

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

IN THE MATTER OF THE FORFEITURE OF)
PERMIT 14165, CERTIFICATE 4508,)
APPROPRIATED FROM THE LAS VEGAS)
ARTESIAN GROUNDWATER BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING

4312

GENERAL

I.

Permit 14165 was granted by the State Engineer to Robert Miller on August 14, 1952, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for quasi-municipal and domestic purposes to serve a trailer park within portions of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ & NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 7, T.21S., R.62E., M.D.B.&M. ¹

The point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 7. ¹ After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4508 on April 3, 1957, for 0.15 cubic feet per second, not to exceed 4.0 million gallons annually. ¹

II.

Documents were submitted to the Office of the State Engineer which transferred ownership of Permit 14165 from the original permittee through several persons to William J. Graves and Kathryn Tisdial Graves. ¹

¹ File No. 14165, official records of the Office of the State Engineer.

III.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the forfeiture of Permit 14165, Certificate 4508 on September 14, 1992, at Las Vegas, Nevada, before representatives of the Office of the State Engineer.²

FINDINGS OF FACT

I.

The permittees were 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 14165 indicate that the certified mailing was received by the permittees of record. The State Engineer finds that permittees 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

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

³ NRS 534.090.

III.

Each year from 1983 through 1991 employees of the Office of the State Engineer performed what are known as groundwater pumpage inventories which documented the use of water under Permit 14165, Certificate 4508.⁴ For each of the years from 1983 through 1991 the pumpage inventory indicated that no water had been used as allowed under the permit.

Testimony provided by Robert Coache, a staff member of the Office of the State Engineer, showed that by 1984 the place of use identified under Permit 14165 was being served water by the Las Vegas Valley Water District, that a freeway had been built where most of the trailer park served under Permit 14165 was located, and that by 1988 or 1989 the well could no longer be located.⁵

The State Engineer finds that from 1983 through 1991 no water was used as authorized by Permit 14165, and the permittees did not attend the hearing or 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.⁶

⁴ Hearing Exhibit 5, public administrative hearing before the State Engineer, September 14, 1992.

⁵ Transcript, pp. 5, public administrative hearing before the State Engineer, September 14, 1992.

⁶ NRS Chapters 533 and 534.

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.⁷ 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.⁸

The State Engineer concludes clear and convincing evidence was found in the testimony of Mr. Coache and the evidence provided through the pumpage inventories that for the five successive years between 1983 through 1991 no water was used as allowed under the permit/certificate.

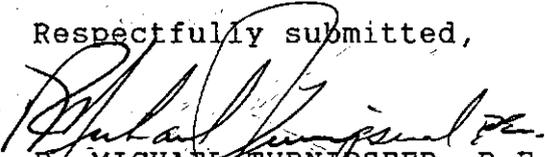
⁷ 1 Clifford S. Fishman, Jones on Evidence Section 3:10, at 238 (7th Ed. 1992).

⁸ Id. at 239.

RULING

Certificate 4508 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 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 19th day of
March, 1996.