

IN THE MATTER OF FORFEITURE AND/
OR ABANDONMENT OF WATER RIGHTS)
UNDER PERMIT 15380, CERTIFICATE)
6869 TO APPROPRIATE THE WATERS)
OF AN UNDERGROUND SOURCE IN)
DIAMOND VALLEY, EUREKA COUNTY,)
NEVADA.)

R U L I N G

GENERAL:

I

Application 15380 was filed by Maurine Hallie Moshier on November 9, 1953 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the W $\frac{1}{2}$ of Section 4, T.22N., R.54E., M.D.B. & M. A permit was issued under application 15380 on February 22, 1961 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6869 was issued under said permit on December 6, 1968.^{1/} There is a series of assignments of interest in Permit 15380. By a deed dated July 22, 1977 and filed in the State Engineer's office on September 12, 1977, said permit was assigned to LAMCO, Inc., a corporation.

FINDINGS

I

In a letter of January 31, 1977, Kenneth P. and Earlene Stenton requested initiation of proceedings to declare water permits issued for Lots 3 and 4, the S $\frac{1}{2}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 4, T.22N., R.54E., M.D.B. & M. forfeited and/or abandoned.^{2/}

II

By letter of April 5, 1977 parties of interest were notified that a field investigation would be held on April 28, 1977 in the matter of the forfeiture and/or abandonment of the subject rights.^{3/}

III

A field investigation was held on April 28, 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.^{4/}

IV

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 rights was scheduled for Tuesday, June 28, 1977 in the Eureka County Court House, Eureka, Nevada.^{5/} Extensive evidence, testimony and arguments were presented at the hearing.^{6/}

FINDINGS (Continued)

V

By letter of April 19, 1977, Kenneth P. 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 534.090.7/

VI

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office testified that he had knowledge and familiarity with the W $\frac{1}{2}$ of Section 4, T.22N., R.54E., M.D.B.& M. dating back to 1972. He testified that during the period 1972 through 1976 that he had never seen a crop on the W $\frac{1}{2}$ of said Section 4. The well under permit 15380 had been equipped with a Layne and Bowler pump with a Hollow Shaft gearhead with an old International motor on all of those dates.8/ Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973.9/ His testimony was that said photograph showed no signs of crop on the described property.10/

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 well under permit 15380, 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.11/

VIII

Mr. Jesse Wayne testified that in 1973 he entered into a lease agreement with Carl and Maurine Moshier for operation of the SW $\frac{1}{4}$ of said Section 4. He stated that during the summer of 1974, he cleared 40 acres of land and leveled it and installed levies. He testified that he had purchased seed for the property and had pre-irrigated a portion of the property prior to planting, however, before the pre-irrigation was completed, the engine on the well failed and Mr. Wayne did not proceed any further with development of the property. No crop was planted or harvested by Mr. Wayne in 1974.12/

IX

Mr. DiGrazia, Attorney at Law representing Carl and Maurine Moshier and Paul Anspach, introduced into evidence Moshier Exhibit "A". Moshier Exhibit "A" is a copy of the lease agreement between Carl S. and Maurine Moshier and Jesse Wayne, dated December 5, 1973.13/

FINDINGS (Continued)

X

Mr. DiGrazia introduced into evidence Moshier Exhibits "B" and "C", which are invoices from Farmers Warehouse Company, Inc. and Ferry Morse Seed Company, respectively, to Jesse Wayne for the purchase of oat seed and alfalfa seed in July, 1974.14/

XI

Mr. DiGrazia introduced into evidence, Moshier Exhibits "D" and "E". Moshier Exhibits "D" and "E" are photographs taken by Mr. Jesse Wayne in July of 1974 showing the application of water from the permit under 15380 to the land in Mr. Wayne's attempt to pre-irrigate the land prior to planting.15/

XII

Mr. DiGrazia introduced into evidence, Moshier Exhibit "F". Moshier Exhibit "F" is a copy of an agreement of sale of real estate between Carl S. and Maurine Moshier and LAMCO, Inc. for the W $\frac{1}{2}$ of Section 4, T.22N., R.54E. The agreement of sale is dated December 11, 1975.16/

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/

CONCLUSIONS (Continued)

II

The source of water under permit 15380, Certificate 6869 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."21/

IV

The water rights under permit 15380, Certificate 6869 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.22/

CONCLUSIONS (Continued)

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 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 a water right does not become final until expiration of a time for appeal of a ruling declaring such water forfeited as provided 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".24/ The current owners of permit 15380, Certificate 6869 therefore are bound by their predecessors and/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 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 15380, Certificate 6869.

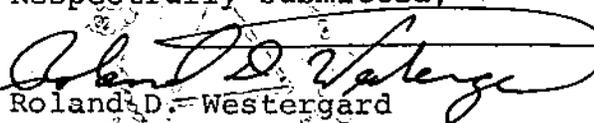
RULING

It is hereby ruled and declared that rights to appropriate water under permit 15380, Certificate 6869 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 purpose for which said rights were acquired. No finding is made or entered regarding abandonment of said rights.

Dated this 7th day
of October, 1977.

RDW/bl

Respectfully submitted,


Roland D. Westergard
State Engineer

FOOTNOTES

1. State Exhibit No. 42, in the Transcript of 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 No. 41, June 28, 1977 Transcript.
3. State Exhibit No. 43, June 28, 1977 Transcript.
4. State Exhibit No. 44, June 28, 1977 Transcript.
5. State Exhibit No. 1, June 28, 1977 Transcript.
6. June 28, 1977 Transcript.
7. State Exhibit No. 2, June 28, 1977 Transcript.
8. June 28, 1977 Transcript, Pages 89 through 95.
9. State Exhibit No. 45, June 28, 1977 Transcript.
10. June 28, 1977 Transcript, Page 90.
11. June 28, 1977 Transcript, Pages 95 through 98.
12. June 28, 1977 Transcript, Pages 98 through 106.
13. Moshier Exhibit "A".
14. Moshier Exhibits "B" and "C".
15. Moshier Exhibits "D" and "E".
16. Moshier Exhibit "F".
17. Public Records within the Office of the State Engineer.
18. State Exhibit No. 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