

COPY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

In the Matter of Forfeiture of  
Permit 10392, Certificate 2727.

RULING  
# 4351

---

TRANSCRIPT OF PROCEEDINGS  
PUBLIC HEARING  
TUESDAY, MAY 14, 1996

APPEARANCES:

For the Applicant:                      NON APPEARANCE

Reported by:                              SHELDON L. HENSLEY, CCR, RPR  
Nevada CCR #316

1 photograph shows among other things the place of use of  
2 permit 10392, certificate 2727. The photograph clearly  
3 shows that the area is developed with residential and  
4 commercial units that are connected to the Las Vegas Valley  
5 Water District. None of the units within the place of use  
6 is connected to these two wells under permit 10392.

7           The State Engineer has authorized me to enter a  
8 ruling in this hearing, therefore I'm going to state the  
9 underlying facts supporting findings of facts, conclusion  
10 and the ruling.

11           It is quite clear from the record that this water  
12 right has not been used for many years going back to 1907  
13 when the photographs in the file show that the well was not  
14 existing and the other well, while it was at its location,  
15 was not connected to electrical power, nor were the pipes  
16 hooked up to the distribution system.

17           The status of this water right did not change over  
18 the years because when Mr. Coache began doing his  
19 inventories and his predecessors who began doing the  
20 inventory as early as 1983, indicated that no use of water  
21 occurred on this water right. The photographs taken by  
22 Mr. Coache in 1996 indicate that the property had not  
23 changed and neither of the wells were even visible in 1996.

24           Therefore I find that this water right has not  
25 been used for a continuous period of time exceeding five

1 years; in fact, the period of non-use extends way back  
2 through 1970. I further find that the evidence in the file  
3 and on this record are clear and convincing evidence that  
4 the water right has not been used during all of those years.

5 Conclusions. 1: The State Engineer has  
6 jurisdiction in this matter as provided in chapters 533 and  
7 534 of the Nevada Revised Statutes.

8 2: In accordance with NRS 534.090, failure for a  
9 period of five consecutive years on the part of the water  
10 right holder to use beneficially all or any part of the  
11 underground water for the purpose for which the right is  
12 acquired works a forfeiture of the water right.

13 3: Because the law thus favors a forfeiture,  
14 there must be clear and convincing evidence of the statutory  
15 period of non-use for the State Engineer to declare a  
16 forfeiture, that was the conclusion of the Nevada Supreme  
17 Court in the Town of Eureka case.

18 I conclude that the record contains clear and  
19 convincing evidence of the statutory period of non-use; in  
20 fact, the non-use extends to about 25 years. Therefore I  
21 conclude that the water right under permit 10392,  
22 certificate 2727 is forfeited.

23 Ruling: The right to beneficially use water under  
24 permit 10392, certificate 2727 is hereby declared forfeited  
25 on the grounds that there was a continuous period of non-use

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

that exceeds five years. This water right is forfeited in its entirety. I'll declare this hearing closed.

(Proceedings Concluded)

-o0o-

