

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

IN THE MATTER OF APPLICATION 51831 FILED)
TO CHANGE THE POINT OF DIVERSION, PLACE)
OF USE AND MANNER OF USE OF A PORTION OF)
PERMIT 19536, CERTIFICATE 5994, WITHIN THE)
PAHRUMP VALLEY HYDROGRAPHIC BASIN)
(162), NYE COUNTY, NEVADA.)

RULING

4969

GENERAL

I.

Application 51831 was filed February 11, 1988, by Preferred Equities Corporation to change the point of diversion, place of use and manner of use of 0.492 cubic feet per second (cfs), not to exceed 192.35 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 19536, Certificate 5994. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, T.20S., R.53E., M.D.B.&M. The proposed manner of use is for municipal (golf course) purposes within the S $\frac{1}{2}$ S $\frac{1}{2}$ of Section 26 and the N $\frac{1}{2}$ N $\frac{1}{2}$ of Section 35, T.20S., R.53E., M.D.B.&M.¹

FINDINGS OF FACT

I.

Permit 19536 was issued on April 16, 1962, for irrigation and domestic purposes to James A. Hail. Certificate 5994 was issued on March 14, 1966, for 1.80 cfs, not to exceed 703.4 afa, for the irrigation of 140.68 acres.

On January 6, 1987, a request to convey ownership of Permit 19536, Certificate 5994, to Preferred Equities Corporation was filed in the office of the State Engineer. The State Engineer finds that on January 19, 1989, Permit 19536, Certificate 5994, was conveyed to Preferred Equities Corporation as owner of record in the office of the State Engineer.

¹ File No. 51831, official records in the office of the State Engineer.

II.

On September 15, 1992, a hearing was held to consider the possible forfeiture of, Permit 19536, Certificate 5994. After consideration of the evidence, the State Engineer issued Ruling No 4481 which declared 348.55 afa under Permit 19536, Certificate 5994, forfeited for failure to beneficially use the water under said certificate for five (5) successive years.² Non-use of the water occurred during the period from 1983 through 1988. The State Engineer finds that the water right under Permit 19536, Certificate 5994, was declared forfeited for failing to place the water to the beneficial use for which it was issued for the statutory time frame, and no timely appeal was taken from that decision. Therefore, the forfeiture of Permit 19536, Certificate 5994, is final. The State Engineer further finds the forfeiture of Permit 19536, Certificate 5994, left no remaining valid water right under the permit/certificate in the name of Preferred Equities Corporation to support the change application.

CONCLUSIONS

I.

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

II.

Nevada Revised Statute § 533.325 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.⁴ Where a permit has been forfeited, the water right is no longer valid; thus, it is not in good standing and cannot be used to support a change application. The State Engineer concludes that in the case of change Application 51831 the portion of the underlying permit/certificate in the name of Preferred Equities Corporation has been forfeited; therefore, no water right exists that can be used to support the change application.

² State Engineer's Ruling No. 4481, dated December 20, 1996, official records in the office of the State Engineer..

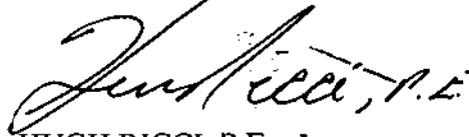
³ NRS chapters 533 and 534.

⁴ NRS § 533.324.

RULING

Application 51831 is hereby denied on the grounds that due to the forfeiture of Permit 19536, Certificate 5994, no water right exists that can be changed by Application 51831.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/KWH/cl

Dated this 28th day of
September, 2000.