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

ORIGINAL
RULING
#4187

In the Matter of Applications
of Amargosa Resources, Inc.

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING
MAY 2, 1995

APPEARANCES:

For the State:	Mark Beutner Bill Quinn Jason King Robert Coache
For the Applicant:	BRENT T. KOLVET, ESQ. Attorney at Law 888 W. Second St. #200 Reno, Nevada
For the Protestants:	Michael M. DeLee Fred White Fred Fellwock David Mulkey
Reported by:	SHELDON L. HENSLEY, CCR, RPR Nevada CCR #316

1 (Recess.)

2 MR. PALM: Are we ready to come to order? Let's go
3 back on the record. The State Engineer has authorized me to
4 enter an oral ruling at this hearing. Therefore after careful
5 analysis of the evidence and testimony of this hearing, I am
6 submitting on this record the findings of facts, conclusions
7 of law and ruling applying to permits 16399, 17181, and
8 17790.

9 Note that permit 25636 will not be covered by this
10 oral ruling. I'm going to defer ruling on 25636 until a
11 later date when a written ruling will be entered, after I've
12 had the opportunity to review the testimony and evidence in
13 more detail.

14 Findings of fact: The record contains much evidence
15 supporting the fact that water was not used on the places of
16 use of permit 16399, certificate 5906, permit 17181,
17 certificate 6008, and permit 17790, certificate 5478. That
18 evidence can be summarized as follows:

19 The State Engineer's annual inventories in Exhibit
20 10 show no use of any kind for the years 1985 through 1992.
21 The aerial photographs for the years 1987, 1989, 1990, 1993,
22 Exhibits 19 through 22 respectively, clearly show an abundance
23 of sagebrush and creosote bush on the places of use which
24 precludes the possibility the land was cleared, crops were
25 planted and irrigated during any of these years.

1 Testimony of various witnesses supports the above
2 mentioned exhibits. The testimony of Robert Coache and Jason
3 King indicate that no water was used on the place of use and
4 this was noted on the annual inventories. The inventories
5 themselves state that zero use for the years 1985 through
6 1992. Mr. Coache also testified that he observed no change in
7 the vegetation since he first went out to these places of use
8 in 1983.

9 Mr. Robert Bement testified that the aerial photos
10 and his ground cruise observations show the presence of
11 creosote bush that is approximately in one case, 7 to 10 years
12 old, in other cases, 19 or 20 years old or even longer.

13 Now, regarding 16399, there are no ground cruise
14 photographs in Exhibit 18. We had testimony that those photos
15 were not developed or didn't come out and so they were not
16 included in the exhibit. However, we have Mr. Bement's
17 testimony that he personally visit the place of use of 16399,
18 made his ground observations, and then his testimony at this
19 hearing supported the creosote use and the age, the creosote
20 growth and the age of that creosote bush and therefore the
21 ground cruising was performed. There are no photos, I'm
22 relying on Mr. Bement's testimony with regard to ground cruise
23 for 16399.

24 With respect to 17181, and 17790, the ground cruise
25 photos are in Exhibit 18 and are relied upon to support the

1 testimony of Mr. Bement and his interpretation of the aerial
2 photos. I'll also address the several objections to the use
3 of Exhibit 18.

4 I find that the testimony of Mr. Bement was entirely
5 consistent with the State Engineer's ruling regarding Exhibit
6 18 in that it be used for ground cruising in support of the
7 aerial photos. Therefore the entire testimony of
8 Mr. Bement is considered here in making the ruling.

9 With regard to permit 17181, we had testimony and
10 the evidence does show that there are really two portions of
11 the place of use, there's the east half which shows a certain
12 growth of creosote bush that Mr. Bement estimated had to be 19
13 or 20 years old; along the west half, however, is on the
14 photo, quite a bit lighter than the east half. However, the
15 testimony shows that the west half is covered by creosote
16 bush; however, the age of the bush is somewhat less. Perhaps
17 in the range of 7 to 10 years old.

18 We have no testimony or evidence on the record to
19 show any water use by the water right holders on any of the
20 places of use of these three water rights. In consideration
21 of all the above, I find there is clear and convincing
22 evidence that a continuous period of nonuse exceeding five
23 years has occurred on the places of use of permit 16399,
24 certificate 5906, permit 17181, certificate 6008, permit
25 17790, certificate 5478.

1 Conclusions: The State Engineer has jurisdiction in
2 this matter pursuant to the authority set forth in the Nevada
3 Revised Statutes, 534.090.

4 2. NRS 534.090, provides that the failure to use an
5 underground water right for the purpose for which it was
6 acquired for a period of five years works a-- a continuous
7 period of five years, works a forfeiture of that water right.

8 3. A continuous period of nonuse exceeding the
9 statutory five years has occurred with respect to these three
10 water rights, therefore I conclude that the water-- that the
11 right to use water under these three certificated water rights
12 has been forfeited.

13 Ruling: The right to use water under permit 16399,
14 certificate 5906, permit 17181, certificate 6008, and permit
15 17790, certificate 5478, is hereby declared forfeited on the
16 grounds that the water under said certificates has not been
17 placed to beneficial use for a continuous period exceeding
18 five years.

19 Having entered this ruling, I'm declaring this
20 hearing closed.

21 (Proceedings Concluded)

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