

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

IN THE MATTER OF A POSSIBLE FORFEITURE OF)
WATER RIGHTS UNDER PERMIT 11323, CERTIFICATE)
4384 AND PERMIT 11428, CERTIFICATE 3446,)
FROM AN UNDERGROUND SOURCE IN THE LAS VEGAS)
ARTESIAN BASIN, CLARK COUNTY, NEVADA.)

RULING
#4087

GENERAL

I.

Application 11323 was filed on June 30, 1945, by Kenneth Searles, to appropriate 1.5 cubic feet per second (cfs) of water from an underground source. Permit 11323 was approved on November 2, 1945, for 0.5 cfs for irrigation and domestic use. Certificate 4384 under Permit 11323 was issued on March 21, 1956, for 0.10 cfs and not to exceed 12 acre feet annually (AFA) for the irrigation of 2.5 acres located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32, T.20S., R.61E., M.D.B.&M. The point of diversion is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 32. The owner of record of Permit 11323, Certificate 4384 is shown as Lester B. (Benny) Binion and Teddy Jane Binion in the records of the State Engineer.¹

Application 11428 was filed on November 16, 1945, by C.A. Morehouse and Gertrude Morehouse, to appropriate 0.40 cfs of water from an underground source. Permit 11428 was approved on July 15, 1947, for 0.08 cfs for quasi-municipal and domestic use. Certificate 3446 under Permit 11428 was issued on April 21, 1950, for 0.08 cfs and not to exceed 27 AFA for quasi-municipal and domestic use in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 28, T.20S., R.61E., M.D.B.&M. The point of diversion is located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 28. The owner of record of Permit 11428, Certificate 3446 is shown as Benny Binion and Teddy Jane Binion in the records of the State Engineer.²

¹ File No. 11323, official records in the office of the State Engineer.

² File No. 11428, official records in the office of the State Engineer.

II.

On September 15, 1992, the Hearing Officer for the State Engineer held a public hearing in the matter of the possible forfeiture of Permit 11323, Certificate 4384 and Permit 11428, Certificate 3446, in Las Vegas, Nevada.³

FINDINGS OF FACT

I.

Field inspections for the Las Vegas Valley pumpage inventories are performed once each year, usually at the beginning of the next calendar year.⁴ The property identified as the place of use of a certificated water right is inspected for visual evidence of water use. In the case of irrigation, the property is inspected for the remnants of a crop irrigated during the past year and for any visual evidence that pipelines, sprinklers, or any other irrigation equipment had been used on the property within that year. The State Engineer finds that in the Las Vegas Basin any irrigation during the previous year would leave visible evidence when the property was inspected at the beginning of the next year. The State Engineer further finds that this is a valid method to determine if the property was irrigated during the past year.

II.

The field inspection for the determination of water usage during 1987 on the place of use of Permit 11323, Certificate 4384 was conducted on January 14, 1988.⁵ No evidence of irrigation during 1987 was visible.⁶ All office buildings located within the place of use of Permit 11323, Certificate 4384 are presently being served by the Las Vegas Valley Water District.⁶ Likewise, there

³ Exhibit No. 1, Public Administrative Hearing before the State Engineer, September 15, 1992.

⁴ Transcript p. 21, Public Administrative Hearing before the State Engineer, September 15, 1992.

⁵ Exhibit No. 10, Public Administrative Hearing before the State Engineer, September 15, 1992.

⁶ Transcript p. 11, Public Administrative Hearing before the State Engineer, September 15, 1992.

was no evidence of water use during the years 1988, 1989, 1990 and 1991 under Permit 11323, Certificate 4384.⁷ The State Engineer finds that there is clear and convincing evidence that water was not used for irrigation or domestic purposes under Permit 11323, Certificate 4384 during the period 1987 through 1991. The State Engineer further finds that there occurred a continuous, five year period of non-use of water under Permit 11323, Certificate 4384.

III.

The place of use of Permit 11428, Certificate 3446 was inspected on January 18, 1988, for any evidence of quasi-municipal or domestic use that may have occurred during the calendar year 1987.⁸ On that date, it appeared that the buildings were unoccupied and that no water was being used.⁹ The value of 0.0 was entered into the pumpage inventory for 1987.¹⁰ However, it is possible that one of the buildings was occupied and water was used for quasi-municipal or domestic purposes at some time during 1987.¹¹ The State Engineer finds that, unlike irrigation use, quasi-municipal and domestic use do not leave behind evidence of use that would be visible up to a year after the use occurred.

The record lacks corroborating evidence to the annual pumpage inventories, such as dated field notes, photographs, descriptions of the property, descriptions of the wells, pumps, and related piping, and meter readings for each of the years of alleged non-use. The State Engineer finds that the annual pumpage inventories

⁷ Transcript pp. 11-12, Public Administrative Hearing before the State Engineer, September 15, 1992.

⁸ Transcript p. 13, Public Administrative Hearing before the State Engineer, September 15, 1992.

⁹ Transcript p. 13, Public Administrative Hearing before the State Engineer, September 15, 1992.

¹⁰ Exhibit No. 11, Public Administrative Hearing before the State Engineer, September 15, 1992.

¹¹ Transcript p. 33, Public Administrative Hearing before the State Engineer, September 15, 1992.

standing alone, do not constitute clear and convincing evidence of non-use of water under Permit 11428, Certificate 3446.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.¹²

II.

Failure for a period of five consecutive years, to use beneficially the underground water for the purpose for which it is acquired, works a forfeiture of the water right.¹³

III.

Because the law disfavors a forfeiture, the State bears the burden of proving, by clear and convincing evidence, a statutory period of non-use.¹⁴

IV.

The State Engineer concludes that evidence of irrigation would be detectable during a field investigation conducted at the beginning of the year following the irrigation season, and no such evidence exists, for water usage under Permit 11323, Certificate 4384.

V.

The State Engineer concludes that evidence of quasi-municipal and domestic uses would not necessarily be detectable during a field investigation conducted at the beginning of the year following the calendar year of use.

VI.

A continuous, five year period of non-use occurred during the period from 1987 through 1991, under Permit 11323, Certificate 4384. Therefore, the State Engineer concludes that a forfeiture to the right to use the water under Permit 11323, Certificate 4384, for irrigation and domestic purposes has occurred.

¹² NRS 533 and 534.

¹³ NRS 534.090.

¹⁴ Town of Eureka v. Office of the State Engineer of Nevada, ---108 Nev.---, 826 P.2d 948 (1992).

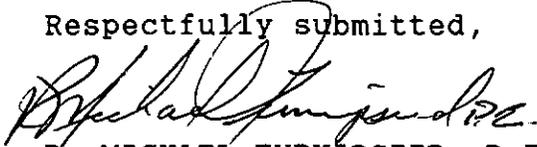
VII.

The State Engineer concludes that the evidence and testimony on the record do not meet the "clear and convincing" standard, regarding the alleged non-use under Permit 11428, Certificate 3446.

RULING

The right to beneficially use water for irrigation and domestic purposes under Permit 11323, Certificate 4384 is hereby declared forfeited. The right to beneficially use water for quasi-municipal and domestic purposes under Permit 11428, Certificate 3446 is not declared forfeited.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 3rd day of
February, 1994.