

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

IN THE MATTER OF THE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 11943,)
CERTIFICATE 3776 APPROPRIATED FROM)
AN UNDERGROUND SOURCE WITHIN THE)
LAS VEGAS ARTESIAN GROUNDWATER)
BASIN (212) CLARK COUNTY, NEVADA.)

RULING

4524

GENERAL

I.

Permit 11943 was granted by the State Engineer to Gordon G. Hair on December 15, 1948, to appropriate 0.116 cubic feet per second of the underground waters of the Las Vegas Artesian Groundwater Basin for irrigation and domestic purposes within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 3, T.22S., R.61E., M.D.B.&M.¹ The point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 3.¹ After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 3776 on March 3, 1952, for 0.116 cubic foot per second (cfs), not to exceed 84 acre feet annually.

II.

The parcel of land identified as the place of use under Permit 11943, Certificate 3776, is in the immediate vicinity of McCarran Airport in Las Vegas, Nevada.

III.

On December 13, 1993, Clark County, Nevada, by and through its agent Robert N. Broadbent, filed an Application for Extension of Time to Prevent a Forfeiture with regard to Certificate 3776.¹ By letter dated December 30, 1993, the State Engineer informed Clark County that under NRS 534.090 the State Engineer could only consider an application for extension of time to prevent a forfeiture if the application is filed prior to the running of the statutory forfeiture period and that the records of the State Engineer indicated that the statutory forfeiture period had already

¹File No. 11943, official records in the office of the State Engineer.

run for the certificate at issue. Therefore, the application for extension of time would be held in abeyance until such time as a forfeiture hearing was set.¹

FINDINGS OF FACT

I.

Based on research of the records of the Clark County recorder, the State Engineer finds that Permit 11943 was conveyed to Clark County on November 26, 1991.

II.

In the December 13, 1993, Application for Extension of Time to Prevent a Forfeiture, Clark County indicated that it did not know when the water was last put to beneficial use under the certificate. However, it was also indicated that any use was prior to the County acquiring the property, and that the County had only recently become aware of the water right or its current status.¹ Each year from 1982 through 1992 employees of the office of the State Engineer performed what are known as groundwater pumpage inventories which documented the use of water under Permit 11943, Certificate 3776.² The pumpage inventories indicate the last use of water under Permit 11943 occurred in 1983, and from 1984 to 1992 the pumpage inventory indicates that no water was used as allowed under the referenced water right certificate.

The State Engineer finds based on the groundwater pumpage inventories that from 1984 through 1992 no water was used as authorized by Permit 11943, Certificate 3776.

III.

The State Engineer's December 30, 1993, letter indicated that a hearing on the forfeiture would be held.¹ Nevada water law does not require that an administrative hearing be held before the State

²Pumpage inventories for the Las Vegas Artesian Groundwater Basin, official records in the office of the State Engineer.

Engineer can make a declaration of forfeiture of water right.³ While a forfeiture hearing is appropriate in most instances, in this case Clark County itself admitted in its application for extension of time that water has not been used since its acquisition of the property nor was Clark County even aware of the water rights existence. The State Engineer finds, based on Clark County's own statements in the application for extension of time and the pumpage inventories, that an administrative hearing is not necessary and would not be an efficient use of the limited resources of the Division of Water Resources.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

To obtain a water right in Nevada a person files an application to appropriate with the State Engineer, and if granted, a permit is issued allowing the applicant to develop the water source and put the water to beneficial use.⁵ 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.⁶ After filing proof of beneficial use of the waters the State Engineer issues a certificate of appropriation.⁷

³NRS 534.090.

⁴NRS Chapters 533 and 534.

⁵NRS 533.325-533.445.

⁶NRS 533.380; 533.410; 533.425.

⁷NRS 533.380; 533.425.

In Nevada, water may be appropriated for beneficial use as provided under the law and not otherwise⁸ and beneficial use is the basis, the measure and the limit of the right to the use of water.⁹ The State Engineer concludes Nevada water law provides that 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.¹⁰ The State Engineer further concludes that Nevada water law provides that an application for extension of time to avoid a forfeiture may be filed with the office of the State Engineer, but the request must be filed before the expiration of the time necessary to work the forfeiture.¹¹

III.

The State Engineer bears the burden of proving by clear and convincing evidence that the statutory period of non-use has occurred.¹² 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.¹³ 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

⁸NRS 533.030 and 533.035.

⁹NRS 533.035.

¹⁰NRS 534.090.

¹¹NRS 534.090(2).

¹²Town of Eureka v. State Engineer of Nevada, 108 Nev. 163, 826 P.2d 948 (1992).

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

produce in the mind of the fact finder a firm belief or conviction that the allegations in question are true.¹⁴

The State Engineer concludes, based on Clark County's own admissions in the application for extension of time to prevent forfeiture, that the last water use was before its acquisition of the relevant property, and based on the Division of Water Resources' pumpage inventories, that clear and convincing evidence exists that no water was used under Permit 11943, Certificate 3776, since 1984, thereby working a forfeiture of the water right.

IV.

The State Engineer concludes that since the forfeiture of Permit 11943, Certificate 3776, worked before 1992 that the application for extension of time to prevent forfeiture filed on December 13, 1993, was not timely.

RULING

The Application for Extension of Time to Prevent Forfeiture filed on December 13, 1993, is hereby denied as not timely, and Permit 11943, Certificate 3776, is hereby declared forfeited for failure for a period exceeding five successive years to place the water to beneficial use.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P. E.
State Engineer

RMT/SJT/ab

Dated this 8th day of
May, 1997.

¹⁴Id. at 239.