

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

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 11092, CERTIFICATE)
4247, APPROPRIATED FROM AN UNDERGROUND)
SOURCE, PAHRUMP VALLEY ARTESIAN GROUND-)
WATER BASIN (162), NYE COUNTY, NEVADA.)

RULING

4373

GENERAL

I.

Application 11092 was filed by Buddy A.F. Cayton on March 24, 1944, to appropriate the underground waters of the Pahrump Valley Artesian Groundwater Basin for irrigation purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 15, T.20 S., R.53 E., M.D.B.&M.¹ The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15. A permit was issued on Application 11092 on July 24, 1944, for 0.4 cubic feet per second (cfs).² After Proof of Beneficial Use of the waters as allowed under the permit was filed by Sophie Moore in the Office of the State Engineer, on December 1, 1955, the State Engineer issued Certificate 4247 allowing for the diversion of 0.05 cfs, not to exceed of total duty of 20.0 acre-feet annually (afa), for the irrigation of 4.0 acres of land within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 15.

II.

Documents were submitted to the Office of the State Engineer which transferred portions of the ownership of Permit 11092, in the records of the Office of the State Engineer, from the original permittee through several persons to the present owners of record Travis and Nomia Nora Lauglin (a 2/3rds undivided interest) and Freeman & Hazel Rogers (a 1/3rd undivided interest).¹ The Nye County Assessor's Office indicated the owners of record of parcels of land located within the place of use identified under the permit are Lendra F. Cohrac (APN 3532119), Edward R. & Lillian H. Bowman

¹Exhibit No. 3, public administrative hearing before the State Engineer, June 5, 1990. (Hereinafter Exhibit No. 3.)

² File No. 11092, official records in the Office of the State Engineer.

(APN 3532121), Jerry N. & Shonry Ann Vohs (APN 3532122), Ray Kenneth Dell (APN 3532123), Lee J. & Barbara L. Hanson (APN 3532124), and Elizabeth P. Madrick (APN 3532129).³

III.

The State Engineer initially described and designated a portion of the Pahrump Valley Artesian Groundwater Basin on March 11, 1941.⁴ The State Engineer subsequently extended the boundaries of the designated area of the Pahrump Valley Artesian Groundwater Basin on January 15, 1948,⁵ and on January 23, 1953.⁶

On October 26, 1987, the State Engineer issued Order 955 wherein he found that the groundwater levels in the Pahrump Valley were declining and ordered that all applications filed to appropriate water from the Pahrump Valley Artesian Groundwater Basin in the east side of the basin on the Pahrump and Manse Fans would be denied; all applications for all uses except small commercial uses on the valley floor would be denied; and that all applications filed to appropriate water for irrigation purposes on lands in Pahrump Valley that have had a certificated water right forfeited where the forfeiture occurred prior to January 1, 1988, would be considered for approval on an individual basis; however, such applications would only be considered if they had been filed within 60 days of the date the water right had been declared forfeited.

IV.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the forfeiture of Permit 11092, Certificate 4247, on June 5, 1990, at

³Exhibit No. 2, public administrative hearing before the State Engineer, June 5, 1990. (Hereinafter Exhibit No. 2.)

⁴State Engineer's Order No. 176, dated March 11, 1941, official records in the Office of the State Engineer.

⁵State Engineer's Order No. 193, dated January 15, 1948, official records in the Office of the State Engineer.

⁶State Engineer's Order No. 205, dated January 23, 1953, official records in the Office of the State Engineer.

Pahrump, Nevada, before representatives of the Office of the State Engineer.⁷

FINDINGS OF FACT

I.

The State Engineer finds that 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.⁸ 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.⁹

II.

Testimony and evidence presented at the administrative hearing showed that from 1982 through 1989 employees of the Office of the State Engineer physically visited the Pahrump Valley Artesian Groundwater Basin and conducted what are known as ground water pumpage inventories which documented the use of water for irrigation purposes as allowed under Certificate 4247 for each of those years.¹⁰ From 1982 through 1987, the pumpage inventories indicated that no water had been used for irrigation as allowed under the certificate; no entries were made for 1988 or 1989.

III.

The State Engineer finds that testimony and evidence established that no irrigation took place on the 4 acres parcel within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T.20S., R.53E., M.D.B.&M. during the period 1982 through 1987, inclusive. The State Engineer

⁷Transcript, public administrative hearing before the State Engineer, June 5, 1990.

⁸NRS 533.410.

⁹NRS 534.090.

¹⁰Exhibit No. 2.

further finds that the permittee did not supply any evidence to refute the finding of no use of the water or to show water was put to beneficial use for irrigation purposes as allowed under Certificate 4247 during the period considered for forfeiture.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.¹¹

II.

Forfeiture must be demonstrated by clear and convincing evidence. 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.¹² 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.¹³ The State Engineer concludes clear and convincing evidence showing no use of water as allowed under Certificate 4247, Permit 11092, for five successive years is found in the testimony and evidence regarding the pumpage inventories, visits to Pahrump Valley Artesian Groundwater Basin, and the fact that no evidence was presented that showed otherwise, resulting in forfeiture of the water rights held under Certificate 4247, Permit 11092.

RULING

The right to beneficially use water under Permit 11092, Certificate 4247, is hereby declared forfeited based on the failure

¹¹NRS Chapters 533, and 534.

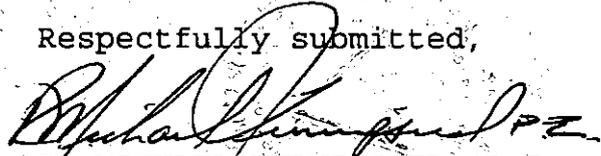
¹²1 Clifford S. Fishman, Jones on Evidence Section 3:10, at 238 (7th Ed. 1992).

¹³Id. at 239.

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for a period of 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/bk

Dated this 16th day of
July, 1996.