

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

IN THE MATTER OF FORFEITURE OF WATER RIGHTS)
UNDER PERMIT 15140, CERTIFICATE 4880 AND)
PERMIT 15754, CERTIFICATE 4882 FROM AN)
UNDERGROUND SOURCE IN THE LAS VEGAS ARTESIAN)
BASIN, CLARK COUNTY, NEVADA.)

RULING

3978

GENERAL

I.

Application 15140 was filed on June 17, 1953 by the Los Angeles and Salt Lake Railroad Company, requesting permission from the State Engineer to change the underground waters previously appropriated under Permit 7200, Certificate 1631. Permit 15140 was approved on June 8, 1954 for 2.5 c.f.s. for railroad and domestic purposes. Certificate 4880 under Permit 15140 was issued on March 30, 1959 for 0.736 c.f.s. and not to exceed 67.0 MGA (205.52 AFA) for railroad and domestic purposes. The point of diversion is located within the SW1/4 NW1/4 Section 34, T.20S., R.61E., M.D.B.&M., and place of use is within the N1/2 NW1/4, SW1/4 NW1/4, NW1/4 SW1/4 Section 34 and E1/2 NE1/4, NE1/4 SE1/4 Section 33, T.20S., R.61E., M.D.B.&M. The area is known as the Union Pacific Railroad yard near downtown Las Vegas.¹

Application 15754 was filed on August 3, 1954 by the Los Angeles and Salt Lake Railroad Company, requesting permission from the State Engineer to change the point of diversion of a portion of the underground waters previously permitted under Permit 15140. Permit 15754 was approved on February 16, 1955 for 1.40 c.f.s. for railroad and domestic purposes. Certificate 4882 under Permit 15754 was issued on March 30, 1959 for 1.40 c.f.s. and not to exceed 72.0 MGA (220.86 AFA) for railroad and domestic purposes. The point of diversion is located in the SE1/4 NE1/4 Section 33, T.20S., R.61E., M.D.B.&M. The place of use remains the same as

¹ File 15140, official records in the office of the State Engineer.

that for Permit 15140, Certificate 4880.²

II.

On September 14, 1992, the State Engineer held a hearing in the matter of the forfeiture of water rights under Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882, in Las Vegas, Nevada.³

FINDINGS OF FACT

I.

Testimony was offered indicating that the railroad water system was interconnected with the Las Vegas Valley Water System and was available for use for fire protection in 1987.⁴ The two wells, certificated under Certificates 4880 and 4882 were inspected and maintained in full operating condition so that they were able to be used for fire protection, until the spring of 1991.⁵ The State Engineer finds that the wells and the water system were maintained, tested, and kept in operating condition so that water could be used for fire protection.

II.

Robert Coache, an employee of the Southern Nevada Branch Office of the State Engineer, prepared inventories of water pumped from wells in the Las Vegas Artesian Basin for the years 1983 through 1991.⁶ Mr. Coache officially visited the place of use of Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882 in 1984, 1988, 1989, 1990, 1991 and 1992 to observe any water using activities and to determine if any water was used during the

² File 15754, official records in the office of the State Engineer.

³ Exhibit 1, Public Administrative Hearing before the State Engineer, September 14, 1992.

⁴ Testimony of Las Vegas Fire Marshall George Judd, Transcript pp. 7, 12-13.

⁵ Affidavit dated November 14, 1991 by Fredrick Colier Bruner II, File 15140, official records in the office of the State Engineer.

⁶ Transcript pp. 21-22.

preceding year.⁷ In addition to these official site visits, Mr. Coache routinely observed the property in performing his normal duties in the Las Vegas Valley.⁸ Based on his official site visits and his informal observations, Mr. Coache recorded in the pumpage inventories for the years 1983 through 1991 that no water had been used in each of those years for Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882.⁹

Mr. Coache testified that he drives by the site four or five times each week and most of the time, twice a day. He has observed no water using activities at any time during these observations.¹⁰ The State Engineer finds that in the absence of any evidence or testimony to the contrary, Mr. Coache's informal observations and the practice of officially visiting the site once each year to determine water use for the proceeding year represent clear and convincing evidence that no water was used for the years of 1984 through 1991.

III.

Counsel for the Permittee objected to the use of the site visit in 1992 for determining that no water was used in 1991.¹¹ The basis for the objection is that the site visits, conducted on March 23, 1992 for Permit 15754, Certificate 4882 and on April 1, 1992 for Permit 15140, Certificate 4880, were conducted after the commencement of the forfeiture proceedings.¹² The State Engineer finds use of the 1992 site visits is appropriate because the final year of the period of non-use (1991) concluded prior to the commencement of the proceedings.

⁷ Transcript pp. 23-28.

⁸ Transcript p. 24 and p. 30.

⁹ Exhibits 8 and 9.

¹⁰ Transcript p. 29.

¹¹ Transcript, p. 31.

¹² The first Notice of Hearing was dated February 10, 1992 but that hearing was continued.

IV.

The permittee presented no evidence or testimony related to water used, except that the water system was kept in good repair in case there was a fire. The hearing notice requested the permittee "to provide evidence and testimony regarding the use of water under Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882 for the period of time from 1978 through 1990."¹³ The permit terms under Permits 15140 and 15754 require that measuring devices be installed to measure the quantity of water put to beneficial use from these two wells.¹³ The State Engineer finds that the permittee was given ample opportunity to present water measurements and other evidence and testimony related to water usage. When asked if he intended to present any evidence of water use, Counsel for the Permittee stated that he did not have to go forward because he felt that the State Engineer had not made a case for five years of non-use.¹⁴

The State Engineer finds that a period of non-use of water occurred for the years 1984 through 1991. The State Engineer finds that there is no evidence of water use in the record for these years. The State Engineer further finds that standby fire protection was not a part of the use when the permits and certificates were issued.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter of this action.¹⁵

II.

Failure for five successive years, on the part of the holder of any water right, to use beneficially all or any part of the underground water for the purpose for which the right is acquired,

¹³ Permits 15140 and 15754, official records in the office of the State Engineer.

¹⁴ Transcript pp. 49-50.

¹⁵ NRS 533 and 534.

works a forfeiture of the right.¹⁶

III.

The State Engineer concludes that during the years 1984 through 1991 (eight consecutive years), water from the underground source described was not used beneficially for the uses to which these water rights were certified under Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882.

IV.

The State Engineer concludes that the water right holder was given ample opportunity to provide evidence that the water was used for its certificated purpose during the years 1984 through 1991.

RULING

The right to beneficially use water for railroad and domestic purposes under Permit 15140, Certificate 4880 and Permit 15754, Certificate 4882 is hereby declared forfeited because of failure for eight consecutive years, on the part of the holder of the right, to use the water for the purposes for which subject water right was acquired.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 7th day of
May, 1993.