

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF FORFEITURE AND/OR )  
ABANDONMENT OF THE WATER RIGHT )  
UNDER PERMIT 15826, CERTIFICATE 4944, )  
TO APPROPRIATE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE IN TRUCKEE )  
MEADOWS, WASHOE COUNTY, NEVADA. )

RULING

GENERAL

Application 15826 was filed on October 14, 1954, by H. Hamer Holloway and Eleanor F. Holloway to appropriate waters of an underground source for domestic purposes within the SE1/4 SE1/4 Section 35 and the SW1/4 SW1/4 Section 36, T.19N., R.19E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SE1/4 Section 35, T.19N., R.19E., M.D.B.&M. A permit was issued under Application 15826 on February 14, 1955, for 0.25 cubic feet per second (c.f.s.) of water for domestic purposes. Certificate 4944 was issued under said permit on December 23, 1959, for 0.02 c.f.s. and not to exceed 1,440 gallons per day for one house. The place of use of said certificate is located within the N1/2 SW1/4 SW1/4 SW1/4 Section 36, T.19N., R.19E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

A Petition dated July 20, 1984, signed by Thomas A. Cooke, requested that the water right under Permit 15826, Certificate 4944, be declared forfeited.<sup>2</sup>

II.

By letter dated July 23, 1984, the owner of record of Permit 15826, Certificate 4944, was noticed that a hearing in the matter of forfeiture was scheduled for August 14, 1984. The notice sent to the owner of record of Permit 15826, Certificate 4944, was returned to the office of the State Engineer stating "Addressee Unknown".<sup>3</sup>

III.

A certified letter was sent to David Sinai and Ebrahim Farahi on July 30, 1984, notifying them of the scheduled hearing in the matter of forfeiture of Permit 15826, Certificate 4944.<sup>4</sup>

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<sup>1</sup> Public record in the office of the State Engineer.

<sup>2</sup> Public record in the office of the State Engineer.

<sup>3</sup> Public record in the office of the State Engineer.

<sup>4</sup> Public record in the office of the State Engineer.

IV.

A hearing in the matter of forfeiture of Permit 15826, Certificate 4944, was held as scheduled. Testimony and evidence was received at that hearing.<sup>5</sup>

V.

William H. Savage, representing Ira B. Harkey, Jr., testified that the well in question in this matter "...was not an operational well, a useful well for at least seven years".<sup>6</sup> Mr. Harris testified that the seven years were from August 1984 back to approximately August 1977.<sup>7</sup> Mr. Savage stated that the well in question is located on a piece of property owned by Ira B. Harkey, Jr., and the place of use stated in Certificate 4944 is under the ownership of a Mr. Farahi.<sup>8</sup>

VI.

Gordon W. Harris, representing Mr. Savage, testified that a Miss Bilts (sic), the owner of the one house served water under Certificate 4944, drilled another well to serve this subject property and "(s)he elected to abandon the well on the Ira Harkey property".<sup>9</sup> Mr. Harris further testified that Miss Bilts (sic) drilled another well at the house in question in this matter on September 7, 1971, and from "...that point or thereabouts the other well was abandoned because it had failed".<sup>10</sup> Mr. Harris further testified that the existing property owner, Mr. Fahari (sic), of the house under Certificate 4944 could not have used the well on Mr. Harkey's property since the well is absolutely inoperative and has not been in service since 1971.<sup>11</sup> Permit 26294 was issued to Sheila Biltz O'Brien on March 29, 1972, for irrigation and domestic purposes. Certificate 8075 was issued to Sheila Kingman Biltz on June 1, 1975, for irrigation and domestic purposes.<sup>12</sup> The place of use for the domestic use is the same as under Certificate 4944.

VII.

Affidavits of William H. Savage and Gordon W. Harris were entered into the hearing record.<sup>13</sup> Mr. Savage's affidavit states that he knows "...that neither all or any

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<sup>5</sup> Transcript of Proceedings - Hearing, Tuesday, August 14, 1984.

<sup>6</sup> August 14, 1984, Transcript; p. 8, ll. 5 and 6.

<sup>7</sup> August 14, 1984, Transcript; p. 8, l. 26, and p. 9, ll. 1 and 2.

<sup>8</sup> August 14, 1984, Transcript; p. 9, ll. 7 through 11.

<sup>9</sup> August 14, 1984, Transcript; p. 10, ll. 9 through 19.

<sup>10</sup> August 14, 1984, Transcript; p. 17, ll. 18 through 23.

<sup>11</sup> August 14, 1984, Transcript; p. 18, ll. 15 through 21.

<sup>12</sup> Public record in the office of the State Engineer. See Permit 26294, Certificate 8075.

<sup>13</sup> August 14, 1984, Transcript; Exhibit 2.

part of the water..." from the well in question "...has been beneficially used at any time during the last seven years for the purpose which such water rights were acquired".<sup>14</sup> Mr. Harris' affidavit states that he knows "...that neither all, nor any part of the water..." from the well in question "... has been beneficially used at any time during the last 8 years for the purpose for providing water for which said water right was acquired".<sup>15</sup>

VIII.

A field investigation was conducted by the Division of Water Resources on August 23, 1984, to view the well in question. The results of the field investigation revealed that apparently the well had not been used for a considerable period of time.<sup>16</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.<sup>17</sup>

II.

The source of water under Permit 15826, Certificate 4944, is underground water.

III.

NRS 534.090 states:<sup>18</sup>

"1. Except as provided in subsections 2 and 3, failure for 5 successive years after April 15, 1967, on the part of the holder of any right, whether it is an adjudicated right, an unadjudicated right, or a permitted right, and further whether the right is initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed, works a forfeiture of both undetermined rights and determined rights to the use of that water to the extent of the nonuse. Upon the forfeiture of a right to the use of ground water, the water reverts to the public and is 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, that 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."

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<sup>14</sup> August 14, 1984, Transcript; Exhibit 2, Affidavit of William H. Savage.

<sup>15</sup> August 14, 1984, Transcript; Exhibit 2, Affidavit of Gordon W. Harris.

<sup>16</sup> See "Report of Field Investigation", public record in the office of the State Engineer under Permit 15826.

<sup>17</sup> NRS 534.090.

<sup>18</sup> NRS 534.090, sections 1 and 4.

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"4. A right to use underground water whether it is 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 of registered or certified mail to the person of record who had the prior right, that 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."

IV.

The water right under Permit 15826, Certificate 4944, is a permitted right and a determined right as described in NRS 534.090 and is therefore subject to the provisions of that statute.

V.

Forfeiture and/or abandonment 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.

VI.

NRS 533.385 states:<sup>19</sup>

- "1. An assignment of a water permit or application is valid only if it is made to a person otherwise authorized to acquire the permit.
2. Except as provided in subsection 3, 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 is binding except between the parties thereto, unless filed for record in the office of the state engineer..."

The current owner of Permit 15826, Certificate 4944, and any subsequent owners not on file with the office of the State Engineer are bound by their predecessors or lessees action or inaction as it relates to the possible forfeiture and/or abandonment of said right.

VII.

Testimony and evidence establishes that, for a period in excess of 5 successive years, water has not been beneficially used for the purpose for which the water was acquired under Permit 15826, Certificate 4944. No testimony or evidence was submitted to refute that this right should not be declared forfeited and/or abandoned.

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<sup>19</sup> NRS 533.385, Sections 1 and 2.

VIII.

There is substantial evidence showing intent to abandon the water right under Permit 15826, Certificate 4944.

RULING

It is hereby ruled and declared that the right to appropriate water under Permit 15826, Certificate 4944, has been forfeited because of failure for in excess of 5 successive years on the part of the holder or successors of the right to use beneficially the underground water for the purpose for which said right was acquired.

Respectfully submitted



Peter G. Morros  
State Engineer

PGM/HR/bl

Dated this 28th day of  
SEPTEMBER, 1984.