

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

IN THE MATTER OF APPLICATION 57734 FILED )  
TO CHANGE THE POINT OF DIVERSION, PLACE )  
OF USE AND MANNER OF USE OF A PORTION OF )  
PERMIT 45531, CERTIFICATE 11433, WITHIN THE )  
PAHRUMP VALLEY HYDROGRAPHIC BASIN )  
(162), NYE COUNTY, NEVADA. )

RULING

# 4962

GENERAL

I.

Application 57734 was filed June 4, 1992, by Central Nevada Utilities Company (CNUC) to change the point of diversion, place of use and manner of use of 0.97 cubic feet per second (cfs), not to exceed 600 acre-feet annually (afa), the underground water previously appropriated under Permit 45531, Certificate 11433. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 31, T.20S., R.54E., M.D.B.&M. The proposed manner of use is for municipal purposes within Central Nevada Utilities Company's service area as certified by the Public Service Commission of Nevada (Public Utilities Commission).<sup>1</sup>

FINDINGS OF FACT

I.

Permit 45531 was issued December 14, 1982, for irrigation and domestic purposes to Edward J. and Warren M. Lewis. Certificate 11433 was issued May 30, 1986, for 0.97 cfs, not to exceed 600 afa, for the irrigation of 120 acres.

On August 28, 1992, a request to convey ownership of Permit 45531, Certificate 11433, to CNUC was filed in the office of the State Engineer. The State Engineer finds that on November 2, 1993, Permit 45531, Certificate 11433, was conveyed to CNUC as owner of record in the office of the State Engineer.

<sup>1</sup> File No. 57734, official records in the office of the State Engineer.

## II.

The State Engineer issued Ruling No 4355, June 4, 1996, forfeiting 600 afa under Permit 45531, Certificate 11433, for failure to beneficially use the water under said certificate for five (5) successive years.<sup>2</sup> The period of non-use of the water occurred during the period from 1986 through 1991. The State Engineer finds that the water under Permit 45531, Certificate 11433, was forfeited for failing to place the water to beneficial use for which it was issued, and no timely appeal was taken from that decision. Therefore, the forfeiture of Permit 45531, Certificate 11433 is final. The State Engineer further finds the forfeiture of Permit 45531, Certificate 11433 left no remaining valid water right under the permit/certificate.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

### II.

The Nevada Revised Statutes provide that beneficial use shall be the basis, measure and limit of the right to use water.<sup>4</sup> Permit 45531, Certificate 11433, was forfeited by State Engineer's Ruling 4355, for failing to use the water under said certificate for a period of five (5) successive years. The State Engineer concludes that no water right remains under Permit 45531, Certificate 11433, because of the failure of the permittee or his successor in interest to place the water to beneficial use for what it was issued.

### III.

Nevada Revised Statute § 533.345(1) provides that an application can be filed to change the point of diversion, place of use or manner of use of water already appropriated. Water already appropriated, in reference to a change application, refers to water represented by a water right permit or certificate in good standing.<sup>5</sup> Where a permit has been forfeited, the water right is no longer valid; thus, it is not in good

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<sup>2</sup> NRS § 534.090.

<sup>3</sup> NRS § 533.534.

<sup>4</sup> NRS § 533.035.

<sup>5</sup> NRS § 533.324.

standing and cannot be used to support a change application. The State Engineer concludes that in the case of change Application 57734 the underlying certificate has been forfeited; therefore, no water right exists that can be used to support the change application.

**RULING**

Application 57734 is hereby denied on the grounds that due to the forfeiture of Permit 45531, Certificate 11433, no water right exists that can be changed by Application 57734.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/KWH/cl

Dated this 25th day of  
August, 2000.