

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

IN THE MATTER OF THE FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 11241, CERTIFICATE)
3388, FILED TO APPROPRIATE THE WATER OF)
AN UNDERGROUND SOURCE WITHIN THE LAS)
VEGAS VALLEY GROUNDWATER BASIN, CLARK)
COUNTY, NEVADA.)

RULING
4039

GENERAL

I.

Application 11241 was filed by Coverton K. and Alice M. Ryerse on February 7, 1945 to appropriate the waters of an underground source for irrigation and domestic purposes. The point of diversion under Application 11241 was described as being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.20S., R.61E., M.D.B.&M. Non-revocable Permit 11241 was issued on June 6, 1945, for 0.15 c.f.s. of water for domestic use and the irrigation of nine acres of land located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, T.20S., R.61E., M.D.B.&M. Certificate 3388 was issued on January 18, 1950 for 0.085 c.f.s. for the permitted manner and place of use. The current owner of record of Permit 11241, Certificate 3388 is Robert and Suzanne R. Dippner.¹

II.

After proper notice was sent to all interested parties, an administrative hearing in the matter of the determination of forfeiture of a portion of Certificate 3388 was held before representatives of the State Engineer on June 15, 1993 in Las Vegas, Nevada.²

¹ File No. 11241, public records in the office of the State Engineer.

² Exhibit No. 1, administrative hearing before the State Engineer, June 15, 1993.

FINDINGS OF FACT

I.

The property described as the place of use of Permit 11241, Certificate 3388, has been developed with homes, duplexes, and an office building.³ Las Vegas Valley Water District service to these buildings began in 1963.⁴ There are only two lots within the place of use that are still irrigated by the well under Permit 11241, Certificate 3388.⁵ These lots are identified by lot numbers 10 and 13 on the assessor's plat map.⁶ Domestic service to the home located on lot number 13 is also provided by this well.⁷

All of the water used during the period 1986 through 1992 has been applied to lots 10 and 13, which encompass an area of 2.69 acres.⁸ The State Engineer finds that a continuous period of non-use longer than five years, has occurred on a portion of the place of use of Permit 11241, Certificate 3388. The remaining portion of the place of use which has been irrigated, can be described as lot numbers 10 and 13 on the assessor's plat map.

³ Transcript p. 12, public administrative hearing before the State Engineer, June 15, 1993.

⁴ Exhibit No. 4, public administrative hearing before the State Engineer, June 15, 1993.

⁵ Transcript pp. 14-15, public administrative hearing before the State Engineer, June 15, 1993.

⁶ Exhibit No. 12, public administrative hearing before the State Engineer, June 15, 1993.

⁷ Transcript p. 54, public administrative hearing before the State Engineer, June 15, 1993.

⁸ Transcript pp. 16-17, public administrative hearing before the State Engineer, June 15, 1993.

II.

The maximum quantity of water used during the period from 1988 through 1992, as reported on the annual groundwater pumpage inventories, is estimated to be 12.5 acre feet per year.⁹ This estimate is based on the annual visits to the place of use of Permit 11241, Certificate 3388, during which the observation was made that approximately 2.5 acres of land were irrigated.¹⁰ The water use for Las Vegas Valley is generally 5 acre feet per acre.¹¹

The area of lots 10 and 13 is equal to 2.69 acres.⁶ A 2,200 square foot home, an 800 square foot barn, and a driveway, estimated at 2,000 square feet occupy a portion of lot number 10.¹² That leaves a net area of 2.58 acres of land which can be irrigated.

The quantity of water allowed from a well that serves a single family dwelling is 2.02 acre feet per year.¹³

The State Engineer finds that the quantity of water used each year under Permit 11241, Certificate 3388, is equal to 2.58 acres times 5 acre feet per acre or 12.9 acre feet plus the domestic use of 2.02 acre feet, for a total of 14.92 acre feet.

⁹ Exhibit No. 9, public administrative hearing before the State Engineer, June 15, 1993.

¹⁰ Transcript p. 15, public administrative hearing before the State Engineer, June 15, 1993.

¹¹ Transcript pp. 22-23, public administrative hearing before the State Engineer, June 15, 1993.

¹² Transcript p. 51, public administrative hearing before the State Engineer, June 15, 1993.

¹³ NRS 534.185.

III.

The amount of the appropriation under Certificate 3388 is 0.085 c.f.s.¹⁴ There is no annual duty of water indicated on Certificate 3388.

If the source of water produced 0.085 c.f.s. for 24 hours per day, for 365 days per year, the total water produced would be 61.5 acre feet in one year. Nine acres of land comprise the land to which the water under Permit 11241, Certificate 3388, is appurtenant. Therefore, the water right holder argued that the quantity of water allowed under Permit 11241, Certificate 3388 is equal to 6.84 acre feet per acre.¹⁵

The State Engineer finds that expanding the diversion rate to calculate the annual duty is not the appropriate method to determine the extent and limit of a water right. Beneficial use is the basis, the measure, and the limit of the right to the use of water.¹⁶ Therefore, the State Engineer finds that the appropriate method is to determine the actual quantity of water placed to beneficial use.

IV.

Water is used on lots 10 and 13 to irrigate trees, miscellaneous vegetation, and cattails.¹⁷ This represents a low water use compared to a water-intense irrigation activity like growing alfalfa. The State Engineer finds that 5 acre-feet per acre accurately represents the water application rate for the type of vegetation grown on lots 10 and 13.

¹⁴ Exhibit No. 2, public administrative hearing before the State Engineer, June 15, 1993.

¹⁵ Transcript pp. 56-57, public administrative hearing before the State Engineer, June 15, 1993.

¹⁶ NRS 533.035.

¹⁷ Transcript p. 23, public administrative hearing before the State Engineer, June 15, 1993.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.¹⁸

II.

Failure for five successive years to use beneficially all or any part of the underground water works a forfeiture to the use of that water, to the extent of the non-use.¹⁹

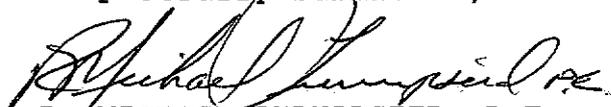
III.

The State Engineer concludes that a period of non-use, greater than five years, has passed for a portion of the water right under Permit 11241, Certificate 3388. The State Engineer further concludes that the portion of the water right under Permit 11241, Certificate 3388, that is not subject to the forfeiture is equal to 14.92 acre feet.

RULING

The right to beneficially use a portion of water under Permit 11241, Certificate 3388 is hereby declared forfeited, because of failure for a period exceeding five consecutive years to use a portion of the water. The portion of the water right that remains in good standing is equal to 14.92 acre feet.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 10th day of
September, 1993.

¹⁸ NRS 533 and 534.

¹⁹ NRS 534.090.