

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

IN THE MATTER OF FORFEITURE OF WATER )  
RIGHTS UNDER PERMIT 18603, CERTIFICATE )  
6438, APPROPRIATED FROM AN UNDERGROUND )  
SOURCE PAHRUMP VALLEY ARTESIAN GROUND- )  
WATER BASIN (162), NYE COUNTY, NEVADA. )

RULING

# 4388

GENERAL

I.

Application 18603 was filed by Leslie Allen Mankins on February 29, 1960, to appropriate the underground waters of the Pahump Valley Artesian Groundwater Basin for irrigation purposes within the SE $\frac{1}{4}$  of Section 2, T.21 S., R.53 E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 2. A permit was issued under Application 18603 on October 21, 1960, for 2.0 cubic feet per second (cfs) of water.<sup>1</sup> After Proof of Beneficial Use of the waters as allowed under the permit was filed in the Office of the State Engineer, on January 12, 1968, the State Engineer issued Certificate 6438 allowing for the diversion of 0.62 cfs of water, not to exceed 166.5 acre-feet annually (afa), for the irrigation of 31.44 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 1.86 acres within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  (total of 33.30 acres) of said Section 2.<sup>2</sup>

II.

Documents were submitted to the Office of the State Engineer which relinquished to the State of Nevada ownership of 14.86 acres (0.2767 cfs, 74.3 afa) of agricultural water rights under Permit 18603, Certificate 6438. Upon relinquishment 18.44 acres (0.3433 cfs, 92.2 afa) remained with appurtenant water rights under Permit 18603, Certificate 6438.

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<sup>1</sup>File No. 18603, official records in the Office of the State Engineer.

<sup>2</sup>Exhibit No. 2, public administrative hearing before the State Engineer, June 7, 1990. (Hereinafter "Exhibit No. 2".)

III.

The State Engineer initially described and designated a portion of the Pahrump Valley Artesian Groundwater Basin on March 11, 1941.<sup>3</sup> The State Engineer subsequently extended the boundaries of the designated area of the Pahrump Valley Artesian Groundwater Basin on January 15, 1948,<sup>4</sup> and on January 23, 1953.<sup>5</sup>

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 18603, Certificate 6438, on June 7, 1990, at

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<sup>3</sup>State Engineer's Order No. 176, dated March 11, 1941, official records in the Office of the State Engineer.

<sup>4</sup>State Engineer's Order No. 193, dated January 15, 1948, official records in the Office of the State Engineer.

<sup>5</sup>State 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.<sup>6</sup>

FINDINGS OF FACT

I.

Testimony and evidence presented at the administrative hearing showed that each year from 1982 through 1987 employees of the Office of the State Engineer physically visited the Pahrump Valley Artesian Groundwater Basin and conducted what are known as groundwater pumpage inventories which documented the use of water for irrigation purposes as allowed under Certificate 6438.<sup>7</sup> For the years 1982 through 1987 the pumpage inventories indicated no water had been used for irrigation within the certificated place of use nor did the permittee provide any evidence of beneficial use of the waters between those years. In fact, the permittee testified that he had left the water appurtenant to the 18 acres alone in case somebody wanted to put in a water system.<sup>8</sup> The State Engineer finds that from 1982 through 1987 no irrigation took place within the certificated place of use and leaving the water to sit for some potential future use is not beneficial use of the water as allowed under the permit/certificate.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>9</sup>

II.

The State Engineer concludes that in order for a water right permit to ripen into a water right certificate the permittee must

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<sup>6</sup>Transcript, public administrative hearing before the State Engineer, June 7, 1990. (Hereinafter "Transcript".)

<sup>7</sup>State's Exhibit No. 2.

<sup>8</sup>Transcript, p. 37.

<sup>9</sup>NRS Chapters 533 and 534.

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

The State Engineer concludes clear and convincing evidence showing non-use of the water right as allow under Permit 18603, Certificate 6438, for five successive years is found in the testimony and evidence regarding the pumpage inventories, visits to Pahrump Valley Artesian Groundwater Basin, failure of the permittee to present evidence of any water use, resulting in the forfeiture of 0.3433 cfs, 92.2 afa, of water for the irrigation of 18.44 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 2 under Permit 18603, Certificate 6438.

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<sup>10</sup>NRS 533.410.

<sup>11</sup>NRS 534.090.

<sup>12</sup>1 Clifford S. Fishman, Jones on Evidence Section 3:10, at 238 (7th Ed. 1992).

<sup>13</sup>Id. at 239.

RULING

The right to beneficially use 0.3433 cfs, 92.2 acre feet of water appurtenant to 18.44 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 2 under Permit 18603, Certificate 6438, is hereby declared forfeited based on the failure 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. No water right remains in existence under Certificate 6438.

Respectfully submitted;

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 1st day of  
August, 1996.