

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

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 20365, AMENDED)
CERTIFICATE 5668, APPROPRIATED FROM AN)
UNDERGROUND SOURCE PAHRUMP VALLEY)
ARTESIAN GROUNDWATER BASIN (162), NYE)
COUNTY, NEVADA.)

RULING

4398

GENERAL

I.

Application 20365 was filed by Charles W.A. Lynch, Jr. and Helene G. Lynch on March 14, 1962, to change the point of diversion of a portion of the water previously appropriated under Permit 12626 from the underground waters of the Pahrump Valley Artesian Groundwater Basin for irrigation of 80 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.20 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 18. A permit was issued under Application 20365 on July 12, 1962, for 0.85 cubic feet per second (cfs) of water.¹ After Proof of Beneficial Use of the waters as allowed under the permit was filed in the Office of the State Engineer, on December 11, 1963, the State Engineer issued Certificate 5668. On July 21, 1980, the State Engineer issued Amended Certificate 5668 allowing for the diversion of 0.85 cfs of water, not to exceed 400.0 acre-feet annually (afa), for the irrigation of 40 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.²

II.

Documents were submitted to the Office of the State Engineer whereby Helene G. Lynch quitclaimed to Charles W.A. Lynch, Jr. any and all right, title and interest she may have had in Permit 20365, Certificate 5668.¹ By deed dated September 1970, C.W. Lynch, Jr. and Cynthia V. Lynch conveyed to C.L. Ranch, Inc. 40 acres in the

¹File No. 20365, official records in the Office of the State Engineer.

²State's Exhibit No. 4, public administrative hearing before the State Engineer, June 7, 1990. (Hereinafter "State's Exhibit No. 4".)

SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18. Pursuant to this conveyance the State Engineer assigned 0.712 cfs, 335.0 afa, for the irrigation of 67 acres to C.L. Ranch, Inc.¹

On February 15, 1979, Charles W.A. Lynch, Jr. relinquished 13 acres of water rights (0.138 cfs, 65.0 afa) in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ E $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; and NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.¹ By deed dated September 24, 1979, C.L. Ranch, Inc. conveyed to Walter H. Carnahan the W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ all in said Section 18, along with agricultural water rights in the amount of 0.146 cfs, 68.75 afa, 13.75 acres. These water rights were moved from Permit 20365, Certificate 5668, by Application 43490.¹

III.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the forfeiture of the remainder of Permit 20365, Certificate 5668, on June 7, 1990, at Pahrump, Nevada, before representatives of the Office of the State Engineer.³

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 5668.⁴ For the years 1982 through 1987 the pumpage inventories indicated no water had been used for irrigation within the certificated place of use.

³Transcript, public administrative hearing before the State Engineer, June 7, 1990. (Hereinafter "Transcript".)

⁴State's Exhibit No. 4.

The permittee provided evidence indicating water use, i.e., statements from persons who have seen water used on the place of use for irrigation, electric bills to show use of electricity to run the well pump, farming expenditures for crop production and photographs of fields of crops.⁵ The State Engineer finds that substantial evidence was presented to rebut the State Engineer's evidence of no water use under Permit 20365, Certificate 5668, showing that water was put to beneficial use for irrigation during the time period from 1982 through 1987 at the certificated place of use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.⁶

II.

The State Engineer concludes 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.⁷ 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.⁸

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

⁵Transcript, pp. 16-33.

⁶NRS Chapters 533 and 534.

⁷NRS 533.410.

⁸NRS 534.090.

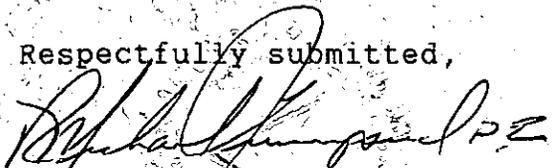
higher standard of beyond a reasonable doubt.⁹ To establish a fact by clear and convincing evidence a party must persuade the trier of fact that the proposition is highly probable, or must produce in the mind of the fact finder, a firm belief or conviction that the allegations in question are true.¹⁰

The State Engineer concludes based on the rebuttal evidence provided by the permittee that clear and convincing evidence does not exist showing non-use of the water right as allowed under the remainder of Permit 20365, Certificate 5668, for five successive years.

RULING

The right to beneficially use water under the remainder of Permit 20365, Certificate 5668, in the amount of 266.25 afa appurtenant to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ excepting out those lands relinquished in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ and appurtenant to E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ excepting out those lands relinquished in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.20S., R.53E., M.D.B.&M., is hereby declared not forfeited. No finding is made as to the status of the water right under Permit 20365, Certificate 5668 from June 7, 1990, to the present time.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 7th day of

August, 1996.

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

¹⁰Id. at 239.