

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 26913, CERTIFICATE)
9964, OF AN UNDERGROUND SOURCE IN)
LAS VEGAS VALLEY, CLARK COUNTY, NEVADA.)

RULING

3879

GENERAL

I.

Application 10720 was filed by Thomas E. Sharp on September 5, 1941, to appropriate underground water for irrigation and domestic purposes. The proposed place of use was 80 acres within the N1/2 SW1/4 Section 29, T.20S., R.61E., M.D.B.&M. A permit was issued under Application 10720 on December 29, 1941, for 0.30 c.f.s. of water for irrigation and domestic purposes.¹

II.

Application 11567 was filed by Thomas E. Sharp on May 1, 1946, for permission to change the point of diversion of waters heretofore appropriated under Permit 10720. The proposed point of diversion under Application 11567 was within the NW1/4 SW1/4 Section 29, T.20S., R.61E., M.D.B.&M. A permit was issued under Application 11567 on July 17, 1946, for 0.30 c.f.s. of water for irrigation and domestic purposes. Certificate 3218 was issued under said permit on March 7, 1949, for 0.30 c.f.s. and 216.81 acre-feet per year for the irrigation of 59.40 acres, and for supplemental use with Permit 10721 and 10722.²

III.

Documents were submitted to the State Engineer's office transferring the ownership of Permit 11567, Certificate 3218, from Thomas E. Sharp to the City of Las Vegas.³

¹ Public records of the State Engineer, Permit 10720.

² Public records of the State Engineer, Permit 11567.

³ Public records of the State Engineer, Permit 11567 and Permit 10721.

IV.

Application 26913 was filed by the City of Las Vegas on August 28, 1972, for permission to change the manner of use of waters heretofore appropriated under Permit 11567 from irrigation and domestic purposes to recreation and domestic purposes.

A permit was granted under Application 26913 on July 17, 1974, for 0.30 c.f.s. of water for recreation and domestic purposes. Certificate 9964 was issued under said permit on April 9, 1982, for 0.23 c.f.s. and 166.5 acre-feet per year for recreation and domestic purposes including use for an artificial lake, a swimming pool, and irrigation of 38.96 acres, and for supplemental use with Permits 26915 and 36041.⁴

V.

Application 52381 was filed by the City of Las Vegas on August 5, 1988, for permission to change the point of diversion and place of use of waters heretofore appropriated under Permit 26913.⁵

VI.

Application 52381 was timely protested by the Las Vegas Valley Water District on November 22, 1988, for the following reasons and on the following grounds, to wit:

"The diversion to be changed under the existing Permit No. 26913, Certificate No. 9964, has not been placed to beneficial use within the last 5 years, the manner of requested use is in conflict with State Engineer Order No. 196 dated December 1, 1949, and amended by State Engineer Order No. 833 dated December 27, 1983, and there are existing Las Vegas Valley Water District pipelines in El Capitan Way and Durango Drive already providing metered water service for park landscaping and golf course use and which carry sufficient capacities and pressures to provide all such future water service."

⁴ Public records of the State Engineer, Permit 26913.

⁵ Public records of the State Engineer, Application 52381.

The Las Vegas Valley Water District requested that the application be denied.⁵

FINDINGS OF FACT

I.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held before the State Engineer in the matter of the protested application to change 52381 on February 4, 1991, at Las Vegas, Nevada.⁶ Evidence and testimony were received into the record at the hearing and the State Engineer took administrative notice of various matters as more specifically set forth herein.⁷

II.

The holder of any ground water right put to beneficial use works a forfeiture of that right after five successive years of nonuse has occurred.⁸

The entire 166.5 acre-feet of water for recreation and domestic purposes under Permit 26913, Certificate 9964, is subject to a forfeiture determination.⁹

III.

The State Engineer finds that testimony and evidence was presented by the protestant, Las Vegas Valley Water District, concerning the well under Permit 26913, Certificate 9964.¹⁰

⁶ Public record of the State Engineer. State Exhibit No. 1 of the Transcript of Hearing before the State Engineer, February 4, 1991. Hereafter called Transcript.

⁷ Transcript, pages 2 through 8.

⁸ NRS 534.090 (1).

⁹ Transcript, State Exhibit No. 1.

¹⁰ Transcript, pages 9 through 39; Testimony of Dean Goodale, Division of Water Resources.

Testimony was presented that the meter on the well was read by Division of Water Resource staff on an average of once a month between 1978 and early 1982. The pump was pulled in early 1982 and the meter was not read after that. February 1982 was the last time the meter was read and the last time water usage of the well was indicated.¹¹ A plate on the well and the pump along side the well were observed when Division of Water Resources staff took monthly meter readings from the well under Permit 26915, Certificate 9942. The well under Permit 26915, Certificate 9942 is approximately 600 feet southeast of the well under Permit 26913, Certificate 9964.¹² Based on the testimony and evidence the State Engineer finds that though some water was used from the well prior to 1982, the well was rendered incapable of producing any water after 1982.

IV.

The State Engineer finds the Las Vegas Valley Water Usage Report, shows the following pumpage for Permit 26913 Certificate 9964:¹³

1982	2.88 AF
1983	0
1984	0
1985	0
1986	0
1987	0

¹¹ Transcript, pages 10 through 12. Dean Goodale's Monthly Meter Reading Book with entries for Permit 26913.

¹² Transcript, pages 12 through 13, pages 22 through 23, pages 38 through 39.

¹³ Transcript, Protestant Exhibits No. 10 and 11.

V.

The State Engineer finds that testimony and evidence were presented by the applicant, the City of Las Vegas concerning the well under Permit 26913, Certificate 9964.¹⁴

The Permittee's witness testified that the swimming pool was existing when the City took over Lorenzi Park which is included in the place of use of Permit 26913, Certificate 9964. Water was provided from the well to the swimming pool on a flow-through basis without a filtering system and with chlorination introduced at the time the water entered the swimming pool.¹⁵

The Permittee's witness testified that the well was pumping a lot of sand. The pump was pulled in May, 1982 and a casing split was found at 139 feet. In the spring of 1983 the casing was repaired, and from mid-August to late September, 1983, the well was used to maintain the level in the swimming pool. However, there were no meter readings or electric power bills to indicate pumpage had taken place subsequent to 1982.¹⁶

The Permittee's witness testified that records concerning the operation of the well were lacking in the City of Las Vegas organization and that the permittee did not have records to support when the well was last pumped.¹⁶ There was a purchase order dated March 3, 1983, for a \$2,500.00 expenditure for casing repair work to be done on the well, but there are no billings or cancelled checks to indicate the repair work was done.¹⁷

¹⁴ Transcript, pages 46 through 59; Testimony of Charles Kajkowski, City of Las Vegas.

¹⁵ Transcript, pages 47 through 49.

¹⁶ Transcript, pages 56 through 59.

¹⁷ Transcript pages 47 through 53, State Exhibit No. 3 and Permittee Exhibits No. 14 and 18.

Therefore, the State Engineer finds that the owner of record of Permit 26913, Certificate 9964 offered no evidence or testimony that the forfeiture on the subject well had not occurred.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.¹⁸

II.

The State Engineer concludes that the actual observations documented by field notes made by Division of Water Resources staff confirms the dismantling of the well pump and motor in 1982, making the well incapable of being pumped and thus making it impossible to put the water to beneficial use.

III.

The State Engineer concludes that the City of Las Vegas, by its own admission, could not provide further evidence to support the statement made in State Exhibit No. 3 as to the last time the well had been pumped.

IV.

The State Engineer concludes there is substantial evidence that for the period from January 1, 1983 through December 31, 1987 (five successive years), water from the underground source described under Permit 26913, Certificate 9964, was not beneficially used for the purpose for which the water rights were issued.

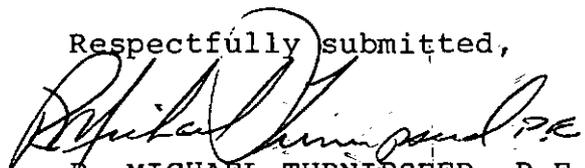
¹⁸ NRS 534.090.

RULING

The right to appropriate and beneficially use water appurtenant to the lands described under the place of use under Permit 26913, Certificate 9964, has been forfeited for failure for five successive years, on the part of the holder of the right, to beneficially use the underground water for the purposes for which the subject right was acquired.

No action will be taken on Application 52381 until the forfeiture of Permit 26913, Certificate 9964 becomes final.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GWQ/pm

Dated this 19th day of
March, 1992.