



II

By letter of April 5, 1977, parties of interest were notified that a field investigation would be held on April 26, 1977 in the matter of the forfeiture and/or abandonment of the subject rights.5/

III

A field investigation was held on April 26, 1977 and was attended by parties of interest and representatives of the Division of Water Resources. A Report of Field Investigation dated May 11, 1977 was filed in the State Engineer's office.6/

IV

Parties of interest were given notice by letter of May 20, 1977 that the hearing in the matter of determination of forfeiture and/or abandonment of the subject rights was scheduled for Tuesday, June 28, 1977 in the Eureka County Court House, Eureka, Nevada.7/ Extensive evidence, testimony and arguments were presented at the hearing.8/

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 534.090.9/

VI

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office, testified that he had knowledge and familiarity with Section 29, T.20N., R.53E., M.D.B. & M., dating back to 1972. Mr. Gamboa testified that during his inspections, he had not seen the well under Permit 19315 equipped with a pump or motor. He testified that although he had not seen a pump or motor on the well, a crop of grain was raised on Lot 2, which would be the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 29, in 1975. Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973.10/ He testified that the photo showed crop in Lot 2 of said Section 29 but no crop in Lots 1 or 8, the other parcels of ground to which Permit 19315 are appurtenant. Mr. Gamboa testified that in 1976 there was a crop of about 100 acres of potatoes grown on said Section 29, although he was not sure as to the exact location of the crop. With regard to the well under Permit 25597, Mr. Gamboa testified that in 1973, the well was not equipped with a motor or gearhead but in 1975 was equipped with a Johnson Gearhead on a Lane and Bowler pump and was powered by a truck motor. He indicated that the well was used to irrigate about 100 acres of potatoes in 1975. Mr. Gamboa further testified that the aerial photo previously referred to indicated that the only crop on Section 29 in the year 1973, was in the NE $\frac{1}{4}$  of this section.11/

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 wells under Permits 19315, 19420 and 25597 and interpretation of the aerial photograph of the area in question. 12/

VIII

Mr. Earl Rasmusen, reported present owner of Section 29, T.20N., R.53E., introduced into evidence Peters Exhibits "A" through "F". Peters Exhibits "A" through "F" were copies of power billings and letters from Mount Wheeler Power, Inc. concerning the use of electricity on a well under Permit 23984 located in Lot 5 or the SW $\frac{1}{2}$  NW $\frac{1}{2}$  of said Section 29. Said well and permit were beneficially used during the years 1975 and 1976 and are not the subject of this ruling. 13/

IX

Mr. Rasmusen introduced into evidence, Peter's Exhibits "G", "H", "I", "J", "K" and "L". These exhibits are affidavits of people familiar with the operation on Section 29, T.20N., R.53E. Peter's Exhibit "G" is an affidavit from Mr. Doyle Snider stating that in 1972 he was in the employ of Mr. Rasmusen and irrigated oats, alfalfa and peas on the north 160 acres of the Peter's place on Highway 50 in Diamond Valley. Peter's Exhibit "H" is an affidavit of Elmer Durarte. Mr. Durarte stated that he worked as a farm hand for Earl Rasmusen in 1972 and farmed Lots 1, 2, 3, 4 and 7 in said Section 29. Peter's Exhibit "I" is an affidavit of Deanna Coty. Ms. Coty stated that during the year 1974 she saw irrigation of the following described property; Lots 3, 4, 6 and 7, Section 29, T.20N., R.53E. Peter's Exhibit "J" is an affidavit of Donald L. Hall. Mr. Hall stated that during the year 1975 he saw irrigation on Lots 2, 3, 4, 7, 8, 9 and 16, Section 29 and during the year 1976 he saw irrigation on Lots 5, 6 and 7. Peter's Exhibit "K" is an affidavit of Mr. Harry Sevey. Mr. Sevey stated that he knows of his own personal knowledge that the following described Lots were irrigated from the year 1972 through 1976; Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 15 and 16, Section 29, T.20N., R.53E. Peter's Exhibit "L" is an affidavit of Mr. Ed Anderson. Mr. Anderson stated that during the years 1975 and 1976 he saw irrigation on the following described property; 1975, Lots 8 and 9, said Section 29 and in 1976, Lots 3 and 5, said Section 29. He stated that he had also seen crops grown on Lots 6 and 16 of said Section 29 in the years 1975 and 1976. 14/

X

Mr. Rasmusen introduced into evidence Peter's Exhibit "M". Peter's Exhibit "M" consisted of four photographs taken in 1975. The photographs show a crop and irrigation by sprinklers of potatoes in Lot 16 of said Section 29. 15/

XI

Mr. Rasmusen testified that the potatoes grown in Lot 16 were irrigated by the well under Permit 25597 and also Permit 23984. He testified that in 1972 and 1973 he irrigated grain in Lot 2 from the well under Permit 19315. He stated that in 1973 he removed the pump and motor from the well and has not used it since. He further testified that he had been farming said Section 29 since 1972 and had not used the well under Permit 19420 located in Lot 26 during any of those years.16/

XII

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, 1975.17/

XIII

Order No. 541 was issued by the State Engineer on December 22, 1975 entitled "Notice of Curtailment of Water Appropriation 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".18/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.19/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.20/

II

The source of water under Permits 19315, Certificate 7504, Permit 19420, Certificate 6912 and Permit 25597, Certificate 7562 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 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 right 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."21/

#### IV

The water rights under Permit 19315, Certificate 7504, Permit 19420 Certificate 6912 and Permit 25597, Certificate 7562 are "permitted rights" and "determined rights" as described in NRS 534.090 and are therefore subject to the provisions of that statute.

#### V

The 1967 State Legislature amended NRS 534.090 to provide that forfeiture would apply to both undetermined and determined rights."22/

#### 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 forfeiture of underground water rights as provided in NRS 534.090. Representatives of persons interested in Diamond Valley and holders of rights to appropriate water for irrigation purposes in that area gave testimony before legislative committees regarding a possible amendment 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 in NRS 533.450."23/

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".<sup>24/</sup> The current owners of Permits 19315, 19420 and 25597 therefore are bound by their predecessors action or inaction as it relates to the possible forfeiture of said rights.

X

Evidence, information and data available indicate that water was beneficially used from the well under Permit 19315 for irrigation of 40 acres within Lot 2, Section 29, T.20N., R.53E., M.D.B. & M., in 1972. Evidence, information and data available clearly and conclusively establish that for a period of in excess of five successive years, water has not been beneficially used for the irrigation of crops for the purposes for which the water rights were acquired under Permit 19420, Certificate 6912. Evidence, information and data available establish that water from the well under Permit 25597 was used for the irrigation of potatoes during the year 1975.

RULING

It is hereby ruled and declared that rights to appropriate water under Permit 19420, Certificate 6912 and that portion of the water right appurtenant to Lots 1 and 8 of Section 29, T.20N., R.53E., M.D.B. & M., under Permit 19315, Certificate 7504 have been forfeited because of failure for in excess of five 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. That portion of the water right under Permit 19315, Certificate 7504 appurtenant to 42.06 acres within Lot 2, Section 29, T.20N., R.53E., M.D.B. & M., and all of Permit 25597, Certificate 7562 are declared to be not forfeited at this time. No finding is made or entered regarding abandonment of any of said rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/BR/bl

Dated this 20th day  
of December, 1977.

FOOTNOTES

1. State Exhibit No. 63 in the Transcript of Public Hearing in the Matter of the Investigation into the Alleged Forfeiture and/or Abandonment of Various 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. 64, June 28, 1977 Transcript.
3. State Exhibit No. 66, June 28, 1977 Transcript.
4. State Exhibit No. 62, June 28, 1977 Transcript.
5. State Exhibit No. 67, June 28, 1977 Transcript.
6. State Exhibit No. 68, June 28, 1977 Transcript.
7. State Exhibit No. 1, June 28, 1977 Transcript.
8. June 28, 1977 Transcript.
9. State Exhibit No. 2, June 28, 1977 Transcript.
10. State Exhibit No. 69, June 28, 1977 Transcript.
11. June 28, 1977 Transcript, pages 131 through 139.
12. June 28, 1977 Transcript, pages 139 and 140.
13. Peter's Exhibits "A", "B", "C", "D", "E" and "F", June 28, 1977 Transcript.
14. Peter's Exhibits "G", "H", "I", "J", "K" and "L", June 28, 1977 Transcript.
15. Peter's Exhibit "M", June 28, 1977 Transcript.
16. June 28, 1977 Transcript, pages 140 through 145.
17. Public Records within the Office of the State Engineer.
18. State Exhibit No. 4, June 28, 1977 Transcript.
19. Public Records within the Office of the State Engineer.
20. NRS 534.090
21. NRS 534.090
22. Statutes of Nevada, 1967 Regular Session, Volume 2, page 1053.
23. NRS 534.090
24. NRS 533.385