

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF THE POSSIBLE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 15819, CERTIFICATE)
5330 FROM AN UNDERGROUND SOURCE, AMARGOSA)
DESERT GROUNDWATER BASIN (230), NYE COUNTY,)
NEVADA.)

RULING

4401

GENERAL

I.

Application 15819 was filed by Gordon W. Bettles on October 4, 1954, to appropriate the underground waters within the Amargosa Desert Groundwater Basin, Nye County, Nevada. Permit 15819 was approved on August 5, 1955, for 2.0 cubic foot per second (cfs) for irrigation and domestic use. Certificate 5330 under Permit 15819 was issued on May 17, 1962, for 1.34 cfs of water and not to exceed 100 acre feet annually (AFA) for the irrigation of 20 acres of land, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, T.17S., R.49E., M.D.B.&M. The point of diversion is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 11.¹

II.

On March 17, 1993, Amargosa Resources, Incorporated (ARI) petitioned the State Engineer to declare certain water rights forfeited.² Permit 15819, Certificate 5330 is included in the petition. The petitioner submitted records going back to 1985 to show the non-use of water. The alleged period of non-use, for the purpose of this forfeiture proceeding, is 1985 through 1992.

III.

On May 16, 17, and 18, 1994, the State Engineer conducted a hearing to allow the petitioner the opportunity to provide the foundation for the evidence filed in support of the petition.³

¹ File No. 15819, official records in the office of the State Engineer.

² Exhibit No's. 1 and 2, Public Administrative Hearing before the State Engineer May 16-18, 1994.

³ Exhibit No. 7, Public Administrative Hearing before the State Engineer May 16-18, 1994.

On May 1, 1996, a hearing was held to consider the possible forfeiture of Permit 15819, Certificate 5330.⁴ The petitioner, ARI, did not appear at the hearing.⁵

IV.

At the hearing to consider the forfeiture of Permit 15819, Certificate 5330, administrative notice was taken of record developed at the foundation hearing, May, 1994, and of the record developed at all the previous hearings on the individual water rights.⁶ Objections to the taking of administrative notice of Exhibit No's. 17, 18, 19, 20, 21, 22, and 27 were noted.⁵

FINDINGS OF FACT

I.

At the hearing, Counsel for the water right holders⁷ moved to dismiss the petition regarding Permit 15819, Certificate 5330, on the grounds that ARI did not appear to present evidence and testimony supporting its petition to declare the forfeiture of Permit 15819, Certificate 5330.⁸ ARI's failure to appear was the basis for the objections to the taking of administrative notice of the exhibits enumerated above.

The State Engineer has the statutory authority to declare a forfeiture of water rights in the absence of a third party petition.⁹ The evidence submitted at the foundation hearing is on the record and was subject to cross examination, and stands on its

⁴ Exhibit No. 174, Public Administrative Hearing before the State Engineer May 1, 1996.

⁵ Transcript p. 6, Public Administrative Hearing before the State Engineer, May 1, 1996.

⁶ Transcript pp. 7-11, Public Administrative Hearing before the State Engineer May 1, 1996.

⁷ The owner of record, Gordon W. Bettles, is deceased. Counsel for the heirs to Mr. Bettles' estate appeared to represent the heirs. See Transcript p. 6, Public Administrative Hearing before the State Engineer, May 1, 1996.

⁸ Transcript pp. 11-12, Public Administrative Hearing before the State Engineer, May 1, 1996.

⁹ NRS 534.090.

own, even in the absence of expert testimony that was provided in past hearings by ARI's witnesses. The State Engineer finds that where evidence of a possible forfeiture of water rights exists, it must be pursued, regardless of who appears or does not appear to support such evidence. The State Engineer further finds that the hearing rightfully proceeded. The motion to dismiss is denied.

II.

The State Engineer has taken annual pumpage inventories in the Amargosa Desert Groundwater Basin since 1983 for the purpose of overall basin management. The annual groundwater pumpage inventory for the Amargosa Desert Groundwater Basin, for the years 1985 through 1992 shows that no water was used for irrigation on any of the 20 acres of land allowed under Permit 15819, Certificate 5330.¹⁰ The testimony of the individuals who performed the inventories for those years, except 1990,¹¹ confirmed that no irrigation occurred during those years.¹²

While the property has not been irrigated during 1985 through 1992, there has been water used for quasi-municipal purposes, although a permit for this use was not issued by the State Engineer.¹³ The certificated well is operational and three single-family dwellings, an RV park with ten spaces, and an out-of-business restaurant and bar are all connected to the well.¹⁴ The

¹⁰Exhibit No. 10, Public Administrative Hearing before the State Engineer May 16-18, 1994.

¹¹The individual who performed the inventory for 1990, Mr. Bill Quinn, is no longer with the Nevada Division of Water Resources. Questions directed to Mr. Quinn could have been answered in writing if they were submitted prior to the hearing, in accordance with the Notice of Hearing. No questions for Mr. Quinn were submitted.

¹²Transcript pp. 14-15 and 32-33, Public Administrative Hearing before the State Engineer, May 1, 1996.

¹³On February 11, 1974, Application 28094 was filed to change the manner of use of Permit 15819, Certificate 5330 to quasi-municipal use but was denied due to the failure of the Applicant to correctly complete the application. No permit was ever issued for quasi-municipal use on this property.

¹⁴Transcript pp. 63-64, Public Administrative Hearing before the State Engineer, May 1, 1996.

only beneficial use of water on this property has been for quasi-municipal purposes and is estimated to be eight AFA.¹⁵

The State Engineer finds that there is clear and convincing evidence that the place of use of Permit 15819, Certificate 5330 was not irrigated during the alleged period of forfeiture, 1985 through 1992. The State Engineer further finds that a permit for quasi-municipal use on this property was not issued.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter.¹⁶

II.

Failure for a period of five consecutive years on the part of a water right holder, to use beneficially all or any part of the underground water for the purpose for which the right is acquired (emphasis added), works a forfeiture of the water right, to the extent of the non-use.¹⁷

III.

Because the law disfavors a forfeiture, there must be clear and convincing evidence of the statutory period of non-use, for the State Engineer to declare a forfeiture.¹⁸

IV.

If, for any reason, it should become impracticable to use water beneficially or economically at the place to which it is appurtenant, the right may be severed from such place of use and simultaneously transferred and become appurtenant to other place or places of use, in the manner provided in NRS Chapter 533, and not

¹⁵The estimate is based on 1,000 gallons per day (gpd) for the restaurant/bar and for each of the three single family dwellings and 300 gpd for each of the ten RV spaces.

¹⁶ NRS Chapters 533 and 534.

¹⁷ NRS 534.090.

¹⁸ Town of Eureka v. Office of the State Eng'r of Nevada, 108 Nev, 826 P.2d 948 (1991).

otherwise (emphasis added), without losing priority of right heretofore established.¹⁹

V.

Any person who wishes to change the manner of use of water already appropriated, shall, before performing any work in connection with such change, apply to the State Engineer for a permit to do so.²⁰

VI.

The State Engineer shall, upon written request, waive the requirements of NRS Chapters 533 and 534 regarding permits for the use and development of underground water from a well if the well existed on July 1, 1983, it is used solely for domestic purposes by not more than three single-family dwellings, and each of those dwellings does not draw more than 1,800 gpd.²¹

VII.

There is clear and convincing evidence that the place of use of Permit 15819, Certificate 5330 was not irrigated for a period of time that exceeds five years. The State Engineer concludes that Permit 15819, Certificate 5330 is forfeited.

VIII.

Water was used for quasi-municipal purposes, without benefit of a permit, at the place of use of Permit 15819, Certificate 5330. Because this use was for a purpose other than irrigation, the State Engineer concludes that the quasi-municipal use cannot be deemed as water use under the terms and conditions of Permit 15819, Certificate 5330. The State Engineer further concludes that the quasi-municipal use cannot be relied upon to avoid the forfeiture of Permit 15819, Certificate 5330.

IX.

The State Engineer concludes that the use of water from the well under Permit 15819, Certificate 5330 to serve the three single-family dwellings, the RV park, and the restaurant/bar does

¹⁹NRS 533.040

²⁰NRS 533.325

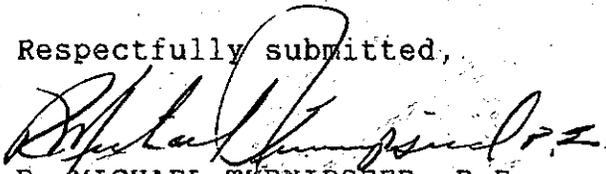
²¹NRS 534.185

not comply with the provisions of NRS Chapters 533 and 534. The water service to the three single-family dwellings may continue if a waiver is granted under the provisions of NRS 534.185. The service to the RV park and the restaurant/bar must cease immediately.

RULING

The right to beneficially use the water appropriated under Permit 15819, Certificate 5330 is hereby declared forfeited on the grounds that the water was not beneficially used for irrigation for a period of time that exceeds five years. Water service to the RV park and the restaurant/bar must be disconnected immediately. If water service to the three single-family dwellings is continued, then a request for a waiver pursuant to NRS 534.185 must be filed in the Office of the State Engineer within 30 days of the date of this Ruling.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 8th day of
August, 1996.