

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 17728, CERTIFICATE)
6071 AND APPLICATION 39600 TO CHANGE)
PERMIT 17728, CERTIFICATE 6071 TO)
APPROPRIATE THE WATERS OF AN UNDER-)
GROUND SOURCE IN FISH LAKE VALLEY,)
ESMERALDA COUNTY, NEVADA)

R U L I N G

117

GENERAL

I

Application 17728 was filed by William S. Wright, Jr., on November 28, 1958 to appropriate underground water for irrigation purposes. A permit was issued under Application 17728 on May 12, 1959. Certificate 6071 was issued on June 29, 1966 for 1.34 c.f.s. of underground water to irrigate 48.4 acres within the S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 6, T.4S., R.36E., M.D.B.&M.

Application 39600 was filed by William S. Wright, Jr., on November 13, 1979 to change the point of diversion and place of use of Permit 17728, Certificate 6071. The point of diversion was to be changed from the SW $\frac{1}{4}$ SE $\frac{1}{4}$ said Section 6 to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4, T.4S., R.36E., M.D.B.&M. The place of use was to be changed to the SE $\frac{1}{4}$ SE $\frac{1}{4}$ said Section 4 and a portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 10, T.4S., R.36E., M.D.B.&M.

Application 39600 was protested on March 25, 1980 by James P. Wallace. 1/

FINDINGS OF FACT

I

William S. Wright, Jr., and James P. Wallace were given notice, by letter of October 7, 1980, that a hearing in this matter was scheduled for October 29, 1980 in the Esmeralda County Courthouse, Goldfield, Nevada. 2/ The hearing was held and evidence, testimony and arguments were presented.

II

James P. Wallace, protestant, testified that he had knowledge and familiarity with Section 6, T.4S., R.36E., M.D.B.&M. He testified that there was no irrigation on any of the land under Permit 17228, Certificate 6071 for at least the last 10 years. 3/ Mr. Wallace identified and interpreted a photo map of the property in question. 4/ The photo map was dated August 1, 1978. His testimony was that the photo map showed no crop in the S $\frac{1}{2}$ SE $\frac{1}{4}$ said Section 6. 5/

Lou Pelham, witness for the protestant, testified that he had not seen any crop in the S $\frac{1}{2}$ SE $\frac{1}{4}$ said Section 6 for the last 9 or 10 years. 6/

Leland Wallace, witness for the protestant, testified that he has driven by the S $\frac{1}{2}$ SE $\frac{1}{4}$ said Section 6 several times a week since 1970 and that no crop has been grown since at least 1970. 7/

III

No evidence, information or testimony has been submitted that water has been applied to the S $\frac{1}{2}$ SE $\frac{1}{4}$ said Section 6 for the irrigation of crops for the period from 1970 to 1980.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties in the subject matter of this action. 8/

II

The source of water under Permit 17728, Certificate 6071 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." 9/

The water right under Permit 17728, Certificate 6071 is a "permitted right" and a "determined right" as described in NRS 534.090 and is subject to the provisions of that statute.

NRS 534.090 provides that forfeiture shall apply whether a right is initiated after or before March 25, 1939.

Forfeiture of a water right does not become final until the appeal period of the forfeiture ruling has expired. 10/

IV

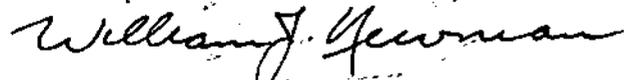
Evidence, information and data available clearly and conclusively establish that for a period of in excess of 5 successive years water has not been beneficially used under Permit 17728, Certificate 6071.

RULING

The right to appropriate water under Permit 17728, Certificate 6071 has been forfeited because of failure for in excess of 5 successive years by the holder to beneficially use the water in accordance with the right.

Application 39600 to change Permit 17728, Certificate 6071 is denied because the base right has been forfeited.

Respectfully submitted,



William J. Newman
State Engineer

WJN/JC/bc

Dated this 9th day of
JANUARY, 1981

FOOTNOTES

1. Public records in the office of the State Engineer.
2. State Exhibit No. 1, Transcript of the October 29, 1980 hearing, hereinafter referred to as Transcript.
3. Transcript, page 12.
4. Protestant Exhibit No. 3, Transcript.
5. Transcript, pages 8 through 13.
6. Transcript, pages 13 through 16.
7. Transcript, pages 17 through 19.
8. NRS 534.090.
9. NRS 534.090.
10. NRS 533.450.