

3885

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
R. MICHAEL TURNIPSEED, STATE ENGINEER

In the Matter of
56910, 56911,
56912, 56913

-/

TRANSCRIPT OF PROCEEDINGS
BEFORE R. MICHAEL TURNIPSEED, STATE ENGINEER
March 27, 1992
Carson City, Nevada

Reported by:

Kathryn Terhune, NV CSR #209

Original

1 Smith. I represent Merl Stewart who's also present. We have
2 nothing further to add to the presentation by Mr. McMullin.
3 Mr. Stewart proposes to receive the transfer of the water
4 rights in the four applications that are in evidence and
5 Exhibits 1 through 5. And if the applications for transfer
6 are approved, then the water rights would be transferred to
7 the south end of the valley and then dedicated to the county.

8 THE STATE ENGINEER: Thank you, Mr. Smith. Any
9 other comments from the audience?

10 With that then I think I'm prepared to make a
11 decision. However, going to be in recess until ten o'clock,
12 and return to the hearing room for our decision.

13 (Recess.)

14 THE STATE ENGINEER: We'll be back on the record.
15 This permit file has some pretty good evidence in it as to
16 the nature of the wells in historic times. On the affidavit
17 of labor, talks about four wells being in existence as of
18 November 30th, 1932. I will just read you the statement out
19 of the--where it said improvements consisted of piped in
20 development of four wells casing of said wells and conveying
21 water by pipes and ditches to irrigation ditches already had
22 use in on Heidenreich Ranch for more than 50 years. Little
23 difficult to tell from that statement whether the ditches
24 were in use for 50 years prior to November 30th, 1932, or
25 whether the wells were in existence prior to 1932.

1 The application that was filed on June 3rd, 1930,
2 further indicates that the wells were probably in existence,
3 it says in remarks, "Although this water has vested right to
4 the use of water from Franktown Crick water from this well is
5 used to augment the natural supply of Franktown, is used to
6 augment the natural supply of Franktown Crick at times when
7 there is a shortage." That would further lead me to believe
8 the well was in existence at least as of June 30, 1930.

9 There is no statement in this affidavit from--there
10 is no statement in Exhibit 11, the affidavit of Mr. Thomas S.
11 Whitehead, that there was ever an intent to abandon. In
12 fact, if the protestants had wished to prove the well had
13 been abandoned, they should have had Mr. Whitehead here so
14 his testimony could be the subject of cross-examination.
15 Simply says that the water was not used between the time 1951
16 and 1973.

17 Therefore, I'm going to find there is no evidence
18 in the record to show that this water right evidenced by
19 Permit 9267, Certificate 2704 is abandoned, for lack of any
20 showing that there was ever an intent to abandonment.

21 I'm also going to find there is insufficient
22 evidence in the record to show that a forfeiture occurred,
23 specially on an artisan well that appears flowed at times and
24 didn't flow at times. I don't believe the forfeiture statute
25 reaches to drought periods when the water's not available.

1 Now, if a person that has an artisan well wishes to
2 pump that well, preserve the right, I suppose that's his
3 right. But I don't think there is any requirement on the
4 part of a permit holder to have to pump an artisan well
5 during drought times in order to preserve the right.

6 Record further reflects the present owner of the
7 permit attempted to replace the well in 1982 or '83 which
8 further shows at least he never intended to abandon the
9 right.

10 The Eureka case is silent, as Mr. Swafford stated,
11 as to vested rights, so the only law we have on vested rights
12 is Mans Springs. And I don't have the cite for you on that,
13 but he has the cite in his brief. And Mans Springs says you
14 simply cannot forfeit a vested right.

15 Therefore, I'm going to find that Permit 9267
16 Certificate 2704 is not forfeited nor abandoned. And is in
17 good standing as far as the records of the State Engineer
18 show and as far as this record shows.

19 I'm further going to grant Applications 56910,
20 56911, 56912, and 56913 subject to prior rights and subject
21 to both the old well drilled at or before 1930 and the
22 replacement well that was drilled in 1982 or 1983 being
23 plugged. Nevada has specific rules and requirements as to
24 how those wells are to be plugged and abandoned. And subject
25 to payment of the statutory fees for the change applications.

1 With that then this hearing will be closed.

2 (Proceedings concluded.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF NEVADA)
2)
3 CARSON CITY)
4)

5 I, Kathryn Terhune, Certified Shorthand Reporter,
6 do hereby certify;

7 That on March 27, 1992, at 9:00 a.m., of said day,
8 at 123 East Nye Lane, Carson City, Nevada, I was present and
9 took stenotype notes of the hearing held before the Nevada
10 Department of Conservation and Natural Resources, Division of
11 Water Resources in the within entitled matter, and thereafter
12 transcribed the same into typewriting as herein appears;

13 That the foregoing transcript, consisting of pages
14 1 through 38 hereof, is a full, true and correct
15 transcription of my stenotype notes of said hearing.

16
17 Dated at Carson City, Nevada, this 7th day of May,
18 1992.

19
20
21 
22 KATHRYN TERHUNE, CSR #209
23
24
25