

IN THE MATTER OF FORFEITURE AND OR)
ABANDONMENT OF WATER RIGHTS UNDER)
PERMIT 22040, CERTIFICATE 7354 TO)
APPROPRIATE THE WATERS OF AN UNDER-)
GROUND SOURCE IN DIAMOND VALLEY,)
EUREKA COUNTY, NEVADA.)

R U L I N G

153

GENERAL:

Application 22040 was filed by Yvonne S. Williamsen on June 12, 1964 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the west half of Section 29, T.23N., R.54E. A permit was issued under application 22040 on August 12, 1965 for 5.0 c.f.s. for irrigation and domestic purposes. Certificate 7354 was issued on May 19, 1970 for 5.0 c.f.s.1/

FINDINGS

I

In a letter of January 19, 1977 to the State Engineer, Kenneth E. and Earlene Stenton requested initiation of proceedings to declare water permits issued for the west half and east half of Section 29, T.23N., R.54E. forfeited and or abandoned.2/

II

By letter of January 28, 1977 parties of interest were notified that a field investigation would be held on February 16, 1977, in the matter of the forfeiture and abandonment of the subject rights.3/

III

A field investigation was held on February 16, 1977 and was attended by parties of interest and representatives of the Division of Water Resources. A report of field investigation dated February 25, 1977 was filed in the State Engineer's office.4/

IV'

Parties of interest were given notice by letter of April 1, 1977 that a hearing in the matter of the forfeiture and or abandonment of subject water rights was scheduled for Thursday, April 19, 1977 in the Eureka County Court House, Eureka, Nevada.5/

V

The hearing was convened as scheduled. Counsel for Yvonne Williamsen joined counsel for other parties present in a request and motion that the hearing be continued until another date on the basis "there is legislation pending that if it passes would

FINDINGS (Continued).

greatly change the forfeiture statutes and would introduce into the concept of forfeiture several new factors and that the testimony that would be taken at this hearing would be quite different if the legislation should pass, and many other things that could be introduced as evidence....."6/ Mr. James W. Johnson, Attorney at Law representing Yvonne Williamsen made the following statement in support of the motion for continuance. "I would have to join in the continuance under these circumstances because I wouldn't want to be placed in the position of having the hearing and then having the statute change which would in any way affect any evidence that might be presented or the method or manner of presenting it. I would feel under the circumstances I would be in an entirely different position than any of the others, any of the rest of the individuals involved in it, and under those circumstances I would have to go along with them."7/ The motion for continuance was granted.8/

VI

By letter of April 19, 1977, Kenneth B. and Earlene Stenton demanded that the State Engineer withdraw all of the protests the Stentons had made against the subject water rights. The letter included a similar demand for the State Engineer to enforce NRS 534.090.9/

VII

Parties of interest were given notice by letter of May 20, 1977 that the hearing in the matter of the determination of forfeiture and or abandonment of the subject water rights was rescheduled for June 15, 1977 in the Eureka County Court House, Eureka, Nevada.10/ Extensive evidence, testimony and arguments were presented at the hearing.11/

VIII

Mr. Ralph Gamboa, Water Commissioner, for the State Engineer's office testified that he had knowledge and familiarity with the west half of Section 29, T.23N., R.54E. dating back to 1972. He testified that upon his inspection of the subject property in 1972, 1973, 1975 and 1976 that there was no evidence of crops or application of water on the described property. Mr. Gamboa identified and interpreted an aerial photograph of the property in question.12/ Said photo is dated September, 1973. His testimony was that said photograph showed no signs of crop on the described property.13/

IX

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office testified in concurrence with Mr. Gamboa regarding the status of equipment on the well under Certificate

FINDINGS (Continued)

7354 and the lack of crops and application of water for the period 1972 through 1976 and interpretation of the aerial photograph of the area in question.14/

X

There was no information, evidence or testimony submitted to in any way indicate, infer or confirm that water was applied to the west half of Section 29, T.23N., R.54E. for the irrigation of crops during the period of 1972 through 1976.15/

XI

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, 1975.16/

XII

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 on their own merits".17/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975, January 3, 10, 17 and 24, 1976.18/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.19/

II

The source of water under permit 22040, Certificate 7354 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

CONCLUSIONS (Continued)

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 be 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. "20/

IV

The water right under permit 22040, Certificate 7354 is a "permitted right" and "determined right" as described in NRS 534.090 and is therefore subject to the provisions of the statute.

V

The 1967 Nevada State Legislature amended NRS 534.090 to provide that forfeiture would apply to both undetermined rights and determined rights. 21/

VI

NRS 534.090 clearly set forth and provide that forfeiture shall apply whether such right 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

CONCLUSIONS (Continued)

in the Diamond Valley area 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 water right does not become final until expiration of a time for appeal of a ruling declaring such water forfeited as provided for in NRS 533.450.22/

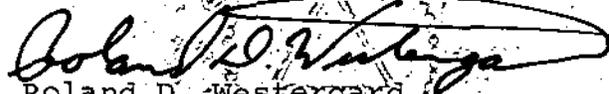
IX

Evidence, information and data available clearly and conclusively establish that for a period in excess of 5 successive years water has not been beneficially used for the purposes for which the water rights were acquired under permit 22040, Certificate 7354.

RULING

It is hereby ruled and declared that rights to appropriate water under permit 22040, Certificate 7354 have been forfeited because of failure for an excess of 5 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. No finding is made or entered regarding abandonment of said rights.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW/bl

Dated this 8th day
of September, 1977.

FOOTNOTES

1. State Exhibit No. 31, June 15 Transcript.
2. State Exhibit No. 30, June 15 Transcript.
3. State Exhibit No. 32, June 15 Transcript.
4. State Exhibit No. 33, June 15 Transcript.
5. State Exhibit No. 1, April 19 Transcript.
6. Reporters Transcript of Proceedings Upon the Hearing of Testimony and Evidence in the Matter of a Request to Declare Water Rights Forfeited and or Abandoned, April 19, 1977. (Hereinafter referred to as April 19 Transcript), Page 6 Lines 10 through 16.
7. April 19 Transcript, Page 17, Lines 20 through 26 and Page 18, Lines 1 and 2.
8. April 19 Transcript, Page 22, Lines 17 through 19.
9. State Exhibit No. 3, June 15 Transcript.
10. State Exhibit No. 2, June 15 Transcript.
11. Reporters Transcript of Proceedings Upon the Hearing of Testimony and Evidence in the Matter of a Request to Declare Water Rights Forfeited and or Abandoned, June 15, 1977. (Hereinafter referred to as June 15 Transcript).
12. State Exhibit No. 34, June 15 Transcript.
13. June 15 Transcript, Page 92.
14. June 15 Transcript, Page 93 and 94.
15. June 15 Transcript and Public Records Located within the State Engineer's Office.
16. Public Records Located within the Office of the State Engineer.
17. State Exhibit No. 57, June 15, 1977 Hearing.
18. Public Records Located within the State Engineer's Office.
19. NRS 534.090.
20. NRS 534.090.
21. Statutes of Nevada, 1967. Regular Session, Volume 2, Page 1053.
22. NRS 534.090.