

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

IN THE MATTER OF THE POSSIBLE FORFEITURE)  
OF PERMIT 12008, CERTIFICATE 3492, )  
LOCATED IN THE LAS VEGAS ARTESIAN BASIN, )  
CLARK COUNTY, NEVADA. )

RULING

# 4014

GENERAL

I.

Application 12008 was filed on September 18, 1947, by E.T. Nollner, to appropriate 0.2 c.f.s. from underground water. Permit 12008 was approved on December 22, 1947, for 0.20 c.f.s. for irrigation and domestic purposes, sufficient to irrigate 20 acres. Amended Certificate 3492 for Permit 12008 was issued on May 27, 1966, for 0.1338 c.f.s., for irrigation 5 acres located in the N $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 31, T.21S., R.62E., M.D.B.&M. The annual duty of water was set at 6 acre feet per acre, for a total of 30 acre feet. The point of diversion is located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 31, T.21S., R.62E., M.D.B.&M. The current owner of record of said certificate is Karl Stanley Brown and Leona B. Brown.<sup>1</sup>

II.

On September 15, 1992, the State Engineer held a public administrative hearing to consider the matter of the possible forfeiture of the water rights under Permit 12008, Certificate 3492.<sup>2</sup>

FINDINGS OF FACT

I.

According to the pumpage records kept by personnel of the Southern Nevada Branch Office of the State Engineer, the maximum quantity of water pumped under Permit 12008, Certificate 3492 for each year, for the years 1987 through 1991, is 15 acre feet per

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<sup>1</sup> File No. 12008, official records in the office of the State Engineer.

<sup>2</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, September 15, 1992.

year.<sup>3</sup> The State Engineer's records indicate that approximately one-half of the 5 acres shown as the place of use under Permit 12008, Certificate 3492 was irrigated.<sup>4</sup> However, testimony indicates that it is possible that additional acreage was irrigated between inspections.<sup>5</sup>

Mr. Brown, the owner of record of Permit 12008, Certificate 3492, testified that a replacement well was completed on May 9, 1988.<sup>6</sup> He further testified that after the new well was completed, the entire property was irrigated 6 days per week up until a portion of the property was sold in August of 1989.<sup>7</sup> Mr. Brown's testimony was corroborated by a notarized affidavit signed by a neighbor who personally observed the irrigation of the entire property until August, 1989.<sup>8</sup>

The State Engineer finds that "clear and convincing evidence" does not exist in this case in order to make a forfeiture determination.<sup>9</sup> The State Engineer further finds that the five

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<sup>3</sup> Exhibit No. 7, Public Administrative Hearing before the State Engineer, September 15, 1992.

<sup>4</sup> Transcript p. 7, Public Administrative Hearing before the State Engineer, September 15, 1992.

<sup>5</sup> Transcript p. 8, Public Administrative Hearing before the State Engineer, September 15, 1992.

<sup>6</sup> Transcript pp. 13-14, Public Administrative Hearing before the State Engineer, September 15, 1992. See also Exhibit No. 8.

<sup>7</sup> Transcript p. 10 and p. 11, Public Administrative Hearing before the State Engineer, September 15, 1992.

<sup>8</sup> Exhibit No. 5, Public Administrative Hearing before the State Engineer, September 15, 1992.

<sup>9</sup> The standard for forfeiture is "clear and convincing evidence" as stated in *Town of Eureka v. Office of the State Engineer*, 108 Nev. Ad. Op. 28, 826 P.2d 948 (1992).

acres shown as the place of use under Permit 12008, Certificate 3492 was irrigated in its entirety in 1988 and 1989.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.<sup>10</sup>

II.

Failure for five successive years, on the part of the holder of any right, to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture to the use of that water to the extent of the nonuse.<sup>11</sup>

III.

The State Engineer concludes that a continuous period of non-use of a portion of the water right under Permit 12008, Certificate 3492 began in 1990. Therefore, a continuous, five year period of nonuse has not yet occurred.

RULING

The use of water under Permit 12008, Certificate 3492 is not declared forfeited because a continuous, five year period of nonuse has not occurred.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 16th day of  
July, 1993.

<sup>10</sup> NRS 533 and 534.

<sup>11</sup> NRS 534.090.