

IN THE MATTER OF FORFEITURE AND/OR)
ABANDONMENT OF WATER RIGHTS UNDER)
PERMIT 13650, CERTIFICATE 4558 TO)
APPROPRIATE THE WATERS OF AN UNDER-)
GROUND SOURCE IN DIAMOND VALLEY,)
EUREKA COUNTY, NEVADA.)

R U L I N G

153

GENERAL

I

Application 13650 was filed by Robert Stucki on March 2, 1951 to appropriate underground water for irrigation purposes. The proposed place of use was the NE1/4 SW1/4 and E1/2 NW1/4 Section 27, the E1/2 SW1/4 and SE1/4 NW1/4 Section 22, T.22N., R.54E., M.D.B.&M. A permit was issued under Application 13650 on September 17, 1951 for 3.5 c.f.s. of water for irrigation and domestic purposes. Certificate 4558 was issued under said permit on July 3, 1957. 1/ Through a series of assignments filed in the State Engineer's office, Permit 13650 was transferred to United Dressed Beef, Inc.

FINDINGS

I

Parties of interest were given notice by letter of January 11, 1978 that a hearing in the matter of determination of forfeiture and/or abandonment of the subject rights was scheduled for February 16 and 17, 1978 in the Eureka County Court House, Eureka, Nevada. 2/ Extensive evidence testimony and arguments were presented at the hearing. 3/

II

Mr. Ralph Gamboa, Water Commissioner for the State Engineer's office, testified that he had knowledge and familiarity with the property in question in Sections 22 and 27, T.22N., R.54E., M.D.B.&M. His testimony was that the well under Permit 13650, Certificate 4558 was equipped with a 25 horse power Westinghouse motor and a Fairbanks Morse pump. He stated that the well was used to irrigate approximately 80 acres of the 162.2 acres allowed under the certificate during the past five years. Mr. Gamboa identified and interpreted an aerial photograph of the property in question. Said photo was dated September, 1973. 4/ His testimony was that the photograph indicated the approximate 80 acres of irrigated crops that he had testified to earlier. 5/

III

Mr. Wayne Testolin, Water Commissioner for the State Engineer's office, testified in concurrence with Mr. Gamboa regarding the use of water on approximately 80 acres for the period 1973 through 1977 and in interpretation of the aerial photograph of the area in question. 6/

IV

Mr. Don Eldredge, a representative of United Dress Beef, Inc. testified that the remaining 80 acres in question "at the time has brush on it, but it is all in crested wheat and tall wheat grass and periodically we do irrigate it. As a rule we have creek water; however, the last few years we haven't had any, but that is what that 80 is set up for, is strictly pasture". 7/

V

A determination of the irrigated acreage shown on the aerial photograph marked as State Exhibit No. 25 by the use of a planimeter indicates that the total irrigated acreage in the year 1973 was 60 acres. This same 60 acres of cultivated acreage appears on a photo marked 4-3 taken June 15, 1977 by Great Basin Aerial Surveys under contract with the State Engineer's office. This 60 acres is an "L" shape and is shown in a green color on the map to accompany Proof of Beneficial Use under Application 13650 lying north and west of the point of diversion as indicated on the map and marked as Robert Stucki Well No. 1. 8/

VII

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. 9/

VIII

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". 10/ Notice of this order was published in the Eureka sentinel on the following dates: December 27, 1975, January 3, 10, 17, and 24, 1976. 11/

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action. 12/

II

The source of water under Permit 13650, Certificate 4558 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 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." 13/

IV

The water rights under Permit 13650, Certificate 4558 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. 14/

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 Nevada State Legislature was fully aware of the issue regarding forfeiture of underground 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 of appeal of a ruling declaring such right forfeited as provided for in NRS 533.450. 15/

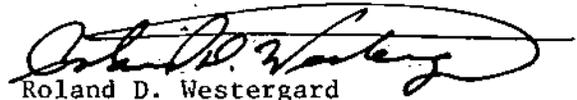
IX

Evidence, information and data available establish that for a period of in excess of 5 successive years water has not been beneficially used for the purposes for which the water rights were acquired under Permit 13650, Certificate 4558 on approximately 100 acres of land within portions of the SE1/4 NW1/4, NE1/4 SW1/4, SW1/4 SW1/4, Section 22, the NE1/4 NW1/4 and the NE1/4 SW1/4 Section 27, T.22N., R.54E., M.D.B.&M. Evidence, information and data available establish that water was used from the well described under the above permit on approximately 60 acres in portions of the SE1/4 SW1/4 Section 22, NE1/4 NW1/4, SE1/4 NW1/4, and NE1/4 SW1/4 Section 27, T.22N., R.54E., M.D.B.&M., during the years 1973 through 1977.

RULING

It is hereby ruled and declared that that portion of the rights to appropriate water under Permit 13650, Certificate 4558 appurtenant to portions of the SE1/4 NW1/4, NE1/4 SW1/4, SE1/4 SW1/4 Section 22, the NE1/4 NW1/4 and NE1/4 NE1/4 SW1/4 Section 27, T.22N., R.54E., M.D.B.&M., have been forfeited because of failure for in excess of 5 successive years on the part of the holder of the rights to use beneficially the underground water for the purposes for which said rights were acquired. That portion of the rights under the above permit appurtenant to portions of the SE1/2 SW1/4 Section 22, NE1/4 NW1/4, SE1/4 NW1/4 and NE1/4 SW1/4 Section 27, T.22N., R.54E., M.D.B.&M., are declared to be not forfeited at this time. That portion of the permit not forfeited is approximately 60 acres indicated by an "L" shaped piece of irrigated acreage and lying north and west of the point of diversion colored green on the Proof of Beneficial Use map filed in support of Permit 13650.

Respectfully submitted,


Roland D. Westergard
State Engineer

RDW/BLR/bl

Dated this 15th day
of SEPTEMBER, 1978.

FOOTNOTES

1. State Exhibit No. 22, in the Transcript of the Public Hearing in the Matter of the Consideration for Forfeiture and/or Abandonment Pursuant to NRS 534.090 of Various Water Rights in Diamond Valley, Eureka County, Nevada, February 16, 1978. (Hereinafter referred to as February 16, 1978 Transcript.)
2. State Exhibit No. 1, February 16, 1978 Transcript.
3. February 16, 1978 Transcript.
4. State Exhibit No. 25, February 16, 1978 Transcript.
5. February 16, 1978 Transcript, Pages 46 through 49.
6. February 16, 1978 Transcript, Pages 51 and 52.
7. February 16, 1978 Transcript, Page 49.
8. Irrigated acreage estimate made in State Engineer's office under State Exhibit No. 25, February 16, 1978 Transcript.
9. Public Records in the Office of the State Engineer.
10. State Exhibit No. 3, February 16, 1978 Transcript.
11. Public Records within the Office of the State Engineer.
12. NRS 534.090
13. NRS 534.090
14. Statutes of Nevada, 1967 Regular Session, Volume II, Page 1053.
15. NRS 534.090