

IN THE MATTER OF FORFEITURE AND/  
OR ABANDONMENT OF WATER RIGHTS )  
UNDER PERMIT 19116, CERTIFICATE )  
6426 TO APPROPRIATE THE WATERS )  
OF AN UNDERGROUND SOURCE IN )  
DIAMOND VALLEY, EUREKA COUNTY, )  
NEVADA. the )

R U L I N G

GENERAL:

Application 19116 was filed by Margaret B. Moncur on August 12, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the SE $\frac{1}{4}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 7, W $\frac{1}{2}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 18, all T. 22N., R. 54E., M.D.B. & M. A permit was issued under Application 19116 on August 25, 1961 for 52.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6426 was issued under said permit on January 11, 1968. There is a series of assignments of interest in Permit 19116. The current owners of record are Fred J. and Florence M. Stenton, as joint tenants, an undivided 1/2 interest and Kenneth P. and Earlene Stenton, an undivided 1/2 interest. This is stated in the title block of the deed of record of the described property.

FINDINGS

VII

I

In a letter of February 1st, 1977 to the State Engineer, Richard E. and Mari Kephart requested initiation of proceedings to declare water permits issued for the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 7, NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 18 and the NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 18, all T. 22N., R. 54E., M.D.B. & M., forfeited and/or abandoned. 2/

VII

By letter of April 5, 1977, parties of interest were notified that a field investigation would be held on April 27, 1977 in the matter of the forfeiture and abandonment of the subject right. 3/

III

Order No. 511 was issued by the State Engineer on December 21, 1977. The field investigation was held on April 27, 1977 and was attended by representatives of the Division of Water Resources and parties of interest. A Report of Field Investigation dated May 10, 1977 was filed in the State Engineer's office. 4/ at that time it was determined that through forfeiture and abandonment of the subject right on an individual basis and on a general basis, the subject right was abandoned. This order was published in the Eureka County Record on the following date: December 17, 1977. By letter of April 19, 1977, Richard E. and Mari Kephart demanded that the State Engineer withdraw all of the protests the Kepharts had made against the subject water rights. The letter included a similar demand for the State Engineer to enforce NRS 534.090. 5/

V

Parties of interest were given notice by letter of May 20, 1977 that a hearing in the matter of the forfeiture and/or abandonment of subject water right was scheduled for June 28, 1977 in the Eureka County Court House, Eureka, Nevada.<sup>6/</sup> Extensive evidence, testimony and arguments were presented at the hearing.<sup>7/</sup>

VI

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office, testified that he had knowledge and familiarity with the property in Sections 7 and 18, T:22N., R.54E., M.D.B.&M., which Permit 19116 is appurtenant, dating back to 1972. Mr. Gamboa's testimony was that there was no crop grown on the property in 1972, 1973, 1975 or 1976. He stated that portions of Sections 7 and 18 were put into crop in 1976. However the three 40 acre parcels which are the subject of this ruling were not in crop in 1976 or 1977.<sup>8/</sup> Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973.<sup>9/</sup> His testimony was that said photograph showed no signs of crop on the described property.<sup>10/</sup>

VII

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office testified in concurrence with Mr. Gamboa regarding the status of the well under Permit 19116, the lack of crop on the three 40 acre parcels in question for the period 1972 through 1976 and interpretation of the aerial photograph of the area in question.<sup>11/</sup>

VIII

There was a determination and ruling of forfeiture of certificated water rights to appropriate underground water in Diamond Valley, Eureka County, Nevada as of December 3, 1975.<sup>12/</sup>

IX

Order No. 541 was issued by the State Engineer on December 22, 1975 entitled "Notice of Curtailment of Water Appropriation within the Diamond Valley Ground Water Basin". This order included a paragraph indicating that "all applications filed to appropriate water for irrigation purposes on lands in Diamond Valley that had a previous water right lost through forfeiture will be considered for approval on an individual basis and on their own merits".<sup>13/</sup> Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.<sup>14/</sup>

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.15/

II

The source of water under Permit 19116, Certificate 6426 is underground water.

III

NRS 534.090 provides 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.16/

IV

The water rights under Permit 19116, Certificate 6426 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 State Legislature amended NRS 534.090 to provide that forfeiture would apply to both determined and undetermined rights.17/

VI

NRS 534.090 clearly sets forth and provides that forfeiture shall apply whether such rights be initiated after or before March 25, 1939.

VII

The 1977 Nevada State Legislature was fully aware of the issue regarding forfeiture of underground water rights as provided in NRS 534.090. Representatives of persons interested in Diamond Valley and holders of rights to appropriate water for irrigation purposes in that area gave testimony before legislative committees regarding a possible amendment to NRS 534.090. No amendments to that statute were adopted by the 1977 Legislature.

VIII

Forfeiture of the water right does not become final until expiration for a time for appeal of a ruling declaring such water forfeited as provided in NRS 533.450.18/

IX

Evidence, information and data available clearly and conclusively establish that for a period of in excess of five successive years water has not been beneficially used for the irrigation of crops for the purposes for which the water rights were acquired under Permit 19116, Certificate 6426 on the following parcels of land: the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7; NE $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 18, T.22N., R.54E., M.D.B. & M. Evidence indicates that the well under Permit 19116 was used to irrigate crops on the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  and NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 18, T.22N., R.54E., in 1976 and 1977.

RULING

It is hereby ruled and declared that the portion of the rights to appropriate water under Permit 19116, Certificate 6426 appurtenant to the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 7, NE $\frac{1}{4}$  NW $\frac{1}{4}$  and NW $\frac{1}{4}$  NE $\frac{1}{4}$  Section 18, T.22N., R.54E., M.D.B. & M. have been forfeited because of failure of in excess of five successive years on the part of the holder of the rights to use beneficially the underground water for the purpose for which said rights were acquired. The remainder of Permit 19116, Certificate 6426 is declared to be not forfeited at this time. No finding is made or entered regarding abandonment of said rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/BR/bl

Dated this 21st day

of December, 1977.

FOOTNOTES

1. State Exhibit No. 28 of the Transcript in the Matter of the Investigation into the Alleged Forfeiture and/or Abandonment of Various Water Rights in Diamond Valley, Eureka County, Nevada, Pursuant to NRS 534.090, held on June 28, 1977. (Hereinafter referred to as June 28, 1977 Transcript)
2. State Exhibit No. 57, June 28, 1977 Transcript.
3. State Exhibit No. 59, June 28, 1977 Transcript.
4. State Exhibit No. 60, June 28, 1977 Transcript.
5. State Exhibit No. 3, June 28, 1977 Transcript.
6. State Exhibit No. 1, June 28, 1977 Transcript.
7. June 28, 1977 Transcript.
8. June 28, 1977 Transcript, pages 123 through 125.
9. State Exhibit No. 61, June 28, 1977 Transcript.
10. June 28, 1977 Transcript, page 124.
11. June 28, 1977 Transcript, page 126.
12. Public Records within the Office of the State Engineer.
13. State Exhibit No. 4, June 28, 1977 Transcript.
14. Public Records within the Office of the State Engineer.
15. NRS 534.090
16. NRS 534.090
17. Statutes of Nevada, 1967 Regular Session, Volume 2, page 1053.
18. NRS 534.090