

IN THE MATTER OF FORFEITURE)
AND ABANDONMENT OF WATER RIGHTS)
UNDER PERMIT 19200 (CERTIFICATE)
6427) AND PERMIT 19277 (CERTIF-)
ICATE 6911))

R U L I N G

FINDINGS:

153

I

Application 19200 was filed by Shirley A. Quaintance on September 14, 1960 to appropriate underground water for irrigation and domestic purposes. The point of diversion under the application was to be within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 17, T. 21 N., R. 53 E., M.D.B.&M., and the place of use was the N $\frac{1}{2}$ of said Section 17. A permit was issued under Application 19200 on November 1, 1961 for 5.4 c.f.s. for irrigation and domestic purposes. The Proof of Commencement of Work was filed on August 23, 1962, the Proof of Completion of Work was filed June 25, 1964, and the Proof of Beneficial Use was filed on February 7, 1967.

There were a series of assignments of interest in Permit 19200. The current owners of record by virtue of an assignment, dated June 21, 1968, and filed in the office of the State Engineer on July 17, 1968 are Fred J. and Florence M. Stenton, husband and wife. Certificate 6427 was issued under the Permit on January 11, 1968 for 5.4 c.f.s., but not to exceed 1275.2 acre-feet annually for irrigation of 318.8 acres within the N $\frac{1}{2}$ of Section 17, T. 21 N., R. 53 E., M.D.B.&M.

II

Application 19277 was filed on October 17, 1960 by R. Kenneth Quaintance to appropriate underground water for irrigation purposes. The point of diversion was to be within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T. 21 N., R. 53 E., M.D.B.&M., and the place of use was 320 acres within the S $\frac{1}{2}$ of said Section 17. A permit was issued under Application 19277 on December 21, 1961 for 5.4 c.f.s. for irrigation purposes. Proof of Commencement of Work was filed under 19277 on July 22, 1963, the Proof of Completion of Work was filed on August 19, 1964, and the Proof of Beneficial Use was filed on June 7, 1968.

There were a series of assignments of interest in Permit 19277. The current owners of record by virtue of an assignment, dated June 21, 1968 and filed in the office of the State Engineer on July 17, 1968 are Marshall J. Stenton and Barbara R. Stenton, husband and wife; Neil D. Stenton, a single man; and, Frederick G. Stenton, a single man.

Certificate 6911 was issued under the permit on January 20, 1969 for 5.4 c.f.s., but not to exceed 1248.0 acre-feet annually for irrigation of 312 acres within the S $\frac{1}{2}$ of Section 17, T. 21 N., R. 53 E., M.D.B.&M.

III

In a letter of January 15, 1975 to the Nevada State Engineer, Julian C. Smith, Jr., attorney at law, indicated he represented the owners of Section 8, T. 21 N., R. 53 E., located in Eureka County, Nevada (Diamond Valley). His letter included the following: "My clients herewith submit to you a request to initiate proceedings to declare that the water permits issued for Section 17, T. 21 N., R. 53 E., also located in Eureka County, Nevada be declared both forfeited and abandoned pursuant to NRS 534.090 and any other statutory or legal authority. You have issued Permit No. 19200 to Fred J. Stenton and Florence M. Stenton and Permit No. 19277 to Marshall J. Stenton, Barbara R. Stenton, Neil D. Stenton and Frederick G. Stenton. There has been absolutely no water put to beneficial use on this section of land for more than five years from this date."

IV

Parties of interest were given notice, by letter of January 24, 1975, of a field investigation in the matter of Permit 19200 and Permit 19277 pursuant to a request for a determination as to abandonment or forfeiture of the subject water rights. The investigation was set for February 6, 1975. Subsequently, parties of interested were advised, by letter of January 31, 1975, that the February 6, 1975 investigation had been postponed by mutual consent and that the new time for said investigation was ten a.m., Thursday, February 20, 1975.

V

A field investigation was held on February 20, 1975 and was attended by parties of interest and their representatives, and representatives of the Division of Water Resources. A "Report of Field Investigation," dated March 6, 1975 is on file in the State Engineer's office.

VI

Parties of interest were given notice by letter of February 27, 1975 that a hearing in the matter of Permits 19200 and 19277 pursuant to a request for determination as to abandonment or forfeiture of the subject water rights was scheduled for nine a.m., Friday, March 14, 1975 in the Eureka County Courthouse, Eureka, Nevada. Extensive evidence,

testimony, and arguments were presented at that hearing. A transcript of the hearing is on file in the office of the State Engineer.

CONCLUSIONS:

I

The source of water under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911) is underground water.

II

Nevada Revised Statute 534.090 provides as follows:
"1. Failure for five successive years on the part of the holder of any right, whether it be an adjudicated right, and 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."

III

The rights under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911) are "permitted rights" as described in NRS 534.090 and are therefore subject to the provisions of that statute.

IV

There was insufficient testimony and evidence to indicate abandonment of the water rights under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911) as provided in NRS 534.090.

V

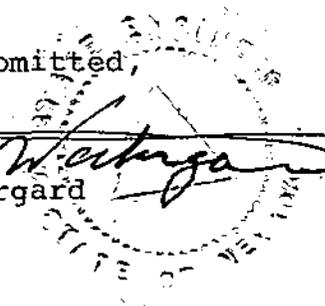
The physical evidence at Section 17, T. 21 N., R. 53 E., M.D.B.&M., at the time of the investigation on February 20, 1975 as well as the testimony and evidence received at the March 14, 1975 hearing before the State Engineer clearly established that for a period of in excess of five successive years water has not been beneficially used for the purposes for which the rights were acquired under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911).

RULING

It is hereby ruled and declared that there has not been an abandonment of water rights as provided under NRS 534.090 under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911). It is ruled and declared that rights to appropriate water under Permit 19200 (Certificate 6427) and Permit 19277 (Certificate 6911) 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 purposes for which said rights were acquired.

Respectfully submitted,


Roland D. Westergard
State Engineer



RDW:gs

Dated this 3rd day
of December, 1975.