

IN THE MATTER OF FORFEITURE AND/  
OR ABANDONMENT OF WATER RIGHTS )  
UNDER PERMIT 19279, CERTIFICATE )  
6870 TO APPROPRIATE THE WATERS )  
OF AN UNDERGROUND SOURCE IN )  
DIAMOND VALLEY, EUREKA COUNTY, )  
NEVADA. )

R U L I N G

GENERAL:

Application 19279 was filed by Lucy I. Quaintance on October 17, 1960 to appropriate underground water for irrigation purposes. The proposed place of use was Lots 7 and 8 of the SW $\frac{1}{4}$ , the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 7, T.21N., R.53E., M.D.B. & M. A permit was issued under application 19279 on December 8, 1961 for 5.4 c.f.s. of water for irrigation purposes. Certificate 6870 was issued under said permit on December 6, 1968.<sup>1/</sup> There is a series of assignments of interest of permit 19279. The current owner is William B. Haney.

FINDINGS

I

In a letter of January 31, 1977 to the State Engineer, Kenneth P. and Earlene Stenton requested initiation of proceedings to declare water permits issued for Lots 7 and 8, the E $\frac{1}{2}$  of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 7, T.21N., R.53E., forfeited and/or abandoned.<sup>2/</sup> The above described property will hereinafter be referred to as the S $\frac{1}{2}$  of Section 7, T.21N., R.53E., M.D.B. & M.

II

By letter of April 5, 1977, parties of interest were notified that a field investigation would be held on April 27, 1977 in the matter of the forfeiture and abandonment of the subject rights.<sup>3/</sup>

III

A field investigation was held on April 27, 1977 and was attended by representatives of the Division of Water Resources. There were no other representatives or parties of interest at the investigation. A Report of Field Investigation dated May 10, 1977 was filed in the State Engineer's office.<sup>4/</sup>

IV

Parties of interest were given notice by letter of May 20, 1977 that a hearing in the matter of forfeiture and/or abandonment of subject water rights was scheduled for Tuesday, June 28, 1977, in the Eureka County Court House, Eureka, Nevada.<sup>5/</sup> Extensive evidence, testimony and arguments were presented at the hearing.<sup>6/</sup>

FINDINGS (Continued)

V

By letter of April 19, 1977, Kenneth P. and Earlene Stenton demanded that the State Engineer withdraw all of the protests the Stentons had made against the subject water rights. The letter included a similar demand for the State Engineer to enforce NRS 534.090.7/

VI

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office, testified that he had knowledge and familiarity with the S $\frac{1}{2}$  of Section 7, T.21N., R.53E., dating back to 1973. He testified that upon his inspection of the subject property in 1973 that there was a crop on part of the S $\frac{1}{2}$  of Section 7. The crop was being irrigated from the well by a 120 horse power G.E. motor on a Western pump by sprinklers. In his inspections in 1975 and 1976, the well was still equipped with the pump and motor but there was no crop or water placed to beneficial use in those years. Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973.8/ His testimony was that said photograph showed irrigation of approximately 100 acres in the N $\frac{1}{2}$  of the S $\frac{1}{2}$  of said Section 7.9/

VII

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office, testified in concurrence with Mr. Gamboa regarding the status of equipment on the well under permit 19279, Certificate 6870, irrigation of crop in 1973 and interpretation of the aerial photograph of the area in question.10/

VIII

Mr. Richard Kephart testified that in 1973 he rented a combine to Mr. Snider who was operating the S $\frac{1}{2}$  of said Section 7. Mr. Kephart testified that he made the first pass around the field and that the Snider's then had the combine for a period of about two weeks while they continued harvesting the oat crop.11/

IX

Mr. C. E. Horton, Attorney at Law for the estate of William B. Haney, introduced into evidence Haney Exhibit "A". Haney Exhibit "A" is an affidavit by Joan Shangle, ex-official clerk of the Third Judicial District Court of the State of Nevada, in and for the County of Eureka. The affidavit stated that on February 21, 1975, W. B. Haney entered into a lease agreement with Mr. Dexter Hurley for the operation of the S $\frac{1}{2}$  of Section 7, T.21N., R.53E. The affidavit further states that on April 16, 1976, W. B. Haney, as plaintiff, filed a complaint

FINDINGS (Continued)

against Dexter Hurley requesting the court to cancel the lease between Haney and Hurley for failure of the defendant, Dexter Hurley, to irrigate and operate the ranch property in accordance with the provisions of the lease. On November 16, 1976, the lease was terminated by a summary judgement of the court.12/

X

A determination by planimeter of the cultivated acreage shown on the September, 1973 aerial photograph marked as State Exhibit No. 27 indicates that 83 acres were irrigated in that portion of the N $\frac{1}{2}$  of the S $\frac{1}{2}$  of Section 7 lying north and west of the well sight under permit 19279 and east of Highway 20.13/

XI

There was a determination and ruling of forfeiture of certificated water rights to appropriate underground water in Diamond Valley, Eureka County, Nevada as of December 3, 1975.14/

XII

Order No. 541 was issued by the State Engineer on December 22, 1975 entitled "Notice of Curtailment of Water Appropriations within the Diamond Valley Ground Water Basin". This order included a paragraph indicating that "all applications filed to appropriate water for irrigation purposes on lands in Diamond Valley that had a previous water right lost through forfeiture will be considered for approval on an individual basis and on their own merits".15/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.16/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties of the subject matter of this action.17/

II

The source of water under permit 19279, Certificate 6870 is underground water.

III

NRS 534.090 provides as follows:

"1. Failure for 5 successive years on the part of the holder of any right, whether it be an adjudicated right, an unadjudicated right, or permitted right, and further whether such

CONCLUSIONS (Continued)

right be initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which such rights shall be acquired or claimed, shall work a forfeiture of both undetermined rights and determined rights of the right to the use of such water to the extent of such nonuse. Upon the forfeiture of a right to the use of ground water, such water shall revert to the public and shall be available for further appropriation, subject to existing rights. If, upon notice by registered or certified mail to the person of record whose right has been declared forfeited, such person fails to appeal such ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final.

2. A right to use underground water whether it be vested or otherwise may be lost by abandonment. If the state engineer, in investigating a ground water source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his examination that an abandonment has taken place, he shall so state in his ruling approving the application. If, upon notice by registered or certified mail to the person of record who had the prior right, such person fails to appeal such ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the alleged abandonment declaration as set forth by the state engineer becomes final."18/

IV

The water right under permit 19279, Certificate 6870 is a "permitted right" and "determined right" as described in NRS 534.090 and is therefore subject to the provisions of that statute.

3V

The 1967 State Legislature amended NRS 534.090 to provide that forfeiture would apply to both undetermined and determined rights."19/

VI

NRS 534.090 clearly sets forth and provides that forfeiture shall apply whether such rights be initiated after or before March 25, 1939.

VII

The 1977 Nevada State Legislature was fully aware of the issue regarding forfeitures of underground water rights as provided in NRS 534.090. Representatives of persons interested in the Diamond Valley area and holders of rights to appropriate water for irrigation purposes in that area gave testimony before

CONCLUSIONS (Continued)

legislative committees regarding possible amendments to NRS 534.090. No amendments to that statute were adopted by the 1977 Legislature.

VIII

Forfeiture of a water right does not become final until expiration of a time for appeal of a ruling declaring such water forfeited as provided for in NRS 533.450.20/

IX

"Any application for a permit or any permit to appropriate water may be assigned subject to the conditions of the permit but no such assignment shall be binding except between the parties thereto unless filed for record in the office of the State Engineer".21/ The current owner of permit 19279, Certificate 6870 is therefore bound by his predecessors or lessees action or inaction as it relates to the possible forfeiture of said rights.

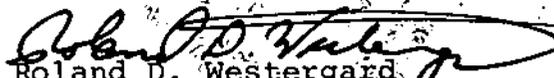
X

Evidence, information and data available establishes that in 1973 water was used from a well under permit 19279 to irrigate a crop on 83 acres of ground to which permit 19279, Certificate 6870 is appurtenant. Evidence, information and data available further establish that for a period in excess of 5 successive years water has not been beneficially used for the purposes for which the water rights were acquired under permit 19279, Certificate 6870 on the approximately 154 acres remaining under the place of use of said Certificate.

RULING

It is hereby ruled and declared that rights to appropriate water under permit 19279, Certificate 6870 appurtenant to the S $\frac{1}{2}$  of the S $\frac{1}{2}$  of Section 7 lying east of Highway 20 and that portion of the N $\frac{1}{2}$  of the S $\frac{1}{2}$  of Section 20 lying north and east of the well under permit 19279 have been forfeited because of failure of in excess of 5 successive years on the part of the holder of the rights to use beneficially the underground water for the purpose for which said rights were acquired. It is further ruled and declared that portion of permit 19279, Certificate 6870 appurtenant to that part of the N $\frac{1}{2}$  of the S $\frac{1}{2}$  of Section 7, T.21N., R.53E., M.D.B.&M., lying north and west of the well and east of Highway 20 has not been forfeited at this time. No finding is made or entered regarding abandonment of said rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/bl

Dated this 3rd day

of October 1977.

FOOTNOTES

1. State Exhibit No. 25, of the Transcript in the Matter of the Investigation into the Alleged Forfeiture and/or Abandonment of Various Water Rights in Diamond Valley, Eureka County, Nevada, Pursuant to NRS 534.090, held on June 28, 1977. (Hereinafter Referred to as June 28, 1977 Transcript)
2. State Exhibit No. 23, June 28, 1977 Transcript.
3. State Exhibit No. 24, June 28, 1977 Transcript.
4. State Exhibit No. 26, June 28, 1977 Transcript.
5. State Exhibit No. 1, June 28, 1977 Transcript.
6. June 28, 1977 Transcript.
7. State Exhibit No. 2, June 28, 1977 Transcript.
8. State Exhibit No. 27, June 28, 1977 Transcript.
9. June 28, 1977 Transcript, Pages 66 through 68.
10. June 28, 1977 Transcript, Pages 68 and 69.
11. June 28, 1977 Transcript, Pages 69 and 70.
12. Haney Exhibit "A", June 28, 1977 Transcript.
13. Calculations made in the State Engineer's Office from State Exhibit No. 27, June 28, 1977 Transcript.
14. Public Records in the Office of the State Engineer.
15. State Exhibit No. 4, June 28, 1977 Transcript.
16. Public Records within the Office of the State Engineer.
17. NRS 534.090
18. NRS 534.090
19. Statutes of Nevada, 1967 Regular Session, Volume 2, Page 1053.
20. NRS 534.090
21. NRS 533.385