

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

IN THE MATTER OF THE FORFEITURE)
OF WATER RIGHTS UNDER)
PERMIT 12318, CERTIFICATE 4355;)
PERMIT 13112, CERTIFICATE 4019;)
PERMIT 13293, CERTIFICATE 4949;)
PERMIT 14146, CERTIFICATE 4356;)
PERMIT 15760, CERTIFICATE 4722;)
PERMIT 15943, CERTIFICATE 4322;)
PERMIT 16691, CERTIFICATE 4496)
APPROPRIATED FROM AN UNDERGROUND)
SOURCE WITHIN THE LAS VEGAS)
ARTESIAN GROUNDWATER BASIN (212))
CLARK COUNTY, NEVADA)

RULING

4364

GENERAL

I.

Permit 12318 was granted by the State Engineer to John W. Kelley and Bette C. Kelley on July 27, 1948, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for quasi-municipal and domestic purposes within the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 34, T.21 S., R.61 E., M.D.B.&M.¹ The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34.¹ After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4355 on February 29, 1956, for 0.10 cubic feet per second (cfs), not to exceed 0.5 million gallons annually (mga) for domestic use. Permit 12318 was assigned to Gladys E. Szpotowski on April 17, 1950.

II.

Permit 13112 was granted by the State Engineer to Pharo Arnoldsen on February 8, 1950, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for irrigation and domestic purposes within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T.21 S., R.61 E., M.D.B.&M.² The point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34. After filing proof

¹File No. 12318, official records of the Office of the State Engineer.

²File No. 13112, official records of the Office of the State Engineer.

of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4019 on January 25, 1954, for 0.02 cfs, not to exceed 10 acre-feet annually (afa).

III.

Permit 13293 was granted by the State Engineer to Gerald N. Leavitt on November 1, 1950, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for irrigation and domestic purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.21 S., R.61 E., M.D.B.&M.³ The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 35. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4949 on December 31, 1959, for 1,440 gallons per day (gpd) for domestic use.

IV.

Permit 14146 was granted by the State Engineer to Joe Blumenthal on September 10, 1952, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for quasi-municipal purposes within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, T.21 S., R.61 E., M.D.B.&M.⁴ The point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 33. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4356 on February 29, 1956, for 0.05 cfs, not to exceed 3.5 mga. Permit 14146 was assigned to Philip Rosenberg on June 19, 1953.

V.

Permit 15760 was granted by the State Engineer to George L. Brooks on June 3, 1955, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for quasi-municipal

³File No. 13293, official records of the Office of the State Engineer.

⁴File No. 14146, official records of the Office of the State Engineer.

purposes within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 27, T.21 S., R.61 E., M.D.B.&M.⁵ The point of diversion is described as being located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 27. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4722 on April 17, 1958, for 0.025 cfs, not to exceed 0.50 mga.

VI.

Permit 15943 was granted by the State Engineer to Dorothy Foster Zettler on April 18, 1955, to appropriate the underground waters of the Las Vegas Artesian Groundwater Basin for quasi-municipal purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, T.21 S., R.61 E., M.D.B.&M.⁶ The point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4322 on February 20, 1956, for 0.031 cfs, not to exceed 2.0 mga. Permit 15943 was assigned to Dominick Catanzarite, George Halpin, and Dominick Martini on July 12, 1955.

VII.

Permit 16691 was granted by the State Engineer to Theodore Kaufman, et al. on May 18, 1956, to change the manner of use of the underground waters of the Las Vegas Artesian Groundwater Basin, heretofore appropriated under Permit 13747, for quasi-municipal purposes within the N $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.21 S., R.61 E., M.D.B.&M.⁷ The point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 27. After filing proof of

⁵File No. 15760, official records of the Office of the State Engineer.

⁶File No. 15943, official records of the Office of the State Engineer.

⁷File No. 16691, official records of the Office of the State Engineer.

beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 4496 on March 12, 1957, for 0.04 cfs, not to exceed 2,500 gpd.

VIII.

The parcels of land identified as the places of use under Permit 12318, Certificate 4355; Permit 13112, Certificate 4019; Permit 13293, Certificate 4949; Permit 14146, Certificate 4356; Permit 15760, Certificate 4722; Permit 15943, Certificate 4322; Permit 16691, Certificate 4496 are in the immediate vicinity of McCarran Airport in Las Vegas, Nevada.

IX.

On December 13, 1993, Clark County, Nevada, by and through its agent Robert N. Broadbent filed Applications for Extension of Time to Prevent a Forfeiture with regard to Certificates 4355, 4019, 4949, 4356, 4722, 4322 and 4496.¹⁻⁷ By letter dated December 30, 1993, the State Engineer informed Clark County that under NRS 534.090 that 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 run for each of the certificates at issue. Therefore, the applications for extension of time would be held in abeyance until such time as a forfeiture hearing was set.¹

FINDINGS OF FACT

I.

In the December 13, 1993, Applications for Extension of Time to Prevent a Forfeiture with regard to the referenced certificates Clark County indicated that it did not know when the water was last put to beneficial use under each of the certificates. However, it was also indicated that any use was prior to the County acquiring the properties, and that the County had only recently become aware of the water rights or their current status.¹⁻⁷ Based on research

of the records of the Clark County recorder, the State Engineer finds that:

Permit 12318 was sold to Clark County on December 2, 1976;
Permit 13112 was sold to Clark County on January 7, 1974;
Permit 14146 was sold to Clark County on January 19, 1989;
Permit 15760 was condemned by Clark County on August 20, 1982,
and September 1, 1982;

Permit 15943 was sold to Clark County on November 13, 1986;
Permit 16691 was sold to Clark County on December 2, 1974.

In reference to Permit 13293, no deeds were found to document the transfer of the property to Clark County.

The State Engineer finds, based on Clark County's own statements, that any water use occurred prior to the acquisition of the properties, that water was last used under Permit 12318 before December 2, 1976; under Permit 13112 before January 7, 1974; under Permit 14146 before January 19, 1989; under Permit 15760 before August 20, 1982, or September 1, 1982; under Permit 15943 before November 13, 1986; and under Permit 16691 before December 2, 1974.

II.

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 12318, Certificate 4355; Permit 13112, Certificate 4019; Permit 13293, Certificate 4949; Permit 14146, Certificate 4356; Permit 15760, Certificate 4722; Permit 16691, Certificate 4496.⁸ For each of the years from 1982 through 1992 the pumpage inventory indicates that no water was used as allowed under any of the referenced water right certificates. In reference to Permit 15943, the State Engineer's pumpage inventories from 1986 to 1992 show no beneficial use of any water under the permit.

⁸Pumpage inventories for the Las Vegas Artesian Groundwater Basin, official records of the Office of the State Engineer.

The State Engineer finds based on the groundwater pumpage inventories that from 1982 through 1992 no water was used as authorized by Permit 12318, Certificate 4355; Permit 13112, Certificate 4019; Permit 13293, Certificate 4949; Permit 14146, Certificate 4356; Permit 15760, Certificate 4722; Permit 16691, Certificate 4496. The State Engineer further finds that from 1986 through 1992 no water was used as authorized under Permit 15943, Certificate 4322.

III.

The State Engineer's December 30, 1993, letter indicated that a hearing on the forfeitures would be held.¹⁷ Nevada water law does not require that an administrative hearing be held before the State Engineer can make a declaration of forfeiture of water right.⁹ While a forfeiture hearing is appropriate in most instances, in this case Clark County itself admitted in its applications for extensions of time that water has not been used since its acquisition of the properties nor was Clark County even aware of the water rights existence. The State Engineer finds, based on Clark County's own statements in the applications 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.¹⁰

II.

To obtain a water right in Nevada a person files an

⁹NRS 534.090.

¹⁰NRS Chapters 533 and 534.

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.¹¹ 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.¹² After filing proof of beneficial use of the waters the State Engineer issues a certificate of appropriation.¹³

In Nevada, water may be appropriated for beneficial use as provided under the law and not otherwise¹⁴ and beneficial use is the basis, the measure and the limit of the right to the use of water.¹⁵ 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.¹⁶ 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.¹⁷

¹¹NRS 533.325-533.445.

¹²NRS 533.380; 533.410; 533.425.

¹³NRS 533.380; 533.425.

¹⁴NRS 533.030 and 533.035.

¹⁵NRS 533.035.

¹⁶NRS 534.090.

¹⁷NRS 534.090(2).

III.

The State Engineer bears the burden of proving by clear and convincing evidence that the statutory period of non-use has occurred.¹⁸ 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.¹⁹ 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.²⁰

The State Engineer concludes, based on Clark County's own admissions in the applications for extension of time to prevent forfeiture, that the last water use was before its acquisition of the relevant properties, and based on the Division of Water Resources' pumpage inventories, that clear and convincing evidence exists that no water was used under Permit 12318, Certificate 4355 since December 2, 1976; under Permit 13112, Certificate 4019 since January 7, 1974; under Permit 13293, Certificate 4949 since 1982; under Permit 14146, Certificate 4356 since 1982; under Permit 15760, Certificate 4722 since 1982; under Permit 15943, Certificate 4322 since 1982; and under Permit 16691, Certificate 4496 since December 2, 1974, thereby working a forfeiture of the water rights.

IV.

The State Engineer concludes that since the forfeitures of Permit 12318, Certificate 4355; Permit 13112, Certificate 4019; Permit 13293, Certificate 4949; Permit 14146, Certificate 4356; Permit 15760, Certificate 4722; Permit 15943, Certificate 4322;

¹⁸Town of Eureka v. State Engineer of Nevada, 108 Nev. 163, 826 P.2d 948 (1992).

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

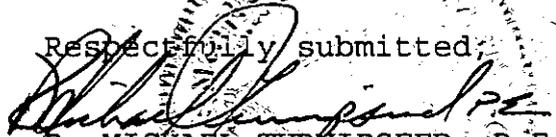
²⁰Id. at 239.

Permit 16691, Certificate 4496 all worked before 1992 that the applications for extension of time to prevent forfeiture filed on December 13, 1993, were not timely.

RULING

The Applications for Extension of Time to Prevent Forfeiture filed on December 13, 1993, are hereby denied as not timely, and Permit 12318, Certificate 4355; Permit 13112, Certificate 4019; Permit 13293, Certificate 4949; Permit 14146, Certificate 4356; Permit 15760, Certificate 4722; Permit 15943, Certificate 4322; Permit 16691, Certificate 4496 are 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/bk

Dated this 18th day of
June, 1996.