

IN THE MATTER OF FORFEITURE AND/ )  
OR ABANDONMENT OF WATER RIGHTS )  
UNDER PERMIT 22206, CERTIFICATE )  
7542 AND PERMIT 23941, CERTIFICATE )  
6653 TO APPROPRIATE THE WATERS OF )  
AN UNDERGROUND SOURCE IN DIAMOND )  
VALLEY, EUREKA COUNTY, NEVADA. )

R U L I N G

GENERAL:

I

Application 22206 was filed by Kenneth A. Gotchal on August 26, 1964 to appropriate underground water for irrigation purposes. The proposed place of use was the NE $\frac{1}{4}$  of Section 7, T.21N., R.53E., M.D.B.& M. A permit was issued under application 22206 on June 3, 1965 for 2.7 c.f.s. of water for irrigation purposes. Certificate 7542 was issued under said permit on February 3, 1971.<sup>1/</sup> On September 22, 1971 permit 22206, Certificate 7542 was assigned to Ken Gotchal Enterprises.

II

Application 23941 was filed by Kenneth A. Gotchal on June 15, 1967 for permission to change the point of diversion and place of use of water heretofore appropriated under permit 19278. The proposed place of use was a portion of the NW $\frac{1}{4}$  and a portion of the W $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 7, T.21N., R.53E., M.D.B.& M. A permit was issued under application 23941 on December 6, 1967 for 2.486 c.f.s. of water for irrigation and domestic purposes. Certificate 6653 was issued under said permit on May 27, 1968.<sup>2/</sup> Permit 23941, Certificate 6653 was assigned on September 22, 1971 to Ken Gotchal Enterprises.

FINDINGS

I

In a letter of January 31, 1977 to the State Engineer, Kenneth B. and Earlene Stenton requested initiation of proceedings to declare water permits issued for Lots 5, 6, the E $\frac{1}{2}$  of the NW $\frac{1}{4}$  and NE $\frac{1}{4}$  of Section 7, T.21N., R.53E., M.D.B.& M. forfeited and/or abandoned. The above described property will hereinafter be referred to as the N $\frac{1}{2}$  of said Section 7.<sup>3/</sup>

II

By a 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 rights.<sup>4/</sup>

FINDINGS (Continued)

III

A field investigation was held on April 27, 1977 and was attended by parties of interest and representatives of the Division of Water Resources. A Report of Field Investigation dated May 11, 1977 was filed in the State Engineer's office.5/

IV

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 534.090.6/

V

Parties of interest were given notice by letter of May 20, 1977 that a hearing in the matter of the determination of forfeiture and/or abandonment of the subject rights was scheduled for Tuesday, June 28, 1977 in the Eureka County Court House, Eureka, Nevada.7/ Extensive evidence, testimony and arguments were presented at the hearing.8/

VI

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office testified that he had knowledge and familiarity with the N $\frac{1}{2}$  of Section 7, T.21N., R.53E., M.D.B. & M. dating back to 1973. He testified that from 1973 through 1976 there was no crop grown or application of water on the NE $\frac{1}{4}$  of said 8 Section 7. He testified that the well under permit 23941 in the NW $\frac{1}{4}$  of said Section 7 was equipped with a 75 horse power electric motor on a U.S. hollow shaft gearhead and Western Pump in July of 1973. The pump was idle at the time that he made his inspection but it had been pumping for irrigation on a crop mostly of alfalfa. In an inspection again in 1975, he stated that the well was being used to irrigate about 60 acres of alfalfa and 20 acres of wheat. In 1976 the well was still equipped with the motor but a crop was not irrigated during that year.9/ Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973.10/ His testimony was that the photograph showed no crop in the NE $\frac{1}{4}$  but in the NW $\frac{1}{4}$  it showed approximately 100 acres of irrigated crop.

VII

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office testified in concurrence with Mr. Gamboa regarding the status of equipment on the wells under Certificate 7542 and

FINDINGS (Continued)

Certificate 6653, the lack of crops and application of water for the period of 1972 through 1976 under Certificate 7542 and interpretation of the aerial photograph of the area in question.11/

VIII

Mr. James Arnold testified that in 1973 he was under the employ of Mr. Ken Snider who was operating the N $\frac{1}{2}$  of Section 7, T.21N., R.53E. He testified that he had assisted in irrigation of pasture feed in the NW $\frac{1}{4}$  of that section from the well under permit 23941 during 1973. He also testified that some water had been run from that well over onto the NW $\frac{1}{4}$  of the section but did not know how many acres were irrigated.12/

IX

Mr. Ramon Arrizabalaga introduced into evidence, Gotchal Exhibit "A". Gotchal Exhibit "A" is a copy of the Eureka County Tax Bill for the period 1975 and 1976 for the N $\frac{1}{2}$  of Section 7, T.21N., R.53E., M.D.B. & M. Under a list of assets the bill states that there is 152 acres of cultivated acreage and 148 acres of pasture. The bill also indicates one pump and electric motor.13/

X

Mr. Ramon Arrizabalaga also introduced into evidence, Gotchal Exhibit "B". Gotchal Exhibit "B" is a copy of a letter dated March 18, 1977 from Ken Gotchal, Inc. to the State Engineer. The letter states "In 1972 and 1973 Ken Gotchal farmed the ranch and used the water. In 1974 Ken Gotchal leased the ranch to Ken Snider who farmed and pumped the wells. In 1975 Marvin and Dorothy Bartels purchased the ranch and tried to farm it through 1976. Their subsequent divorce led to an inability to make the payments and the ranch was repossessed in late 1976".14/

XI

A determination of the irrigated acreage shown on the aerial photograph marked as State Exhibit 22 by the use of a planimeter indicates that the total irrigated acreage in the year 1973 was 75 acres. This same 75 acres of cultivated acreage appears on a photo marked as 1-4 taken June 15, 1977 by Great Basin Aerial Services under contract with the State Engineer's office. This land lies in a roughly triangular shape north of the well and northeast of a ditch running northwesterly from the well toward the NW corner of said Section 7.15/

FINDINGS (Continued)

XII

There was no evidence, information or testimony submitted that would confirm that water was applied to the NE $\frac{1}{4}$  of Section 7, T.21N., R.53E., for the irrigation of crops during the period of 1972 through 1976. Evidence and information available has confirmed that water was applied to the 75 acres of land in the NW $\frac{1}{4}$  of said Section 7 as described in Item XI above in 1973 and 1975. Evidence indicates that no water was used on the N $\frac{1}{2}$  of said Section 7 during the irrigation season of 1976.16/

XIII

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, 1975.17/

XIV

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".18/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.19/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.20/

II

The source of water under permit 22206, Certificate 7542 and permit 23941, Certificate 6653 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

CONCLUSIONS (Continued)

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.<sup>21/</sup>

IV

The water rights under permit 22206, Certificate 7542 and permit 23941, Certificate 6653 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 undetermined and determined rights.<sup>22/</sup>

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 Nevada State Legislature was fully aware of the issue regarding forfeiture of underground rights as provided in NRS 534.090. Representatives of persons interested in the Diamond Valley area and holders of rights to appropriate water for irrigation purposes in that area gave testimony before legislative

CONCLUSIONS (Continued)

committees regarding a possible amendment to NRS 534.090. No amendments to that statute were adopted by the 1977 Legislature.

VIII

Forfeiture of a 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 533.450.23/

IX

"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!"<sup>24/</sup> The current owners of permit 22206, Certificate 7542 and permit 23941, Certificate 6653 therefore are bound by their predecessors or lessees action or inaction as it relates to the possible forfeiture of said rights.

X

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 22206, Certificate 7542 on the NE $\frac{1}{4}$  of Section 7, T.21N., R.53E., M.D.B. & M. Evidence, information and data available establish that water was used from the well under permit 23941, Certificate 6653 on a total of approximately 75 acres in the NW $\frac{1}{4}$  of said Section 7 during the years 1973 and 1975. The said 75 acres lies north of the well under permit 23941 and northeast of a ditch running northwesterly from the well toward the NW corner of said Section 7.

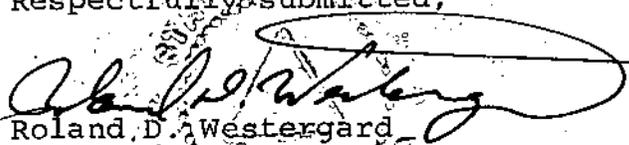
RULING

It is hereby ruled and declared that rights to appropriate water under permit 22206, Certificate 7542 have been forfeited because of failure for in 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 right. It is also ruled that a portion of the rights to appropriate water under Permit 23941, Certificate 6653 appurtenant to the W $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 7 and that portion of the NW $\frac{1}{4}$  of said Section 7 lying south of the well and southwest of a ditch running northwesterly from the well toward the northwest corner of the section as shown on State Exhibit No. 22, June 28, 1977 Transcript have been forfeited because of failure for in excess

RULING (Continued)

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. That portion of the rights under permit 23941, Certificate 6653 appurtenant to 75 acres in the NW $\frac{1}{4}$  of said Section 7, lying north of the well and northeast of a ditch running northwesterly from the well towards the northwest corner of said Section 7 are declared to be not forfeited at this time. No finding is made or entered as to abandonment of the rights under permit 23941, Certificate 6653.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/bl

Dated this 16th day  
of September, 1977.

FOOTNOTES

1. State Exhibit 19, in the Transcript of the Public Hearing 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 18, June 28, 1977 Transcript.
3. State Exhibit 17, June 28, 1977 Transcript.
4. State Exhibit 20, June 28, 1977 Transcript.
5. State Exhibit 21, June 28, 1977 Transcript.
6. State Exhibit 20, June 28, 1977 Transcript.
7. State Exhibit 1, June 28, 1977 Transcript.
8. June 28, 1977 Transcript.
9. June 28, 1977 Transcript, Pages 51 through 56.
10. State Exhibit 22, June 28, 1977 Transcript.
11. June 28, 1977 Transcript, Page 57.
12. June 28, 1977 Transcript, Pages 61 through 63.
13. Gotchal Exhibit "A", June 28, 1977 Transcript.
14. Gotchal Exhibit "B", June 28, 1977 Transcript.
15. Irrigated Acreage Estimate made in the State Engineer's Office under State Exhibit 22, June 28, 1977 Transcript and Photo 1-4 Referred to on Page 52, June 28, 1977 Transcript.
16. June 28, 1977 Transcript and Public Records Located within the State Engineer's Office.
17. Public Records within the Office of the State Engineer.
18. State Exhibit 4, June 28, 1977 Transcript.
19. Public Records within the Office of the State Engineer.
20. NRS 534.090.
21. NRS 534.090.
22. Statutes of Nevada, 1967 Regular Session, Volume 2, Page 1053.
23. NRS 534.090.
24. NRS 533.385.