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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE JONATHAN M. PALM, HEARING OFFICER

In the Matter of Applications
of Amargosa Resources, Inc.

ORIGINAL
RULING
#4188

TRANSCRIPT OF PROCEEDINGS
PUBLIC HEARING
MAY 3, 1995

APPEARANCES:

For the State:	Mark Beutner Bill Quinn Jason King Robert A. Coache
For the Applicant:	BRENT T. KOLVET, ESQ. Attorney at Law 888 W. Second St. #200 Reno, Nevada
For the Protestants:	David A. Stephens, Esq. Attorney at Law 1000 S. Valley View La Vegas, Nevada
Reported by:	SHELDON L. HENSLEY, CCR, RPR Nevada CCR #316

1 6099. Permit 22581, certificate 6642 and permit 22582,
2 certificate 6643.

3 That evidence can be summarized as follows: The
4 State Engineer's annual inventories in Exhibit 10 shows no
5 irrigation of any kind for the years 1985 through 1992, which
6 is the alleged period of nonuse in the petition that was filed
7 by Amargosa Resources, Incorporated. The aerial photos for
8 the years 1987, 1989, 1990 and 1993 which are Exhibits 19
9 through 22, respectively, show an abundance of sagebrush and
10 creosote bush on the places of use. This precludes the
11 possibility that the land was cleared, a crop was planted and
12 the land was irrigated during any of those years.

13 We also have Exhibit Number 17 which show-- the
14 photos in that exhibit show creosote and desert brush. In
15 addition, photographs in Exhibit 121 through 124 also show the
16 same thing. The testimony of various witnesses supports the
17 above mentioned exhibits. The testimony of Robert Coache and
18 Jason King of the staff of the State Engineer indicates that
19 no water was used on the places of use and this was noted on
20 their annual inventories. Mr. Coache testified that no change
21 in vegetation was observed since 1983.

22 We had no testimony supporting the 1990 pumpage
23 inventory. This does not diminish the observations of
24 Dr. Bement that creosote bushes aged 10 to 20 years existed on
25 the places of use in 1994 when he personally visited the

1 property. In his testimony, Dr. Bement used the high level
2 aerial photos, his personal low level aerial observations and
3 his ground observations and testified as to the presence of
4 the creosote bush and the age of that bush on the different
5 places of use. There is no evidence or testimony on the
6 record to show any use of the water under these water rights.

7 In consideration of the above, I find that there is
8 clear and convincing evidence that a continuous period of
9 nonuse exceeding five years has occurred on the places of use
10 of permit 18267, certificate 6660. Permit 18375, certificate
11 6385; permit 18376, certificate 6099; permit 22581,
12 certificate 6642; and permit 22582, certificate 6643.

13 Conclusions: The State Engineer has jurisdiction in
14 this matter in accordance with the Nevada Revised Statute
15 534.090. NRS 534.090, provides that the failure to use an
16 underground water right for a continuous five-year period for
17 the purpose for which it was acquired works a forfeiture of
18 that water right.

19 This hearing was conducted under the authority of
20 the State Engineer and no petition was required to initiate
21 this hearing. However, there's no statute that states that a
22 petition is not allowed to begin a hearing like this.

23 A continuous period of nonuse exceeding the
24 statutory five years has occurred on the place of use of these
25 water rights. Therefore, I conclude that the right to use

1 water under these water rights has been forfeited.

2 The ruling: The right to use water under permit
3 18267, certificate 6660; permit 18375, certificate 6385;
4 permit 18376, certificate 6099; permit 22581, permit 6642, and
5 permit 22582, certificate 6643, is hereby declared forfeited
6 on the grounds that the water under said certificates has not
7 been placed to beneficial use for a continuous period
8 exceeding five years.

9 I'm declaring this hearing closed.

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11 (Proceedings Concluded)

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1 STATE OF NEVADA,)
2 CARSON CITY.) ss.

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I, SHELDON L. HENSLEY, Official Court Reporter for the State of Nevada, Department of Conservation and Natural Resources, Division of Water Resources, do hereby certify:

That on Wednesday, the 3rd day of May, 1995, I was present at Beatty, Nevada, for the purpose of reporting in verbatim stenotype notes the within-entitled public hearing;

That the foregoing transcript, consisting of pages 1 through 138, inclusive, includes a full, true and correct transcription of my stenotype notes of said public hearing.

Dated at Carson City, Nevada, this 13th day of May, 1995.



SHELDON L. HENSLEY