

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

IN THE MATTER OF THE POSSIBLE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 21387, CERTIFICATE)
5746 FROM AN UNDERGROUND SOURCE, LAS VEGAS)
ARTESIAN GROUNDWATER BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING

4456

GENERAL

I.

Application 21387 was filed by George Crockett on July 9, 1963, to change the point of diversion and place of use of the underground waters within the Las Vegas Artesian Basin, Clark County, Nevada previously appropriated under Permit 11495, Certificate 5023. Permit 21387 was approved on December 5, 1963, for 0.1 cubic foot per second (cfs) for irrigation and domestic use. Certificate 5746 under Permit 21387 was issued on June 30, 1964, for 0.1 cfs of water, not to exceed 20 acre feet annually (AFA) for the irrigation of 4.0 acres of land, located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 3, T.22S., R.61E., M.D.B.&M. The point of diversion is located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 3. The current owner of record is the Margaret Crockett Trust.¹

II.

On August 26, 1991, an Application for Extension of Time to Prevent a Forfeiture of Permit 21387, Certificate 5746 was filed by Margaret Crockett. On line 4, it is stated that the last beneficial use occurred on December 20, 1986. On September 20, 1991, said application was approved and the time to prevent a forfeiture was extended to August 28, 1992.¹

On July 22, 1992, an Application for Extension of Time to Prevent a Forfeiture of Permit 21387, Certificate 5746 was filed by Margaret Crockett. On line 4, it is stated that the last

¹File No. 21387, official records in the Office of the State Engineer.

beneficial use occurred in January, 1988. On December 4, 1992, said application was approved and the time to prevent a forfeiture was extended to July 22, 1993.¹

On August 16, 1993, an Application for Extension of Time to Prevent a Forfeiture of Permit 21387, Certificate 5746 was filed by Robert Broadbent of the Clark County Department of Aviation. On line 4, it is stated that the last beneficial use occurred in January, 1988. On September 7, 1993, said application was approved and the time to prevent a forfeiture was extended to July 22, 1994.¹

On March 28, 1995, an Application for Extension of Time to Prevent a Forfeiture of Permit 21387, Certificate 5746 was filed by Margaret Crockett. Because said application was filed after the time to prevent a forfeiture had expired, it was not timely filed. Action on said application was deferred until after a hearing to consider the possible forfeiture of the water right.¹

III.

On May 13, 1996, a hearing was held to consider the possible forfeiture of Permit 21387, Certificate 5746.² At the hearing, administrative notice was taken of all records in the office of the State Engineer.³

FINDINGS OF FACT

I.

On line 4 of the Application for Extension of Time filed on August 26, 1991, it is stated that the last beneficial use occurred on December 20, 1986. On the other three applications, it is stated that the last beneficial use occurred in January, 1988.¹ At the hearing, Mrs Crockett testified that these dates were shown in

²Exhibit No. 1, Public Administrative Hearing before the State Engineer, May 13, 1996.

³Transcript p. 9, Public Administrative Hearing before the State Engineer, May 13, 1996.

error⁴ and that beneficial use of water occurred continuously until May, 1993, when she vacated the property.⁵ She testified that water was used for her 7,000 square foot home, the caretaker's house, the maid's quarters, and for the extensive landscaping which included ornamental trees, an orchard, flowers, and large areas of planted grass.⁶ The area that Mrs. Crockett referred to encompasses about 10 to 12 acres surrounding the ranch house and is located within the place of use of Permit 17727, Certificate 5168,⁷ which is not being considered for a possible forfeiture. The State Engineer finds that the beneficial use on the Crockett property as described above, occurred under Permit 17727, Certificate 5168, and not under Permit 21387, Certificate 5746, the water right at issue here.

II.

The place of use of Permit 21387, Certificate 5746 consists of four acres located on the west side of the Crockett property, adjacent to Bermuda Road.⁸ The State Engineer's records show that the four acres were last irrigated in 1986.⁹ Mrs. Crockett rebutted the State Engineer's records with her testimony that alfalfa was grown there for many years until 1988.¹⁰ In 1989, her

⁴Transcript pp. 29, 49, 51, 57, and 63-64, Public Administrative Hearing before the State Engineer, May 13, 1996.

⁵Transcript pp. 21-22, Public Administrative Hearing before the State Engineer, May 13, 1996.

⁶Transcript pp. 12-17, Public Administrative Hearing before the State Engineer, May 13, 1996.

⁷Transcript pp. 14-15 and 72-73, Public Administrative Hearing before the State Engineer, May 13, 1996.

⁸Exhibit No. 3, Public Administrative Hearing before the State Engineer, May 13, 1996.

⁹Exhibit Nos. 4 and 5, Public Administrative Hearing before the State Engineer, May 13, 1996.

¹⁰Transcript p. 76, Public Administrative Hearing before the State Engineer, May 13, 1996.

husband, who died in 1990, planted and irrigated 20,000 palm trees for resale on this four acres.¹¹ There is no evidence or testimony regarding the fate of the palm trees or the irrigation of this parcel after 1989. Accepting Mrs. Crockett's testimony, the State Engineer finds that the place of use of Permit 21387, Certificate 5746 was last irrigated in 1989. The State Engineer further finds that five consecutive years of non-use concluded at the end of 1994.

III.

Mrs. Crockett was involved in negotiations and a lawsuit over the condemnation of her property, including the place of use of Permit 21837, Certificate 5746.¹² Mrs. Crockett felt that the Clark County Department of Aviation intended to include this water right along with her real property in the condemnation.¹³ When the lawsuit concluded in March, 1995, Mrs. Crockett learned that the County did not wish to include her water rights and on March 28, 1995, Mrs Crockett filed an Application for Extension of Time to Prevent a Forfeiture of Permit 21387, Certificate 5746. Because this was filed after the five consecutive years of non-use had run and after the previous extension had expired on July 22, 1994, the State Engineer finds that the application was not timely filed.

¹¹Transcript pp. 18 and 75-76, Public Administrative Hearing before the State Engineer, May 13, 1996.

¹²Exhibit No. 9, Public Administrative Hearing before the State Engineer, May 13, 1996.

¹³Transcript p. 54 and Exhibit No. 9, Public Administrative Hearing before the State Engineer, May 13, 1996. There is evidence that the County intended to include Mrs. Crockett's water right in the offers to purchase dated February 12, 1992 and January 11, 1993. Further evidence is the Application for Extension of Time to Prevent a Forfeiture filed on August 16, 1993, by the Clark County Department of Aviation. The County failed to refile when the extension expired on July 22, 1994.

CONCLUSIONS

I.

The State Engineer has jurisdiction in this matter.¹⁴

II.

Failure for a period of five consecutive years on the part of a water right holder, to use beneficially all or any part of the underground water for the purpose for which the right is acquired, works a forfeiture of the water right, to the extent of the non-use.¹⁵

III.

Because the law disfavors a forfeiture, there must be clear and convincing evidence of the statutory period of non-use, for the State Engineer to declare a forfeiture.¹⁶ Regarding the four acres composing the place of use of Permit 21387, Certificate 5746, the State Engineer concludes that there is clear and convincing evidence that this land was not irrigated for the five year period 1990 through 1994, and has not been irrigated since.

IV.

The State Engineer may, upon the request of the water right holder, extend the time necessary to work a forfeiture, if the request is made before the expiration of the time necessary to work a forfeiture.¹² Because the five year period of non-use expired at the end of 1994 and the previous Extension of Time to Prevent a Forfeiture expired on July 22, 1994, the State Engineer concludes that the Application for Extension of Time filed on March 28, 1995, was not timely filed and must be denied.

V.

Because the water under Permit 21387, Certificate 5746 was not placed to beneficial use for a five year period and the Request for

¹⁴NRS Chapters 533 and 534.

¹⁵NRS 534.090.

¹⁶Town of Eureka v. Office of the State Eng'r of Nevada, 108 Nev, 826 P.2d 948 (1991).

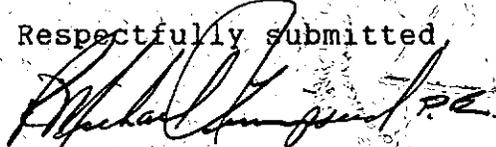
Ruling
Page 6

Extension of Time was not filed in a timely manner in accordance with NRS 534.090, the State Engineer concludes that said water right must be declared forfeited.

RULING

The right to beneficially use the water under Permit 21387, Certificate 5746 is hereby declared forfeited on the grounds that the water was not beneficially used for five consecutive years, the Extension of Time to Prevent the Forfeiture filed on August 16, 1993, expired on July 22, 1994, and the latest Application for Extension of Time to Prevent a Forfeiture was not timely filed.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 19th day of
November, 1996.