

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

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 29915, CERTIFICATE)
9846, APPROPRIATED FROM AN UNDERGROUND)
SOURCE, PAHRUMP VALLEY ARTESIAN GROUND-)
WATER BASIN (162), NYE COUNTY, NEVADA.)

RULING

4386

GENERAL

I.

Application 29915 was filed by Edgar Siri on January 15, 1976, to change the point of diversion and place of use of a portion of the underground waters of the Pahrump Valley Artesian Groundwater Basin previously appropriated under Permit 24712 for irrigation and domestic purposes on 4 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 20, T.20 S., R.53 E., M.D.B.&M.¹ The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 20. A permit was issued on Application 29915 on May 12, 1977, for 0.017 cubic feet per second (cfs).² On February 19, 1982, after Proof of Beneficial Use of the waters as allowed under the permit was filed with the Division of Water Resources, the State Engineer issued Certificate 9846 allowing for the diversion of 0.017 cfs, not to exceed of total duty of 12.3 acre-feet annually (afa), for the irrigation of 2.5 acres of land within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 20.³

II.

Documents were submitted to the Office of the State Engineer which transferred ownership of Permit 29915 in the records of the Office of the State Engineer from the original permittee to the present owner of record Edgar Siri and Pauline J. Siri.¹

¹File No. 29915, official records in the Office of the State Engineer.

²State's Exhibit No. 10, public administrative hearing before the State Engineer, June 5, 1990. (Hereinafter "Exhibit No. 10").

³State's Exhibit No. 10.

III.

The State Engineer initially described and designated a portion of the Pahrump Valley Artesian Groundwater Basin on March 11, 1941.⁴ The State Engineer subsequently extended the boundaries of the designated area of the Pahrump Valley Artesian Groundwater Basin on January 15, 1948,⁵ and on January 23, 1953.⁶

On October 26, 1987, the State Engineer issued Order 955 wherein he found that the groundwater levels in the Pahrump Valley were declining and ordered that all applications filed to appropriate water from the Pahrump Valley Artesian Groundwater Basin in the east side of the basin on the Pahrump and Manse Fans would be denied; all applications for all uses except small commercial uses on the valley floor would be denied; and all applications filed to appropriate water for irrigation purposes on lands in Pahrump Valley that have had a certificated water right forfeited where the forfeiture occurred prior to January 1, 1988, would be considered for approval on an individual basis; however, such applications would only be considered if they had been filed within 60 days of the date the water right had been declared forfeited.

IV.

After all parties of interest were duly noticed by certified mail dated March 27, 1990, an administrative hearing was held with regard to the forfeiture of Permit 29915, Certificate 9846, on June

⁴State Engineer's Order No. 176, dated March 11, 1941, official records in the Office of the State Engineer.

⁵State Engineer's Order No. 193, dated January 15, 1948, official records in the Office of the State Engineer.

⁶State Engineer's Order No. 205, dated January 23, 1953, official records in the Office of the State Engineer.

5, 1990, at Pahrump, Nevada, before representatives of the Office of the State Engineer.⁷

FINDINGS OF FACT

I.

Testimony and evidence presented at the administrative hearing showed that from 1982 through 1987 employees of the Office of the State Engineer physically visited the Pahrump Valley Artesian Groundwater Basin and conducted what are known as groundwater pumpage inventories which documented the use of water for irrigation purposes as allowed under Certificate 9846.⁸ From 1982 through 1987 the pumpage inventories indicated that no water had been used for irrigation as allowed under the certificate. The State Engineer finds that from 1982 through 1987 no irrigation took place at the certificated place of use as authorized under the certificate.

II.

The permittee did not appear at the public administrative hearing⁹; however, a Mr. and Mrs. DeAngelis did appear at the hearing. Mr. and Mrs. DeAngelis are the owners of record in the Nye County Assessor's Office of the land at the certificated place of use¹⁰; however, no request for assignment of the water rights represented by Permit 29915, Certificate 9846, has ever been filed in the Office of the State Engineer.¹ Thus, Edgar Siri and Pauline J. Siri are still the legal owners of record of Permit 29915, Certificate 9846, in the Office of the State Engineer. At the public administrative hearing Mr. DeAngelis testified that from 1982 through 1987 the land had not been used for agriculture, and

⁷ Transcript, public administrative hearing before the State Engineer, June 5, 1990. (Hereinafter "Transcript".)

⁸ State's Exhibit No. 10.

⁹ Transcript, p. 47.

¹⁰ State's Exhibit No. 10.

that when he purchased the property in 1989 he did not purchase it to pursue an agricultural enterprise.¹¹ The State Engineer finds that no testimony or evidence was presented at the public administrative hearing which showed any use of water as authorized under the permit/certificate from 1982 through 1987.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.¹²

II.

In order for a water right permit to ripen into a water right certificate the permittee must file proof of the application of the water to beneficial use within the time frame set forth in the permit or in any extension of time granted by the State Engineer.¹³ 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.¹⁴

Forfeiture must be demonstrated by clear and convincing evidence.¹⁵ Clear and convincing evidence is that evidence which falls somewhere between a preponderance of the evidence and the

¹¹ Transcript, p. 49 - 54.

¹² NRS Chapters 533 and 534.

¹³ NRS 533.410.

¹⁴ NRS 534.090.

¹⁵ Town of Eureka v. Office of the State Engineer, 826 P.2d. 948 (1992).

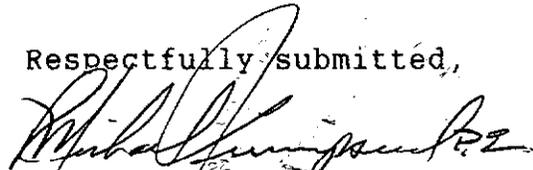
higher standard of beyond a reasonable doubt.¹⁶ To establish a fact by clear and convincing evidence a party must persuade the trier of fact that the proposition is highly probable, or must produce in the mind of the fact finder a firm belief or conviction that the allegations in question are true.¹⁷

The State Engineer concludes clear and convincing evidence exists as to non-use of the water from 1982 through 1987 thereby working a forfeiture of the water right in 1986.

RULING

The right to beneficially use 0.017 cubic feet per second, 12.3 acre-feet annually, of the water right appurtenant to the place of use under Permit 29915, Certificate 9846, is hereby declared forfeited.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 31st day of
July, 1996.

¹⁶ Clifford S. Fishman, Jones on Evidence Section 3:10, at 238 (7th Ed. 1992).

¹⁷ Id. at 239.