

IN THE MATTER OF FORFEITURE AND/ )  
OR ABANDONMENT OF WATER RIGHTS )  
UNDER PERMIT 18790, CERTIFICATE )  
7010; PERMIT 18791, CERTIFICATE )  
6477; PERMIT 18792, CERTIFICATE )  
6478; PERMIT 18793, CERTIFICATE )  
6479; PERMIT 18794, CERTIFICATE )  
6480; PERMIT 18795, CERTIFICATE )  
6481; PERMIT 18798, CERTIFICATE )  
6118 AND PERMIT 18799, CERTIFI- )  
CATE 6128 TO APPROPRIATE THE )  
WATERS OF AN UNDERGROUND SOURCE )  
IN DIAMOND VALLEY, EUREKA COUNTY, )  
NEVADA. )

R U L I N G

153

GENERAL:

I

Application 18790 was filed by Betty S. Murphy on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the N½ of Section 14, T.21N., R.53E., M.D.B.& M. A permit was issued under application 18790 on December 15, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 7010 was issued under said permit on May 2, 1969.1/ There is a series of assignments of interest in Application 18790. The current owners are Frank B. and Vetra Denis as joint tenants.

II

Application 18791 was filed by Betty S. Murphy on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the N½ of Section 14, T.21N., R.53E., M.D.B.& M. A permit was issued under Application 18791 on December 15, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6477 was issued under said permit on January 25, 1968.2/ There is a series of assignments of interest in Application 18791. The current owners are Frank B. and Vetra Denis, joint tenants.

III

Application 18792 was filed by Melvin S. Murphy on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the S½ of Section 14, T.21N., R.53E., M.D.B.& M. A permit was issued under Application 18792 on December 15, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6478 was issued under said permit on January 25, 1968.3/ There is a series of assignments of interest in permit 18792. The current owners of record are Frank B. and Vetra Denis, as joint tenants.

GENERAL (Continued)

IV

Application 18793 was filed on May 2, 1960 by Melvin S. Murphy to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the S $\frac{1}{2}$  of Section 14, T.21N., R.53E. A permit was issued under Application 18793 on December 15, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6479 was issued under said permit on January 25, 1968.<sup>4/</sup> There is a series of assignments of interest in permit 18793. The current owners of record are Frank B. and Vetra Denis, joint tenants.

V

*partial*  
Application 18794<sup>4</sup> was filed by Katie M. Murphy on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the N $\frac{1}{2}$  of Section 23, T.21N., R.53E., M.D.B. & M. A permit was issued under Application 18794 on December 19, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6480 was issued under said permit on January 25, 1968.<sup>5/</sup> There is a series of assignments of interest in permit 18794. The current owners of record are Frank B. and Vetra Denis, joint tenants.

VI

Application 18795 was filed by Katie M. Murphy on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the N $\frac{1}{2}$  of Section 23, T.21N., R.53E., M.D.B. & M. A permit was issued under application 18795 on December 19, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6481 was issued under said permit on January 25, 1968.<sup>6/</sup> There is a series of assignments of interest in permit 18795. The current owners of record are Frank B. and Vetra Denis, joint tenants.

VII

Application 18798 was filed by Denver Kelly on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the W $\frac{1}{2}$  of Section 11, T.21N., R.53E., M.D.B. & M. A permit was issued under Application 18798 on December 19, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6118 was issued under said permit on January 4, 1967.<sup>7/</sup> There is a series of assignments of interest in permit 18798. The current owners of record are Frank B. and Vetra Denis, joint tenants.

GENERAL (Continued)

VIII

Application 18799 was filed by Denver Kelly on May 2, 1960 to appropriate underground water for irrigation and domestic purposes. The proposed place of use was the W $\frac{1}{2}$  of Section 11, T.21N., R.53E., M.D.B.& M. A permit was issued under application 18799 on December 19, 1960 for 5.4 c.f.s. of water for irrigation and domestic purposes. Certificate 6128 was issued under said permit on January 18, 1967.<sup>8/</sup> There is a series of assignments of interest in permit 18799. The current owners of record are Frank B. and Vetra Denis, joint tenants.

FINDINGS

I

In a letter of January 31, 1977, Kenneth P. and Earlene Stenton requested initiation of proceedings to declare water permits issued for the W $\frac{1}{2}$  of Section 11, the E $\frac{1}{2}$  of Section 14 and the N $\frac{1}{2}$  of Section 23, T.21N., R.53E., M.D.B. & M., forfeited and/or abandoned.<sup>9/</sup> In a similar letter also dated January 31, 1977 the Stentons also requested initiation of proceedings to declare water permits issued for the W $\frac{1}{2}$  of Section 14, T.21N., R.53E., M.D.B.& M. forfeited and/or abandoned.

II

By letter of April 5, 1977 parties of interest were notified that a field investigation would be held on April 25, 1977 in the matter of the forfeiture and abandonment of the subject rights.<sup>10/</sup>

III

A field investigation was held on April 25, 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.<sup>11/</sup>

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 water rights was scheduled for Tuesday, June 28, 1977 in the Eureka County, Court House, Eureka, Nevada.<sup>12/</sup> Extensive evidence, testimony and arguments were presented at the hearing.<sup>13/</sup>

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.<sup>14/</sup>

FINDINGS (Continued)

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 11, the E $\frac{1}{2}$  of Section 14 and the N $\frac{1}{2}$  of Section 23, all in T.21N., R.53E., M.D.B. & M. dating back to 1972. He testified that he had never seen a crop on the W $\frac{1}{2}$  of said Section 11 to which permit numbers 18798 and 18799 are appurtenant. The well under permit 18798 had been equipped with an A. O. Smith pump and gearhead but had never had a motor installed. The well under permit 18799 had been equipped with an old Layne pump but there was never a motor or gearhead on it during his inspections. He testified that he had never seen a crop on the NE $\frac{1}{4}$  of Section 14, T.21N., R.53E., to which permit 18790, Certificate 7010 is appurtenant. The well under permit 18790 had been equipped with a pump but there was never a motor on it. The only cultivation that had taken place on the SE $\frac{1}{4}$  of Section 14, T.21N., R.53E., to which permit 18792 is appurtenant was a crop of winter wheat that was planted in 1975, however the crop was not watered from the well and was not harvested. The well had been equipped with a U.S. gearhead and a Layne and Bowler pump but no motor during his inspections. He testified that from the period 1972 through 1976 there had been no crop planted on the NW $\frac{1}{4}$  of Section 23, T.21N., R.53E., to which permit 18795, Certificate 6481 is appurtenant. During that time the well had been equipped with a U.S. gearhead and a Layne and Bowler pump but no motor or service pole. In 1972 approximately 80 acres of wheat was planted on the NE $\frac{1}{4}$  of Section 23, T.21N., R.53E., M.D.B. & M. to which permit 18794 is appurtenant. From 1973 through 1976 there was no crop on the property.<sup>15/</sup> Mr. Gamboa identified and interpreted aerial photographs of the property in question. Said photos were dated September, 1973.<sup>16/</sup> He testified that the only evidence of cultivation on the subject property apparent on the photos was on the N $\frac{1}{2}$  NE $\frac{1}{4}$  and the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.21N., R.53E. There was no evidence of crop or cultivation on the NW $\frac{1}{4}$ , Section 23; the W $\frac{1}{2}$ , Section 11 or the E $\frac{1}{2}$ , Section 14, all T.21N., R.53E.<sup>17/</sup>

VII

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office, testified in concurrence with Mr. Gamboa regarding the status of the equipment on the wells under permits 18790, 18791, 18792, 18793, 18794, 18795, 18798 and 18799, the lack of crops under permits 18790, 18792, 18795, 18798 and 18799, the irrigation of crops under permit 18794 in 1973 and interpretation of the aerial photographs of the area in question.<sup>18/</sup>

VIII

Mr. Harold Groth testified that in 1972 he farmed the NE $\frac{1}{4}$  of said Section 23. He said that there was 80 acres of winter wheat planted and 40 acres of spring wheat. The crop was irrigated through the summer of 1972 and was harvested that year.<sup>19/</sup>

FINDINGS (Continued)

IX

Evidence and testimony concerning the W $\frac{1}{2}$  of Section 14, T.21N., R.53E., to which permit 18791, Certificate 6477 and permit 18793, Certificate 6479 are appurtenant was not taken during the June 28, 1977 hearing. Evidence available in the State Engineer's office including 1973 aerial photographs and notes made by Ralph Gamboa and Wayne Testolin during their field inspections of the area, indicate that there has been no water placed to beneficial use on the W $\frac{1}{2}$  of said Section 13 during the years 1972 through 1977.20/

X

There was no information, evidence or testimony submitted that would in any way indicate, infer or confirm that water was applied to the W $\frac{1}{2}$  of Section 11, all of Section 14 or the NW $\frac{1}{4}$  of Section 23, T.21N., R.54E., for the irrigation of crops during the period 1972 through 1976. Evidence and testimony indicates that 120 acres of grain was grown on the NE $\frac{1}{4}$  of Section 23, T.21N., R.54E., in 1972.21/

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, 1975.22/

XII

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".23/ Notice of this order was published in the Eureka Sentinel on the following dates: December 27, 1975; January 3, 10, 17 and 24, 1976.24/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action.25/

II

The source of water under permit 18790, Certificate 7010; permit 18791, Certificate 6477; permit 18792, Certificate 6478; permit 18793, Certificate 6479; permit 18794, Certificate 6480; permit 18795, Certificate 6481; permit 18798, Certificate 6118 and permit 18799, Certificate 6128 is underground water.

CONCLUSIONS (Continued)

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."26/

IV

The water rights under permit 18790, Certificate 7010; permit 18791, Certificate 6477; permit 18792, Certificate 6478; permit 18793, Certificate 6479; permit 18794, Certificate 6480; permit 18795, Certificate 6481; permit 18798, Certificate 6118 and permit 18799, Certificate 6128 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.27/

VI

NRS 534.090 clearly sets forth and provides that forfeiture shall apply whether such rights be initiated after or before March 25, 1939.

CONCLUSIONS (Continued)

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 the ruling declaring such water forfeited as provided in NRS 533.450.28/

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."<sup>29/</sup> The current owners of permit 18790, Certificate 7010; permit 18791, Certificate 6477; permit 18792, Certificate 6478; permit 18793, Certificate 6479; permit 18794, Certificate 6480; permit 18795, Certificate 6481; permit 18798, Certificate 6118 and permit 18799, Certificate 6128 therefore are bound by their predecessors 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 in excess of five successive years, water has not been beneficially used for the purposes for which the water rights were acquired under permit 18790, Certificate 7010; permit 18791, Certificate 6477; permit 18792, Certificate 6478; permit 18793, Certificate 6479; permit 18795, Certificate 6481; permit 18798, Certificate 6118 and permit 18799, Certificate 6128. Evidence indicates that 120 acres of grain was raised on the NE $\frac{1}{4}$  of Section 23, T.21N., R.53E., to which permit 18794, Certificate 6480 is appurtenant during the year 1972.

RULING

It is hereby ruled and declared that rights to appropriate water under permit 18790, Certificate 7010; permit 18791, Certificate 6477; permit 18792, Certificate 6478; permit 18793, Certificate 6479; permit 18795, Certificate 6481; permit 18798, Certificate 6118 and permit 18799, Certificate 6128 have been forfeited because of failure for in excess of five successive years on the part of the holder of the rights to use beneficially the underground water for the purposes for which said

RULING (Continued)

rights were acquired. It is further ruled that 40 acres of water right under permit 18794, Certificate 6480 has been forfeited because of failure for in excess of five successive years on the part of the holder of the right to use beneficially the underground water for the purpose for which said rights were acquired. The remaining 120 acres of water right under permit 18794, Certificate 6480 is declared to be not forfeited at this time. No finding is made or entered regarding abandonment of any of the above numbered rights.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/bl

Dated this 7th day  
of October, 1977.

FOOTNOTES

1. State Exhibit No. 29, 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. 30, June 28, 1977 Transcript.
3. State Exhibit No. 31, June 28, 1977 Transcript.
4. State Exhibit No. 32, June 28, 1977 Transcript.
5. State Exhibit No. 33, June 28, 1977 Transcript.
6. State Exhibit No. 34, June 28, 1977 Transcript.
7. State Exhibit No. 35, June 28, 1977 Transcript.
8. State Exhibit No. 36, June 28, 1977 Transcript.
9. State Exhibit No. 28, June 28, 1977 Transcript.
10. State Exhibit No. 37, June 28, 1977 Transcript.
11. State Exhibit No. 38, June 28, 1977 Transcript.
12. State Exhibit No. 1, June 28, 1977 Transcript.
13. June 28, 1977 Transcript.
14. State Exhibit No. 2, June 28, 1977 Transcript.
15. June 28, 1977 Transcript, Pages 75 through 82.
16. State Exhibits 39 and 40, June 28, 1977 Transcript.
17. June 28, 1977 Transcript, Pages 75 through 82.
18. June 28, 1977 Transcript, Pages 77 through 83.
19. June 28, 1977 Transcript, Pages 83 through 85.
20. Public Records in the Office of the State Engineer.
21. June 28, 1977 Transcript and Public Records located within the State Engineer's Office.
22. Public Records within the Office of the State Engineer.
23. State Exhibit No. 4, June 28, 1977 Transcript.
24. Public Records within the Office of the State Engineer.
25. NRS 534.090
26. NRS 534.090
27. Statutes of Nevada, 1967 Regular Session, Volume 2, Page 1053.
28. NRS 534.090
29. NRS 533.385