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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE THE HEARING OFFICER, JONATHAN C. PALM

-oOo-

4344

In the Matter of the)
PERMIT NUMBERS 26718, 29069,)
31204, and 36584.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
HEARING ON POSSIBLE FORFEITURE OF WATER RIGHTS
WEDNESDAY, MAY 1, 1996
BEATTY, NEVADA

Reported By: KAREN YATES, RPR
Nevada CCR No. 195

1 some records we don't have access to.

2 And we would, if there's some we don't, we would
3 like a letter from the State Engineer's office, if there is
4 going to be a next set of hearings, indicating what is not
5 available to us and we'll have somebody go down there. We
6 are not stating we are not getting it. We want to make it
7 clear we have that kind of access.

8 MR. PALM: Perhaps we can address that later on.

9 MR. STEPHENS: That's part of where we are when we
10 get ready for the next set.

11 MR. PALM: The State Engineer has authorized me to
12 enter a ruling at this hearing. Therefore, I am going to
13 make findings of fact, conclusions, and the ruling.

14 Regarding the water right, the two water rights
15 under Permit 26718 and Permit 29069, we had some testimony
16 that there was a sprinkler system in place. The property is
17 not covered with desert vegetation and the witness testified
18 that it appears that there has not been a long period of
19 time that it has not undergone irrigation.

20 On the other hand, we have our pumpage inventories
21 that show no use up until 1992 and 1993 when two acres were
22 entered on the inventory that were irrigated.

23 The place of use of 29069 is 6.18 acres, of which
24 3.78 acres are covered by 26718. It is not clear where on
25 the property the two acres was irrigated. We are talking

1 about small parcels here. Therefore, it's difficult to say
2 that these two acres were irrigated but the rest of it was
3 not. And when I look at the entire record regarding these
4 two water rights, I find that the evidence is not clear and
5 convincing that there has been a period of non-use that
6 exceeds five years.

7 I am going to move on to Permit 31204. Again, we
8 have our pumpage inventories that show no use, but we have
9 testimony from Mr. Eastman describing an irrigation system
10 in place, different crops that were planted in 1986, 1990,
11 and 1994, as well as the wind break trees.

12 Mr. Stephens explained a reason why perhaps the
13 inventories reflect zero when in fact there was use. Again,
14 when I consider the entire record, I find that the evidence
15 is not clear and convincing that there was non-use on this
16 property during the alleged period of forfeiture.

17 Regarding Permit Number 36584, Mrs. Allison
18 provided testimony of quite extensive water use for a parcel
19 of ground that covers five acres. She testified as to the
20 photographs that were taken in Exhibit 196. We also have
21 Exhibit 194, which is the evidence package. And the
22 numerous trees, the wind breaks, the Sudan grass, the
23 pasture, all were evidence of water use.

24 I'm going to make the same finding here. When I
25 consider the entire record regarding Permit 36584, I find

1 that the evidence is not clear and convincing that there was
2 a period of non-use during the alleged period of forfeiture.

3 Conclusions. Number one, the State Engineer has
4 jurisdiction over this matter in accordance with NRS Chapter
5 533 and 534.

6 Number two, failure for five consecutive years of
7 non-use of a water right for the purpose for which it was
8 acquired works a forfeiture of that water right.

9 Number three, in order for the State Engineer to
10 declare a forfeiture, there must be clear and convincing
11 evidence of the statutory period of non-use.

12 For the reasons set forth in the findings, I
13 conclude that for each of these water rights, the evidence
14 is not clear and convincing that there was a statutory
15 period of non-use.

16 The ruling is that the water rights identified by
17 Permit 26714, Certificate 8438; Permit 29069, Certificate
18 8680; Permit 31204, Certificate 10684; and Permit 36584,
19 Certificate 10676, are not declared forfeited for the
20 reasons set forth above.

21 With that, I will declare this hearing closed.

22 (The hearing concluded at 2:00 p.m.)
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