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

IN THE MATTER OF THE POSSIBLE FORFEITURE OF WATER RIGHTS UNDER PERMIT 20411, CERTIFICATE 6846 FROM AN UNDERGROUND SOURCE, AMARGOSA DESERT GROUNDWATER BASIN (230), NYE COUNTY, NEVADA.	)	RULING #4498

GENERAL

I.

Application 20411 was filed by Johnny Williamson on April 16, 1962, to appropriate the underground waters within the Amargosa Desert Groundwater Basin, Nye County, Nevada. Permit 20411 was approved on December 26, 1962, for 4.01 cubic feet per second (cfs) for irrigation and domestic use. Certificate 6846 under Permit 20411 was issued on October 23, 1968, for 0.918 cfs of water not to exceed 145.6 acre feet annually (AFA) for the irrigation of 36.4 acres of land, located within the SE¼ NE¼ of Section 8, T.16S., R.49E., M.D.B.&M. The point of diversion is located within the SE¼ NE¼ of said Section 8.[1]

II.

On March 17, 1993, Amargosa Resources, Incorporated (ARI) petitioned the State Engineer to declare certain water rights forfeited.[2] Permit 20411, Certificate 6846 is included in the petition. The petitioner submitted records going back to 1985 to show the non-use of water. The alleged period of non-use, for the purpose of this forfeiture proceeding, is 1985 through 1992.

III.

On May 16, 17, and 18, 1994, the State Engineer conducted a hearing to allow the petitioner the opportunity to provide the foundation for the evidence filed in support of the petition.[3]

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[1]File No. 20411, official records in the Office of the State Engineer.

[2]Exhibit No's. 1 and 2, Public Administrative Hearing before the State Engineer May 16-18, 1994.

[3]Exhibit No. 7, Public Administrative Hearing before the State Engineer May 16-18, 1994.

On October 23, 1996, a hearing was held to consider the possible forfeiture of Permit 20411, Certificate 6846.[4] The petitioner, ARI, did not appear at the hearing.[5]

IV.

At the hearing to consider the forfeiture of Permit 20411, Certificate 6846, administrative notice was taken of records in the Office of the State Engineer and of the record developed at the pre-hearing conference, February, 1994, at the foundation hearing, May, 1994, and at all the previous hearings on the individual water rights.[6]

V.

At the hearing, a water right holder moved to dismiss the petition regarding Permit 20411, Certificate 6846, on the grounds that ARI did not appear to present evidence and testimony supporting its petition to declare the forfeiture of Permit 20411, Certificate 6846.[7] In addition, a motion to strike ARI's exhibits was entered, based on ARI's failure to appear and make its witnesses available for cross examination.[7]

The Hearing Officer stated that the State Engineer has the statutory authority to declare a forfeiture of water rights in the absence of a third party petition, as provided in NRS 534.090. The evidence submitted at the foundation hearing is on the record, was subject to cross examination, and stands on its own, even in the absence of expert testimony that was provided in past hearings by ARI's witnesses. The Hearing Officer found that where evidence of a possible forfeiture of water rights exists, it must be pursued,

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[4]Exhibit No. 272, Public Administrative Hearing before the State Engineer October 23, 1996.

[5]Transcript p. 5, Public Administrative Hearing before the State Engineer, October 23, 1996.

[6]Transcript pp. 10-11, Public Administrative Hearing before the State Engineer October 23, 1996.

[7]Transcript pp. 5-6, Public Administrative Hearing before the State Engineer, October 23, 1996.

regardless of who appears or does not appear to support such evidence. The Hearing Officer further found that the hearing should rightfully proceed. The motion to dismiss and the motion to strike were denied.[8]

VI.

Mr. Bill Quinn, who performed the pumpage inventory in Amargosa Valley in 1990, is no longer an employee of the Division of Water Resources. The water right holders had the opportunity to submit questions for Mr. Quinn prior to the hearing, that would be answered in writing and be made a part of the record.[9] No questions for Mr. Quinn were submitted.

FINDINGS OF FACT

I.

The State Engineer has taken annual pumpage inventories in the Amargosa Desert Groundwater Basin since 1983 for the purpose of overall basin management. The pumpage inventories for the years 1985 through 1993 showed that no irrigation occurred under Permit 20411, Certificate 6846 for those years.[10] The persons who performed the inventories confirmed that the place of use was not irrigated but they observed some water use that was considered domestic.[11] The lots were not individually inspected.[12]

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[8]Transcript pp. 6-7, Public Administrative Hearing before the State Engineer, October 23, 1996.

[9]Exhibit No. 272, Public Administrative Hearing before the State Engineer, October 23, 1996.

[10]Exhibit No. 10, Public Administrative Hearing before the State Engineer, May 16-18, 1994.

[11]Transcript pp. 23 and 33, Public Administrative Hearing before the State Engineer, October 23, 1996.

[12]Transcript p. 24, Public Administrative Hearing before the State Engineer, October 23, 1996.

The place of use of Permit 20411, Certificate 6846 has been divided into five parcels whose water righted acreages and ownerships are shown in the following table:[13]

Water Righted Acreages

APN	Acres	Acre Ft	Owner
19-141-12	9.1	45.5	Nye County Commissioners
19-141-16	9.1	45.5	Nancy Fisher
19-141-17	4.55	22.75	Ramon Villalobos
19-141-18	4.55	22.75	Robert Vanneyhof
19-141-19	9.1	45.5	Dolores Nunez

Only one of the above referenced parcels, 19-141-12, is served from the certificated well. The water is used at the Amargosa Senior Citizens Center for culinary and domestic purposes and to water the lawn, garden, and tree line.[14] This use is really quasi-municipal and is not authorized under Certificate 6846. ARI's 1990 and 1994 aerial photographs show that the tree line surrounds one-half of the ten acre parcel.[15] The shading, color, and texture on the photographs indicate that the western portion of APN 19-141-12 is similar to the nearby uncultivated land that is covered with creosote and other native brush. The State Engineer finds that water was used for quasi-municipal purposes within the five acres of land associated with the Senior Citizens Center. The State Engineer further finds that the pumpage inventories, the aerial photographs, and the presence of creosote and desert brush

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[13]Exhibit No. 291, Public Administrative Hearing before the State Engineer, October 23, 1996.

[14]Transcript pp. 76-78 and 81-82, Public Administrative Hearing before the State Engineer, October 23, 1996.

[15]Exhibit Nos. 18 and 21, Public Administrative Hearing before the State Engineer, May 16-18, 1994.

represent clear and convincing evidence that water was not used on the remaining water righted acreage within APN 19-141-12 during the alleged period of forfeiture.

II.

There is evidence of water use on the other four parcels located within the place of use of Permit 20411, Certificate 6846.[16] However, each parcel is served by a separate well that is not the certificated well. In a similar situation, the State Engineer allowed the property owners to file applications to change the point of diversion of their portions of a certificated water right to their respective properties.[17] The State Engineer finds that the conditions here are similar to the those involved in the "Dansby Ruling" and the holders of portions of Permit 20411, Certificate 6846 may file applications to change in accordance with NRS 533.345.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter.[18]

II.

Failure for a period of five consecutive years on the part of a water right holder, to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture of the water right, to the extent of the non-use.[19]

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[16]Exhibit No. 295 and Transcript pp. 23-25, 84-86, and 87, Public Administrative Hearing before the State Engineer, October 23, 1996.

[17]State Engineer's Ruling No. 4114, dated May 18, 1994. This is referred to as the "Dansby Ruling."

[18]NRS Chapters 533 and 534.

[19]NRS 534.090.

III.

Because the law disfavors a forfeiture, there must be clear and convincing evidence of the statutory period of non-use, for the State Engineer to declare a forfeiture.[20]

IV.

The place of use of Permit 20411, Certificate 6846 has been divided into five parcels. There is evidence that water from the certificated well, was used for quasi-municipal purposes within 5 acres of land on the east portion of APN 19-141-12, associated with the Amargosa Senior Citizens Center. The State Engineer concludes that this portion of Permit 20411, Certificate 6846, amounting to 25 AFA, is not declared forfeited. Because quasi-municipal use is not authorized under Permit 20411, Certificate 6846, the State Engineer further concludes that an application to change the manner of use must be filed to reflect the current use.

There is clear and convincing evidence that water was not used on the remaining water righted acreage of APN 19-141-12 for a continuous period of time exceeding five years. The State Engineer concludes that the right to the use of water on 4.1 acres, located within the west half of APN 19-141-12, amounting to 20.5 AFA, is forfeited.

V.

There is evidence of water use on the other four parcels within the place of use of Permit 20411, Certificate 6846. The water is supplied to these parcels by individual wells, none of which is the certificated well. The State Engineer concludes that the owners of portions of Permit 20411, Certificate 6846 may file appropriate ownership documents and applications to change the point of diversion within 120 days of the date of this ruling. If an owner chooses not to file an application, then the water right appurtenant to his respective parcel, will be deemed to have been

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[20] Town of Eureka v. Office of the State Eng'r of Nevada, 108 Nev, 826 P.2d 948 (1991).

abandoned and declared forfeited. The owner would still retain the ability to use water for domestic purposes not exceeding 2.02 AFA from the well on his property.

RULING

The right to beneficially use the water appropriated under that portion of Permit 20411, Certificate 6846 appurtenant to 5.0 acres of land within the east half of APN 19-141-12 amounting to 25 AFA is not declared forfeited. The holder of this portion of Permit 20411, Certificate 6846 must file an application to change the manner of use within 120 days of the date of this Ruling.

The right to beneficially use the water appropriated under that portion of Permit 20411, Certificate 6846, appurtenant to 4.1 acres in the west half of APN 19-141-12, amounting to 20.5 AFA is hereby declared forfeited on the grounds that the water under said certificate was not placed to beneficial use for a continuous period of time exceeding five years.

The owners of APN 19-141-16, 19-141-17, 19-141-18, and 19-141-19 must, within 120 days of the date of this ruling, file appropriate ownership documents and applications to change their respective portions of Permit 20411, Certificate 6846. Failure to do so will result in forfeiture of the right to use the water for irrigation purposes on those parcels.

Respectfully submitted,

R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 14th day of

February, 1997.

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

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absence of a third party petition, as provided in NRS 534.090. The evidence submitted at the foundation hearing is on the record, was subject to cross examination, and stands on its own, even in the absence of expert testimony that was provided in past hearings by ARI's witnesses. The Hearing Officer found that where evidence of a possible forfeiture of water rights exists, it must be pursued, regardless of who appears or does not appear to support such evidence. The Hearing Officer further found that the hearing should rightfully proceed. The motion to dismiss and the motion to strike were denied.[8]

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is similar to the nearby uncultivated land that is covered with creosote and other native brush. The State Engineer finds that water was used for quasi-municipal purposes within the five acres of land associated with the Senior Citizens Center. The State Engineer further finds that the pumpage inventories, the aerial photographs, and the presence of creosote and desert brush represent clear and convincing evidence that water was not used on the remaining water righted acreage within APN 19-141-12 during the alleged period of forfeiture.

II.

There is evidence of water use on the other four parcels located within the place of use of Permit 20411, Certificate 6846.[16] However, each parcel is served by a separate well that is not the certificated well. In a similar situation, the State Engineer allowed the property owners to file applications to change the point of diversion of their portions of a certificated water right to their respective properties.[17] The State Engineer finds that the conditions here are similar to the those involved in the "Dansby Ruling" and the holders of portions of Permit 20411, Certificate 6846 may file applications to change in accordance with NRS 533.345.

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The place of use of Permit 20411, Certificate 6846 has been divided into five parcels. There is evidence that water from the certificated well, was used for quasi-municipal purposes within 5 acres of land on the east portion of APN 19-141-12, associated with the Amargosa Senior Citizens Center. The State Engineer concludes that this portion of Permit 20411, Certificate 6846, amounting to 20 AFA, is not declared forfeited. Because quasi-municipal use is not authorized under Permit 20411, Certificate 6846, the State Engineer further concludes that an application to change the manner of use must be filed to reflect the current use.

There is clear and convincing evidence that water was not used on the remaining water righted acreage of APN 19-141-12 for a continuous period of time exceeding five years. The State Engineer concludes that the right to the use of water on 4.1 acres, located within the west half of APN 19-141-12, amounting to 16.4 AFA, is forfeited.

V.

There is evidence of water use on the other four parcels within the place of use of Permit 20411, Certificate 6846. The water is supplied to these parcels by individual wells, none of which is the certificated well. The State Engineer concludes that the owners of portions of Permit 20411, Certificate 6846 may file appropriate ownership documents and applications to change the

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[19]NRS 534.090.

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point of diversion within 120 days of the date of this ruling. If an owner chooses not to file an application, then the water right appurtenant to his respective parcel, will be deemed to have been abandoned and declared forfeited. The owner would still retain the ability to use water for domestic purposes not exceeding 2.02 AFA from the well on his property.

RULING

The right to beneficially use the water appropriated under that portion of Permit 20411, Certificate 6846 appurtenant to 5.0 acres of land within the east half of APN 19-141-12 amounting to 20 AFA is not declared forfeited. The holder of this portion of Permit 20411, Certificate 6846 must file an application to change the manner of use within 120 days of the date of this Ruling.

The right to beneficially use the water appropriated under that portion of Permit 20411, Certificate 6846, appurtenant to 4.1 acres in the west half of APN 19-141-12, amounting to 16.4 AFA is hereby declared forfeited on the grounds that the water under said certificate was not placed to beneficial use for a continuous period of time exceeding five years.

The owners of APN 19-141-16, 19-141-17, 19-141-18, and 19-141-19 must, within 120 days of the date of this ruling, file appropriate ownership documents and applications to change their respective portions of Permit 20411, Certificate 6846. Failure to do so will result in forfeiture of the right to use the water for irrigation purposes on those parcels.

Respectfully submitted,

R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 22nd day of

May, 1997.