

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

IN THE MATTER OF THE POSSIBLE)
FORFEITURE OF PERMIT 10709,)
CERTIFICATE 3003, FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
THE LAS VEGAS VALLEY ARTESIAN)
GROUNDWATER BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING
4658

GENERAL

I.

Certificate 3003, under Permit 10709, was issued by the State Engineer to the Charles E. Barbee on October 29, 1946, and allowed for the appropriation of 0.02 cubic feet per second (cfs) of the underground waters of the Las Vegas Valley Artesian Groundwater Basin for quasi-municipal and domestic purposes within the Lots 6, 7, 8 and 9 of Block 1, Four Mile Park Subdivision, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7, T.21S., R.62E., M.D.B. & M.¹ The point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 7.

II.

After all parties of interest were duly noticed by certified mail,² an administrative hearing was held with regard to the forfeiture of Permit 10709, Certificate 3003, on June 23, 1998, in Carson City, Nevada, before a representative of the office of the State Engineer.³

FINDINGS OF FACT

I.

After a certificate is issued on a permit, failure for five successive years on the part of the certificate holder to use

¹ Certificate No. 3003, official records of the office of the State Engineer. Exhibit No. 3, public administrative hearing before the State Engineer, June 23, 1998.

² Exhibit No. 1, public administrative hearing before the State Engineer, June 23, 1998.

³ Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, June 23, 1998.

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.⁴

II.

By letter dated September 25, 1996, the State Engineer informed the permittee that the water rights issued under Permit 10709, Certificate 3003, may be subject to forfeiture.⁵ Each year from 1989 through 1996 employees of the office of the State Engineer performed what are known as groundwater pumpage inventories which documented the use of water under Permit 10709, Certificate 3003.⁶ For the years 1989 and 1990, the pumpage inventory indicated that 1.5 acre-feet of water had been used as allowed under the permit. For the years 1991 through 1995, the pumpage inventory indicated that no water had been used, and for the year 1996, the pumpage inventory indicated that 1.0 acre-foot had been used.

Even though pumpage inventories submitted as evidence document water use back to 1989, the State Engineer's witness indicated that the forfeiture period being alleged by the State Engineer is 1991 through 1995.⁷ The State Engineer finds based on the September 25, 1996, date of the notice of possible forfeiture, and the testimony of the State Engineer's witness, year one of non-use is 1991 to 1992, year two is 1992 to 1993, year three is 1993 to 1994, and year four is 1994 to 1995.

⁴ NRS § 534.090.

⁵ Exhibit No. 2, public administrative hearing before the State Engineer, June 23, 1998.

⁶ Exhibit No. 10, public administrative hearing before the State Engineer, June 23, 1998.

⁷ Transcript, p. 9, public administrative hearing before the State Engineer, June 23, 1998.

III.

The State Engineer finds that on July 1, 1995, an amendment to NRS § 534.090 was made effective which provided that:

For water rights in basins for which the state engineer keeps pumping records, if the records of the state engineer indicate at least 4 consecutive years, but less than 5 consecutive years, of nonuse of all or any part of such a water right is which governed by this chapter, the state engineer shall notify the owner of the water right as determined in the records of the office of the state engineer, by registered or certified mail that he has one year after the date of the notice in which to use the water right beneficially and to provide proof of such use to the state engineer or apply for relief pursuant to subsection 2 to avoid forfeiting the water right. If, after 1 year after the date of the notice, proof of beneficial use is not sent to the state engineer, the state engineer shall, unless he has granted a request to extend the time necessary to work a forfeiture of the water right, declare the right forfeited within 30 days.

The State Engineer finds that the record does not indicate that said notice of possible forfeiture was ever sent to the permittee.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁸

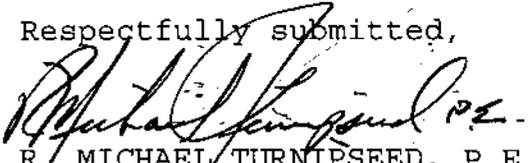
II.

The State Engineer concludes, based on the fact that 1991 to 1995 was alleged at the administrative hearing as the years of non-use of the water right under Permit 10709, Certificate 3003, the noticing provisions of NRS § 534.090 were applicable. The State Engineer further concludes that since no notice of possible forfeiture was sent to the permittee the statutory requirement of notice after four years of non-use was not complied with thereby preventing the forfeiture of the water right under Permit 10709, Certificate 3003, at this time.

⁸ NRS Chapters 533 and 534.

RULING

The right to beneficially use the waters under Permit 10709, Certificate 3003, is hereby declared not forfeited as of the date of this ruling. The State Engineer will issue a four year letter of non-use under the provisions of NRS § 534.090.

Respectfully submitted,

R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/cl

Dated this 14th day of
August, 1998.