

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

IN THE MATTER OF THE POSSIBLE)
FORFEITURE OF PERMIT 25324,)
CERTIFICATE 8116, FILED TO)
APPROPRIATE THE PUBLIC WATERS OF)
THE LAS VEGAS ARTESIAN GROUNDWATER)
BASIN (212), CLARK COUNTY, NEVADA.)

RULING

4631

GENERAL

I.

Permit 25324 was granted by the State Engineer to the Las Vegas Hacienda, Inc., on January 29, 1973, and allowed for a change in the point of diversion, place and manner of use of 0.053 cubic feet per second (cfs), not to exceed 38.48 acre-feet annually, of the underground waters of the Las Vegas Artesian Groundwater Basin. The manner of use is quasi-municipal and domestic purposes to meet the increased demands of the Hacienda Hotel and the place of use is described as being located within the N½ SE¼ of Section 29, T.21S., R.61E., M.D.B. & M.¹ The point of diversion is described as being located within the NE¼ SE¼ of said Section 29. After filing proof of beneficial use of the waters as allowed under the permit, the State Engineer issued Certificate 8116 on August 1, 1973, for 0.053 cfs, not to exceed 38.48 acre-feet annually.²

II.

Ownership of the water right is being claimed by the Santa Fe Gaming Corporation;³ however, nothing in the records of the State Engineer assigns ownership of this water right from the Las Vegas Hacienda, Inc. to Santa Fe Gaming Corporation.

¹ File No. 25324, official records of the office of the State Engineer.

² Exhibit No. 5, public administrative hearing before the State Engineer, April 23, 1998.

³ Exhibit No. 2, public administrative hearing before the State Engineer, April 23, 1998.

III.

After all parties of interest were duly noticed by certified mail,⁴ an administrative hearing was held with regard to the forfeiture of Permit 25324, Certificate 8116, on April 23, 1998, in Las Vegas, Nevada, before a representative of the office of the State Engineer.⁵

FINDINGS OF FACT

I.

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.⁶

II.

Each year from 1988 through 1996 employees of the office of the State Engineer performed what are known as groundwater pumpage inventories which documented the use of water under Permit 25324, Certificate 8116, through meter readings then summarized in the pumpage inventories.⁷ For each of the years from 1988 through 1993, and 1996 the pumpage inventory indicated that no water had been used as allowed under the permit. For the year 1994 the pumpage inventory indicated that 0.1 acre-foot had been used, and for the year 1995 the pumpage inventory indicated that 0.5 acre-foot had been used. The permittee provided no evidence to dispute

⁴ Exhibit No. 3, public administrative hearing before the State Engineer, April 23, 1998.

⁵ Exhibit No. 3 and Transcript, public administrative hearing before the State Engineer, April 23, 1998.

⁶ NRS § 534.090.

⁷ Exhibit No. 6, public administrative hearing before the State Engineer, April 23, 1998.

the actual quantity of water used under the permit. The State Engineer finds for the five years proceeding the notice of possible forfeiture⁸ (1992 through 1996) the maximum quantity of water used under Permit 25324, Certificate 8116, was 0.5 acre-foot out of the 38.48 certificated under the water right.

III.

Testimony and evidence indicated the fire protection system for the Las Vegas Hacienda has a water supply from the Las Vegas Valley municipal water system and backup from a storage tank connected to the certificated well, and that during the period of time from 1991 to 1994 the pumps to the system from the well were tested and operational.⁹ However, for several years while the pump on the well was operational it was not hooked up to the water tank.¹⁰ Further testimony indicated that in 1994, when the owner of the Las Vegas Hacienda began negotiations to sell the hotel, it was these certificated water rights that the owners of the Las Vegas Hacienda looked to move to use in another place in the valley.¹¹ The State Engineer finds that the well was kept operational as only a backup fire protection system, but by the very fact that the owners of the hotel looked to move the water rights to another place in the valley it is clear that the certificated water right was not the sole source of supply for the fire protection system, but in fact city water was the primary source of supply.

⁸ Exhibit No. 1, public administrative hearing before the State Engineer, April 23, 1998.

⁹ Transcript, pp. 27, 48-55, and Exhibit Nos. 10 and 11, public administrative hearing before the State Engineer, April 23, 1998.

¹⁰ Transcript, pp. 51-55, 78-79, Exhibit Nos. 10 and 11, public administrative hearing before the State Engineer, April 23, 1998.

¹¹ Transcript, pp. 56-58, public administrative hearing before the State Engineer, April 23, 1998.

IV.

Testimony provided by Dean Goodale, a staff member of the Division of Water Resources, indicated that he informed the engineers at the Las Vegas Hacienda several times that they ought to be using the water.¹² Bill Quinn, a former staff member of the Division of Water Resources, also informed the permittee's representative who researched the status of water rights at the Division of Water Resources that if the owners of the hotel did not pump water from the certificated well for five years consecutively, they could be in danger of having those water rights forfeited.¹³

The General Manager of the Las Vegas Hacienda testified as to his belief that if some use was made of the water the entire right would be protected and not subject to forfeiture.¹⁴ The State Engineer finds this witness' understanding of the law of forfeiture is incorrect, and that an engineer for the permittee and the General Manager of the Las Vegas Hacienda were informed that failure to use the water would result in the forfeiture of said water right.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁵

II.

Clear and convincing evidence is that evidence which falls somewhere between a preponderance of the evidence and the higher

¹² Transcript, p. 17, public administrative hearing before the State Engineer, April 23, 1998.

¹³ Transcript, pp. 61-62, public administrative hearing before the State Engineer, April 23, 1998.

¹⁴ Transcript, pp. 62-64, 73-74, 82, public administrative hearing before the State Engineer, April 23, 1998.

¹⁵ NRS § Chapters 533 and 534.

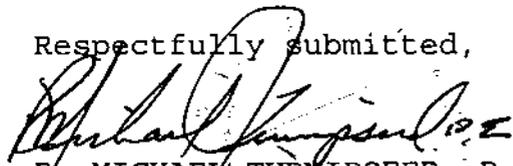
standard of beyond a reasonable doubt.¹⁶ To establish a fact by clear and convincing evidence a party must persuade the trier of fact that the proposition is highly probable, or must produce in the mind of the fact finder a firm belief or conviction that the allegations in question are true.¹⁷

The State Engineer concludes there is clear and convincing evidence as to the use of water at the certificated well found in the testimony of the staff of the Division of Water Resources as to the meter readings on the certificated well, as well as testimony from the witness familiar with the operation of the Las Vegas Hacienda Hotel during the forfeiture period. The State Engineer concludes that 37.98 acre-feet of water under Permit 25324, Certificate 8116, is forfeited leaving 0.5 acre-foot in good standing under the permit as of 1995.

RULING

The right to beneficially use 37.98 acre-feet of water under Permit 25324, Certificate 8116, is hereby declared forfeited because of failure for five consecutive years on the part of the holder of the water right to use the water for the purposes for which the subject water right was acquired leaving 0.5 acre-foot under the certificate in good standing as of 1995.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/cl

Dated this 22nd day of
May, 1998

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

¹⁷Id. at 239.