time to Prevent a Forfeiture was filed in the Office of the State Engineer on December 8, 1995.¹ The filing occurred before the fifth year of non-use had expired. The State Engineer finds that said Application was filed in a timely manner and may be approved.

¹Transcript p. 28 and Exhibit No. 5, Public Administrative Hearing before the State Engineer, September 18, 1996.

⁸Transcript pp. 28-34, Public Administrative Hearing before the State Engineer, September 18, 1996.

⁹Transcript pp. 33-34, Public Administrative Hearing before the State Engineer, September 18, 1996.

¹⁰Transcript p. 14, Public Administrative Hearing before the State Engineer, September 18, 1996.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter.¹¹

II.

Failure for a period of five consecutive years on the part of a water right holder, to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture of the water right, to the extent of the non-use.¹²

III.

The State Engineer may, upon the request of the water right holder, extend the time necessary to work a forfeiture, if the request is made before the expiration of the time necessary to work a forfeiture.¹²

IV.

The water under Permit 12744, Certificate 5105 was placed to beneficial use in 1990. The Application for Extension of Time to Prevent a Forfeiture was filed in 1995, before the fifth year of non-use had expired. The State Engineer concludes that said Application was filed in a timely manner in accordance with NRS 534.090. The State Engineer further concludes that the water right under Permit 12744, Certificate 5105 was not forfeited.

¹¹NRS Chapters 533 and 534.

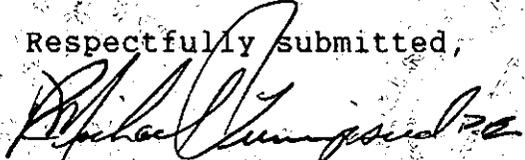
¹²NRS 534.090.

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RULING

The right to beneficially use the water under Permit 12744, Certificate 5105 is not declared forfeited and the Application for Extension of Time to Prevent a Forfeiture is hereby approved for a period of one year from the date of the filing.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 19th day of

November, 1996.