

IN THE MATTER OF FORFEITURE AND/OR)
ABANDONMENT OF WATER RIGHTS UNDER)
PERMIT 13664 (CERTIFICATE 4138) TO)
APPROPRIATE THE WATERS OF AN UNDER-)
GROUND SOURCE WITHIN THE LAS VEGAS)
ARTESIAN BASIN, CLARK COUNTY, NEVADA.)

R U L I N G

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GENERAL:

Application 13664 was filed by Jack Wollenzien on March 29, 1951 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was 80 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, T.22S., R.61E., M.D.B. & M. A permit was issued under Application 13664 on July 10, 1951 for 1.5 c.f.s. for irrigation and domestic purposes. Certificate 4138 was issued under said permit on January 10, 1955.^{1/} There were a series of assignments of interest in Permit 13664. The current owners of record are Red Buttons and Helayne Buttons as joint tenants an undivided 1/2 interest, and Sergio Franchi an undivided 1/2 interest.

FINDINGS

I

In a letter of January 17, 1977, Red and Helayne Buttons and Sergio Franchi were notified that unless evidence to the contrary were received within 30 days, Certificate 4138 (Permit 13664) would be declared forfeited.^{2/}

II

In a letter of February 8, 1977 to the State Engineer, Charles W. Deaner, Attorney at Law, submitted a "Response to Notice to Declare Forfeiture" with exhibits.^{3/}

III

In a letter of March 30, 1977 to Mr. Charles W. Deaner, the "Response to Notice to Declare Forfeiture" was acknowledged and Mr. Deaner was informed that a hearing would be scheduled to receive additional information and evidence.^{4/}

IV

Parties of interest were given notice by letter of June 7, 1977 that a hearing in the matter of forfeiture and/or abandonment of the subject water right was scheduled for Tuesday, July 19, 1977 in the Las Vegas Convention Center, Las Vegas, Nevada.^{5/} Evidence, testimony and arguments were presented at that hearing.^{6/}

FINDINGS (Continued)

V

Mr. William J. Newman, Hydraulic Engineer IV for the State Engineer's office identified and interpreted photographs of the well site and portions of the property under Certificate 4138.^{7/} Mr. Newman testified that we had examined the well site, the surrounding property and the irrigation facilities on dates ranging from 1970 through 1976.^{8/} Mr. Newman further testified that we had not seen and that it was his opinion that no water had been placed to beneficial use on lands described under Certificate 4138 from the well under said certificate during the period 1970 through 1976.^{9/}

VI

Mr. Francis W. Thorne, Branch Engineer for the State Engineer's office testified that there were no crops produced, that there was no harvesting of crops and that there was no application of water to beneficial use under Certificate 4138 since 1970.^{10/}

VII

Mr. Deaner offered into evidence "Response to Notice to Declare Forfeiture" with attachments and other exhibits which are a part of the hearing record.^{11/}

VIII

Mr. Richard Lindsay was called as a witness by Mr. Deaner and described his involvement with the property included under Certificate 4138 beginning in 1976. Upon cross examination, Mr. Lindsay testified that no crops resulted from the irrigation of that land.^{12/}

IX

There was no information, evidence or testimony submitted to in any way indicate, infer or confirm that water was applied to the land described under Certificate 4138 for the irrigation of crops during the period 1970 through 1975.^{13/}

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action.^{14/}

II

The source of water under Permit 13664 (Certificate 4138) is underground water.

CONCLUSIONS (Continued)

III

Nevada Revised Statutes 534.090 provide 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."15/

IV

The water rights under Permit 13664 (Certificate 4138) 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 Nevada State Legislature amended NRS 534.090 to provide that forfeiture would apply to both undetermined and determined rights.16/

VI

Nevada Revised Statutes 534.090 clearly set forth and provide that forfeiture shall apply whether such right be initiated after or before March 25, 1939.

CONCLUSIONS (Continued)

VII

The 1977 Nevada State Legislature was fully aware of the issues regarding forfeiture of underground water rights as provided in NRS 534.090. No amendments to that statute were adopted by the 1977 Legislature.

VIII

"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."¹⁷ The current owners of Permit 13664 (Certificate 4138) therefore are bound by their predecessor's action or inaction as it relates to the possible forfeiture of said rights.

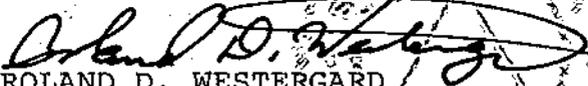
IX

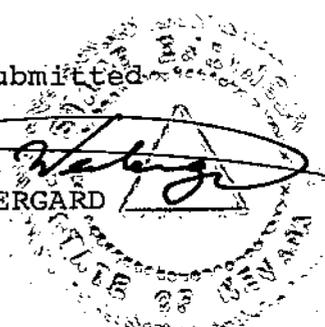
Evidence, information and data available clearly and conclusively establish that for a period in excess of five successive years, water has not been beneficially used for the purpose for which the water right was acquired under Permit 13664 (Certificate 4138).

RULING

It is hereby ruled and declared that the right to appropriate water under Permit 13664 (Certificate 4138) has been forfeited because of failure for in excess of five successive years on the part of the holders of the right to use beneficially the underground water for the purpose for which said right was acquired. No finding is made or entered regarding abandonment of said right.

Respectfully submitted


ROLAND D. WESTERGARD
State Engineer



RDW/bl

Dated this 30th day
of September, 1977.

FOOTNOTES

1. State Exhibit No. 2, July 19, 1977 Hearing.
2. State Exhibit No. 3, July 19, 1977 Hearing.
3. Public Records Located within the State Engineer's Office.
4. State Exhibit No. 4, July 19, 1977 Hearing.
5. State Exhibit No. 1, July 19, 1977 Hearing.
6. Reporter's Transcript of Proceedings Upon Hearing in the Matter of Determination of Forfeiture of Certificate 4138 (Permit 13664) July 19, 1977. (Hereinafter Referred to as July 19 Transcript)
7. State Exhibit No. 5A through 5E, July 19, 1977 Hearing.
8. July 19 Transcript, Page 10, Lines 18 through 21.
9. July 19 Transcript, Page 11.
10. July 19 Transcript, Pages 16 and 17.
11. Franchi Exhibits "A" through "I".
12. July 19 Transcript, Page 34, Line 7.
13. July 19 Transcript and Public Records Located within the State Engineer's Office.
14. NRS 534.090.
15. NRS 534.090.
16. Statutes of Nevada 1967 Regular Session, Volume 2, Page 1053.
17. NRS 533.385.