

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

IN THE MATTER OF FORFEITURE OF A PORTION)
OF THE WATER RIGHTS UNDER PERMIT 31161,)
CERTIFICATE 9267, APPROPRIATED FROM AN)
UNDERGROUND SOURCE IN LAS VEGAS VALLEY)
GROUNDWATER BASIN (212), CLARK COUNTY,)
NEVADA.)

RULING

4317

GENERAL

I.

Permit 31161 was granted by the State Engineer to Darwin Lamb on June 16, 1977, to appropriate the underground waters of the Las Vegas Valley Groundwater Basin for quasi-municipal and domestic purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 28, T.19S., R.60E., M.D.B.&M.¹ The proposed point of diversion is located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 28, T.19S., R.60E., M.D.B.&M. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 9267 on September 20, 1978, for 0.0625 cubic feet per second, not to exceed 8.145 million gallons annually (25 acre-feet annually).¹

II.

Documents were submitted to the Office of the State Engineer which transferred ownership of Permit 31161 from the original permittee to Ismail & Leanne Yassai and the Las Vegas Valley Water District.¹

III.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the forfeiture of Permit 31161, Certificate 9267 on September 14, 1992, at Las Vegas, Nevada, before representatives of the Office of the State Engineer.²

¹ File No. 31161, official records of the Office of the State Engineer.

² Transcript, public administrative hearing before the State Engineer, September 14, 1992.

FINDINGS OF FACT

I.

The permittees were all notified by certified mail of the public administrative hearing scheduled for September 14, 1992, and the records of the Office of the State Engineer regarding Permit 31161 indicate that the certified mailing was received by the permittees of record. The State Engineer finds that permittees Ismail & Leanne Yassai did not appear for the hearing even though they received notice of the hearing.

II.

After a certificate is issued on a permit, failure for five successive years on the part of the certificate holder to use beneficially all, or any part, of the underground water of the State of Nevada for the purpose for which the right is acquired or claimed, works a forfeiture of the right to the use of that water to the extent of the nonuse.³

III.

Each year from 1988 through 1990 employees of the Office of the State Engineer performed what are known as groundwater pumpage inventories which documented the use of water under Permit 31161, Certificate 9267.⁴ For the year 1985, the pumpage inventory indicated that 4.9 acre feet of water had been used as allowed under the permit. The 1986 inventory indicated that 4.8 acre feet had been used, 1987 4.5 acre feet, 1988 3.5 acre feet, 1989 and 1990 3.5 acre feet was used under Permit 31161.

Testimony provided by Dean Gooddale, a staff member of the Office of the State Engineer, showed that in late 1988 the motor was removed from the well and no water was used as authorized under

³ NRS 534.090.

⁴ Hearing Exhibit 4, public administrative hearing before the State Engineer, September 14, 1992.

the permit.⁵ The Las Vegas Valley Water District introduced a letter from Christine Thiel, also a staff member of the Office of the State Engineer, dated August 9, 1991, wherein she stated that 4.91 acre feet was in good standing as of that date.⁶

The State Engineer finds that from 1985 through 1990 the highest quantity of water used under Permit 31161 was 4.91 acre feet, and the permittees did not provide any evidence to show otherwise.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁷

II.

Clear and convincing evidence is that evidence which falls somewhere between a preponderance of the evidence and the higher standard of beyond a reasonable doubt.⁸ To establish a fact by clear and convincing evidence a party must persuade the trier of fact that the proposition is highly probable, or must produce in the mind of the fact finder a firm belief or conviction that the allegations in question are true.⁹

The State Engineer concludes clear and convincing evidence was found in the testimony of Mr. Gooddale and the testimony and evidence provided by Janet Monaco for the Las Vegas Valley Water

⁵ Transcript, pp. 3-7 and Exhibit Nos. 4 & 5, public administrative hearing before the State Engineer, September 14, 1992.

⁶ Exhibit No. 5, public administrative hearing before the State Engineer, September 14, 1992.

⁷ NRS Chapters 533 and 534.

⁸ 1 Clifford S. Fishman, Jones on Evidence Section 3:10, at 238 (7th Ed. 1992).

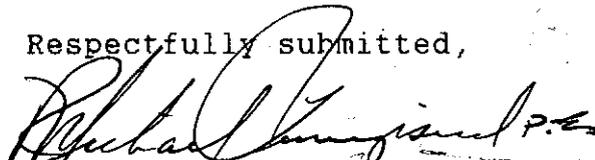
⁹ Id. at 239.

District that no more than 4.91 acre feet annually was used under Permit 31161, Certificate 9267, for the five successive years from 1985 through 1990, and that no evidence was presented that showed any greater use of water as allowed under the permit/certificate.

RULING

The right to beneficially use 20.09 acre feet annually of water under Permit 31161, Certificate 9267, is hereby declared forfeited because of the failure for a period exceeding five successive years on the part of the holder of the right to beneficially use that portion of the water for the purposes for which the subject water right was acquired.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 28th day of
March, 1996.