

IN THE MATTER OF FORFEITURE AND/OR )  
ABANDONMENT OF WATER RIGHTS UNDER )  
PERMIT 19199, CERTIFICATE 7071 TO )  
APPROPRIATE THE WATERS OF AN UNDER- )  
GROUND SOURCE IN DIAMOND VALLEY, )  
EUREKA COUNTY, NEVADA. )

R U L I N G

153

GENERAL:

Application 19199 was filled by Horace Blake Briscoe on September 13, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the W $\frac{1}{2}$  of Section 30, T.23N., R.54E., M.D.B. & M. A permit was issued under application 19199 on September 1, 1961 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 7071 was issued under said permit on July 15, 1969.<sup>1/</sup> There is an assignment of interest of permit 19199. The current owner is Shirley H. Williamsen.

FINDINGS

I

In a letter of January 19, 1977 to the State Engineer, Kenneth E. and Earlene Stenton requested initiation of proceedings to declare water permits issued for Lots 1, 2, 3, 4 and the E $\frac{1}{2}$ W $\frac{1}{2}$  of Section 30, T.23N., R.54E., forfeited and/or abandoned.<sup>2/</sup> The above described property will hereinafter be referred to as the W $\frac{1}{2}$ , Section 30, T.23N., R.54E., M.D.B. & M.

II

By letter of January 28, 1977 parties of interest were notified that a field investigation would be held on February 16, 1977 in the matter of the forfeiture and abandonment of the subject rights.<sup>3/</sup>

III

A field investigation was held on February 16, 1977 and was attended by parties of interest and representatives of the Division of Water Resources. A Report of Field Investigation dated February 25, 1977 was filed in the State Engineer's office.<sup>4/</sup>

IV

Parties of interest were given notice by letter of April 1, 1977 that a hearing in the matter of forfeiture and/or abandonment of subject water rights was scheduled for Thursday, April 19, 1977 in the Eureka County Court House, Eureka, Nevada.<sup>5/</sup>

V

The hearing was convened as scheduled. Counsel for Shirley Williamsen joined counsel for other parties present in a request and motion that the hearing be continued until another date on the basis "There is legislation pending that if it passes would greatly change the forfeiture statutes and

FINDINGS (Continued)

would introduce into the concept of forfeiture several new factors and that the testimony that would be taken at this hearing would be quite different if the legislation should pass and many other things that could be introduced as evidence. . . . "6/ Mr. C. E. Horton, Attorney at Law, representing Shirley Williamsen made the following statement in support of the motion for continuance. "Now the issues in this case have so much at stake, I don't think this calls for any summary or hasty determination, so I join in the motion and respectfully ask that the matter be continued until such time as we can prepare a case and have our witnesses present, and also determine whether or not the legislature is going to change the presently existing law. 7/ The motion for continuance was granted. 8/

VI

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. 9/

VII

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 water rights was rescheduled for June 15, 1977 at the Eureka County Court House, Eureka, Nevada. 10/ Extensive evidence, testimony and arguments were presented at the hearing. 11/

VIII

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office testified that he had knowledge and familiarity with the SW $\frac{1}{4}$  of Section 30, T.23N., R.54E., dating back to 1972. He testified that upon his inspection of the subject property that there was no evidence of crops or application of water to beneficial use on the described property in the period 1972 through 1976. During that period the well was neither equipped with a pump or motor. Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973. 12/ His testimony was that said photograph showed no signs of crops on the described property. 13/

IX

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 19199, Certificate 7071, 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. 14/

X

There was no evidence or testimony submitted that would in any way indicate, infer or confirm that water was applied to the SW $\frac{1}{4}$  of Section 30, for the irrigation of crops during the period of 1972 through 1976. 15/

FINDINGS (Continued)

XI

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, 1975.16/

XII

Order No. 541 was issued by the State Engineer on December 22, 1975 entitled "Notice of Curtailment of Water Appropriations 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".17/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.18/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.19/

II

The source of water under permit 19199, Certificate 7071 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

CONCLUSIONS (Continued)

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."20/

IV

The water right under permit 19199, Certificate 7071 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

The 1967 State Legislature amended NRS 534.090 to provide that forfeiture would apply to both undetermined and determined rights.21/

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 forfeitures of underground water rights as provided in NRS 534.090. Representatives of persons interested in the Diamond Valley area and 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 for in NRS 533.450.22/

IX

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 19199, Certificate 7071.

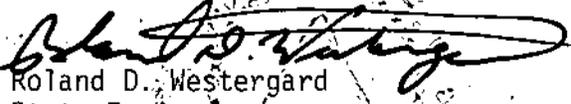
RULING

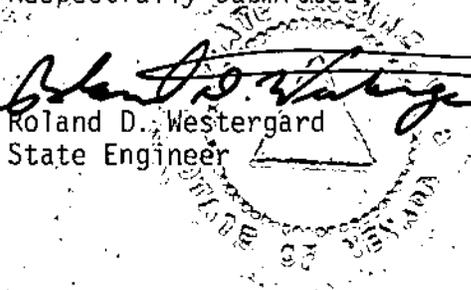
It is hereby ruled and declared that rights to appropriate water under permit 19199, Certificate 7071 have been forfeited because of failure for in excess of 5 successive years on the part of the holder of the rights to

RULING (Continued)

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.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer



RDW/b1

Dated this 8th day  
of September 1977.

FOOTNOTES

1. State Exhibit No. 36, June 15, 1977 Transcript.
2. State Exhibit No. 35, June 15, 1977 Transcript.
3. State Exhibit No. 37, June 15, 1977 Transcript.
4. State Exhibit No. 38, June 15, 1977 Transcript.
5. State Exhibit No. 1, April 19, 1977 Transcript.
6. Reporters Transcript of Proceedings Upon the Hearing of Testimony and Evidence in the Matter of a Request to Declare Water Rights Forfeited and/or Abandoned, April 19, 1977. (Hereinafter referred to as April 19, 1977 Transcript), Page 6, Lines 10 through 16.
7. April 19, 1977 Transcript, Page 11, Lines 6 through 12.
8. April 19, 1977 Transcript, Page 22, Lines 17 through 19.
9. State Exhibit No. 3, June 15, 1977 Transcript.
10. State Exhibit No. 2, June 15, 1977 Transcript.
11. Reporters Transcript of Proceedings Upon the Hearing of Testimony and Evidence in the Matter of a Request to Declare Water Rights Forfeited and/or Abandoned, June 15, 1977. (Hereinafter referred to as June 15, 1977 Transcript)
12. State Exhibit No. 34, June 15, 1977 Transcript.
13. June 15, 1977 Transcript, Pages 106 and 107.
14. June 15, 1977 Transcript, Pages 107 and 108.
15. June 15, 1977 Transcript and Public Records Located within the State Engineer's Office.
16. Public Records within the Office of the State Engineer.
17. State Exhibit No. 57, June 15, 1977 Transcript.
18. Public Records within the Office of the State Engineer.
19. NRS 534.090.
20. NRS 534.090.
21. Statutes of Nevada 1967 Regular Session, Volume 2, Page 1053.
22. NRS 534.090.