

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

IN THE MATTER OF APPLICATION 62675 FILED TO)
CHANGE THE POINT OF DIVERSION AND PLACE)
OF USE OF UNDERGROUND WATER PREVIOUSLY)
APPROPRIATED UNDER PERMIT 14576,)
CERTIFICATE 5329, WITHIN THE PAHRUMP)
VALLEY HYDROGRAPHIC BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

4937

GENERAL

I.

Application 62675 was filed on December 17, 1996, by Rosemarie Ricks to change the point of diversion and place of use of 0.10 cubic feet per second (cfs), not to exceed 10.0 acre-feet annually (afa), a portion of the underground waters previously appropriated under Permit 14576, Certificate 5329. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M. The application was filed for irrigation and domestic purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, T.19S., R.53E., M.D.B.&M.¹

Application 62675 came ready for action by the State Engineer June 15, 1997.

II.

Permit 14576 was issued February 18, 1953, for irrigation and domestic purposes. Amended Certificate 5329 was issued June 20, 1963, for 2.0 cfs, not to exceed 800.0 afa. On July 1, 1991, the water rights under Permit 14576, Certificate 5329, were sold at auction to numerous buyers in various amounts.¹

III.

On March 13, 1998, the State Engineer forfeited 10.0 afa, a portion of Permit 14576, Certificate 5329, in the name of Jack Lehtinen.²

¹ File No. 62675, official records in the office of the State Engineer.

² File No. 14576, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

A Grant, Bargain, and Sale Deed was filed in the office of the State Engineer on February 27, 1992, pursuant to which 10.0 afa of water rights under Permit 14576, Certificate 5329, were conveyed to Jack Lehtinen.¹ The State Engineer finds that Jack Lehtinen was the owner of record of a 10.0 afa portion of the water right under Permit 14576 at the time of the forfeiture.

II.

Change Application 62675 was filed and came ready for action by the State Engineer prior to the date of forfeiture of the Jack Lehtinen portion of Permit 14576, Certificate 5329.¹ The change application under consideration in this ruling was filed in a timely manner after purchasing said water from Jack Lehtinen. However, no report of conveyance had been filed to update the ownership of record of Permit 14576 to the applicant under Application 62675 prior to the date the forfeiture was declared. Grant, Bargain, and Sale Deeds were filed in the office of the State Engineer September 3, 1998, Nye County Recorder Nos. 0377224 and 0377225, executed July 26, 1995, each document conveyed 5.0 afa from Permit 14576, Certificate 5329, to Rosemarie Ricks from Jack Lehtinen and Carolyn Lehtinen.¹ The State Engineer finds the report of conveyance under Permit 14576, which was from the applicant under Application 62675, was filed after the date of the forfeiture was declared and that Application 62675 came ready for action prior to the forfeiture of the Jack Lehtinen portion of Permit 14576, Certificate 5329.

III.

Notice of forfeiture of water rights dated March 13, 1998, was sent by certified mail to Jack Lehtinen, forfeiting the 10.0 afa of Permit 14576, Certificate 5329, which was the portion of said water right remaining in the name of Jack Lehtinen as of March 13, 1998. Jack Lehtinen did not appeal the forfeiture of the 10.0 afa portion of Permit 14576. The State Engineer finds that even though the report of conveyance was not filed until after the date upon which the forfeiture was declared, the address of the applicant under the change application was on file and available to the State Engineer. Furthermore, the State Engineer finds that by failing to notice the applicant involved in

this ruling of the forfeiture of the Jack Lehtinen's portion of Permit 14576 the applicant was not given an opportunity to appeal the forfeiture within the statutory period.³

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

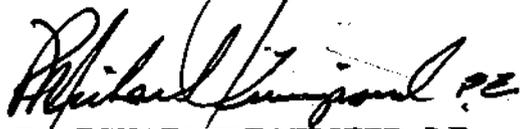
II.

The report of conveyance from the applicant under Application 62675 regarding ownership of Permit 14576 was filed after the date the forfeiture was declared. The notice of the forfeiture of a portion of the waters under Permit 14576, Certificate 5329, did not include the applicant under change Application 62675, it only included the owner of record under Permit 14576 of the portion being forfeited. The State Engineer concludes that by not noticing the applicant of the forfeiture she had no knowledge of its occurrence and was not given an opportunity to appeal the declared forfeiture within the statutory period as set forth in NRS § 533.450.

RULING

The forfeiture of the 10.0 afa of water under Permit 14576, Certificate 5329, previously under the name of Jack Lehtinen is hereby declared vacated. The requested transfer under Application 62675 will be acted upon based on its own merit and in accordance with NRS chapters 533 and 534.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/KWH/cl

Dated this 13th day of
June, 2000.

³ NRS § 533.450.

⁴ NRS chapters 533 and 534.