

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

IN THE MATTER OF PETITION FOR)
FORFEITURE OF CERTAIN CERTIFICATED)
WATER RIGHTS WITHIN THE AMARGOSA)
GROUNDWATER BASIN, AMARGOSA VALLEY,)
NEVADA)

INTERIM
RULING

4086

GENERAL

I.

On March 17, 1993, Amargosa Resources, Inc., filed a petition with the State Engineer to forfeit approximately seventy-three (73) certificated groundwater rights in the Amargosa Groundwater Basin, Amargosa Valley. The water rights are represented by various permits and certificates that had gone to beneficial use in all cases prior to 1985. The State Engineer, by notice of December 14, 1993, set a hearing to take evidence and testimony regarding possible forfeitures beginning February 14, 1994, in North Las Vegas, Nevada and continuing through the week. Later, in a letter dated January 20, 1994, the State Engineer stated that he is considering the possibility of holding a portion of the hearings closer to the basin affected. The addresses of approximately one-half of the people noticed are in locations other than Amargosa Valley. The remainder live in Amargosa Valley.

II.

A petition was received from an attorney for one of the water right holders in Amargosa Valley which was joined in by attorneys for two other water right holders in Amargosa Valley. The petition requested: 1) Change in the venue from North Las Vegas to the Amargosa Valley Community Center; 2) Exclusion of certain evidence from the evidentiary hearing; and 3) Continuance of the hearing to a later date in order to prepare an adequate defense of their water rights.

FINDINGS OF FACT

I.

In Nevada, water rights are subject to forfeiture, in total or in part, if five continuous years of non-use have occurred¹. The State Engineer may, upon the request of the holder of any right, extend the time necessary to work a forfeiture if the request is made before the expiration of time necessary to work the forfeiture².

II.

The Amargosa Resources, Inc., asserting that the water rights have not been used for the statutory period, has the burden of proving by "clear and convincing evidence" that the water rights were not beneficially used for the certificated use for the statutory period³. In order that the public, and in particular the water right holders, would have a full opportunity to review the evidence that would be brought forth against them, the State Engineer ordered the Amargosa Resources, Inc., to deposit in the Southern Nevada Branch Office of the State Engineer in Las Vegas and the Carson City Office, a copy of all of the evidence it was going to offer at the evidentiary hearing. The State Engineer on December 14, 1993 sent a certified notice to all water right holders that would be affected by the forfeiture petition, stating that the evidence would be available for their review and further stating that the evidentiary hearing would begin in the North Las Vegas City Library on February 14, 1994. Thus, the State Engineer finds that the notice was sent more than sixty days prior to the beginning of the hearing.

¹ Nevada Revised Statutes 534.090.

² Nevada Revised Statutes 534.090(2).

³ Town of Eureka v. Office of State Eng'r of Nevada, 108 Nev, 826 P.2d 948 (1992).

III.

Nevada Revised Statutes do not require a hearing in order to make a determination of forfeiture⁴. However, in this instance the State Engineer determined a hearing would be appropriate so that Amargosa Resources, Inc., can offer all of its evidence and testimony in order to substantiate the forfeiture petition. Likewise, the State Engineer determined a hearing would be appropriate to provide the water right holders an opportunity to present all evidence and testimony to show that the forfeiture did not occur. The State Engineer finds that although Nevada Revised Statutes do not require a hearing, let alone require a hearing in any particular location, in this case a hearing will be held.

IV.

Counsel for the petitioning water right holders argue that the notice sent by the State Engineer on June 16, 1993, implied that evidence relied upon for the forfeiture finding was represented only by the State Engineer's annual pumpage inventory taken on an annual basis. Upon review of the information on deposit the water right holders found that additional evidence in the form of electric meter readings and photographs would also be brought forth at the hearing. Counsel argue that the sixty day period is insufficient to review the additional evidence and, therefore, the additional evidence should be excluded.

The State Engineer finds that sixty days is sufficient for review of the evidence being offered by the Amargosa Resources, Inc., in the form of the State Engineer's pumpage inventories, aerial photographs, ground photographs and electric meter readings and will not be excluded.

⁴ Nevada Revised Statutes 534.090.

V.

Counsel for the petitioning water right holders argue that while the petition for forfeiture was filed March 17, 1993, the evidence to support the forfeiture was not available until mid-December 1993. Counsel do not dispute that the evidence was actually available for inspection in Carson City, Las Vegas and at the Amargosa Valley Library beginning mid-December 1993. Since the hearing was scheduled for February 14, 1994, the State Engineer finds that the evidence was readily available and sixty days is ample time to review it.

VI.

On January 27, 1994, the State Engineer received via a facsimile a follow up letter from one of the counsel stating that a continuance is necessary in order for his client and others to request satellite images from a repository in South Dakota. The cost of those images ranges from \$2,400 to \$2,800 per scene and that an expedited service charge of 300% would have to be paid in order for them to receive and interpret the scenes by the time of the hearing.

The State Engineer finds that the water right holders have known since March of 1993, and surely since June of 1993, that a hearing to consider a forfeiture of their water rights was forthcoming. Nonetheless, the State Engineer feels obligated to provide every opportunity to the water right holders to defend their water rights and to show that the forfeiture has not occurred. The State Engineer finds that satellite images of the acreage in question would provide useful information on the issue before him. The State Engineer further finds that this is the only meritorious reason brought forth to date as to why the hearing should be continued.

VII.

Counsel for the petitioning water right holders argue that 96 of the 165 addressees live in Amargosa Valley. Therefore, counsel argues that there is no reason that the hearing should be held any where other than the Amargosa Valley Community Center. The State Engineer originally scheduled the hearing to begin at the North Las Vegas City Library believing that it would be fairly easy for the people that live in Amargosa Valley to travel to the Las Vegas area. Additionally, the State Engineer's records show that approximately half of the people noticed reside in places other than the Amargosa Valley, including many from out-of-state. The State Engineer has received many letters from water right holders asking that the hearing be held at the Amargosa Valley Community Center in order to accommodate those that have difficulty in traveling and to accommodate those who wish to call witnesses who may not be able to get to Las Vegas. The State Engineer finds that the request to hold the hearings nearer to Amargosa Valley is reasonable, and that adequate facilities to hold such a hearing exist in Beatty, Nevada which is a relatively short distance from Amargosa Valley.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matters of forfeiture of groundwater rights in Amargosa Valley⁵.

⁵ Nevada Revised Statutes, Chapters 533 and 534.

II.

The State Engineer is not required to hold an administrative hearing in regard to forfeiture, but in this case Amargosa Resources, Inc., has the burden of showing with clear and convincing evidence that five years of none use has occurred on each of the 73 permits. Likewise, the water right holders require a hearing to refute the petition. Further, the State Engineer concludes that he is not required by statute to hold a hearing in any particular location, but only to provide a full opportunity for the petitioner to support the petition for forfeiture and to allow the water right holder the opportunity to present evidence and testimony that the forfeiture may not have occurred.

III.

The State Engineer concludes that there is no credible reason to exclude any evidence from the hearing. To the contrary, the State Engineer will review all relevant evidence in making the determination as to whether the forfeiture has occurred.

IV.

The State Engineer concludes that sixty days is sufficient time to review all of the information prepared by Amargosa Resources, Inc.

V.

The State Engineer concludes that the time required to obtain and analyze the satellite images of the properties in question is the only valid reason to continue the hearing. Therefore, a continuance of ninety days is warranted and should be granted. The State Engineer further concludes that no additional continuances should be granted without good cause and extremely unusual circumstances.

VI.

The possible forfeiture of seventy-three water rights, the number of individuals and the numerous details involved present a challenge in the organization of a hearing of this magnitude and importance. Therefore, a pre-hearing conference is imperative in planning the evidentiary hearing.

VII.

The State Engineer concludes that it is reasonable for at least a portion of the water right holders to have the opportunity to present evidence and testimony at a location closer to Amargosa Valley. Beatty, Nevada has all of the necessary facilities, including lodging, to hold such hearings.

RULING

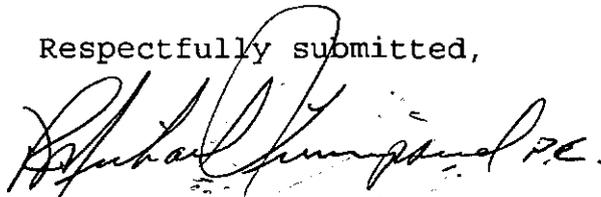
I.

The hearing scheduled to begin on February 14, 1994 is hereby continued until May 16, 1994, only to allow the water right holders to obtain and analyze the satellite images of their property. Further continuance will only be granted for good cause and extremely unusual circumstances. A pre-hearing conference will be held February 14, 1994 at 1:00 p.m. at the Beatty Community Center and all water right holders are required to attend or send a representative. At the pre-hearing conference, water right holders must be ready to state the following:

1. Their preference in having their particular water rights hearing held in Las Vegas or Beatty.
2. The length of time it will take to present the evidence and testimony necessary to defend their water rights.
3. Whether they are going to be represented by counsel, and if so, the name and address of said counsel.

Copies of all satellite images obtained by the water right holders, whether used in evidence or not, shall be sent to Amargosa Resources Inc., no later than thirty days prior to the hearing. All evidence being offered by the water right holders to defend their water rights shall be sent to the Amargosa Resources, Inc., no later than thirty days in advance of the hearing. Anyone offering a witness to help them in defending their water rights shall provide the name of that witness and a summary of his/her testimony to Amargosa Resources, Inc., no later than thirty days prior to the hearing date.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT:vjw

Dated this 1ST day of
FEBRUARY, 1994.