

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

IN THE MATTER OF FORFEITURE OF WATER)
RIGHTS UNDER PERMIT 18901, CERTIFICATE)
6108, APPROPRIATED FROM AN UNDERGROUND)
SOURCE, PAHRUMP VALLEY ARTESIAN GROUND-)
WATER BASIN (162), NYE COUNTY, NEVADA.)

RULING

4380

GENERAL

I.

Application 18901 was filed by Kenneth, Dorothy, John and Clifford Gilliam on June 3, 1960, to appropriate the underground waters of the Pahrump Valley Artesian Groundwater Basin for irrigation and domestic purposes within the SE $\frac{1}{4}$ Section 8, T.20 S., R.53 E., M.D.B.&M.¹ The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8. A permit was issued under Application 18901 on December 8, 1960, for 2.0 cubic feet per second (cfs).² On December 12, 1966, after Proof of Beneficial Use of the waters as allowed under the permit was filed with the Division of Water Resources, the State Engineer issued Certificate 6108 allowing for the diversion of 1.16 cfs, not to exceed 334.70 acre-feet annually (afa), for domestic purposes and irrigation of 37.35 acres of land within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and the irrigation of 29.59 acres of land within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.³

II.

The place of use under Permit 18901, Certificate 6108, was subsequently subdivided into smaller parcels of land and, as described below, portions of the water right represented by Permit

¹File No. 18901, official records in the Office of the State Engineer.

²State's Exhibit No. 13-A, public administrative hearing before the State Engineer, December 14, 1988. (Hereinafter "Exhibit No.").

³State's Exhibit No. 14-A.

18901, Certificate 6108, were conveyed to other parties and abrogated by change applications granted by the State Engineer or relinquished to the State of Nevada as water rights to serve a domestic well subdivision.

By Quitclaim deed filed on September 6, 1983, the holder of Permit 18901, Certificate 6108, relinquished to the State of Nevada 13.74 acres (68.70 acre-feet) of water rights appurtenant to the west 617.0 feet of the north 970.00 feet of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8 to serve the Morgan Manor Subdivision consisting of 34 lots to be served by domestic wells.¹ This left a remaining balance of 266.0 acre-feet and a diversion rate of 0.9219 cfs under Permit 18901, Certificate 6108.

Permit 48983 changed the point of diversion of 0.0138 cfs, not to exceed 10 acre-feet annually, a portion of the water appurtenant to the N $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8. Permit 48983 stripped water from 2 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.

Permit 49181 changed the point of diversion and place of use of 0.03465 cfs, not to exceed 10 acre-feet annually, a portion of the water appurtenant to the N $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8. Permit 49181 stripped water from 2 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.

Application 51142, filed on July 24, 1987,⁴ changed the point of diversion, place of use and manner of use of a 0.1213 cfs, not to exceed 35 acre-feet annually, portion of the water appurtenant to the N $\frac{1}{2}$ SE $\frac{1}{4}$ of said Section 8. Application 51142 stripped water from 7 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.

After the above-referenced permits were granted, the following water remained appurtenant to the remaining place of use as described under Permit 18901, Certificate 6108. In the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8, 24.25 acre-feet remained appurtenant to 4.85 acres

⁴A permit was granted under Application 51142 on July 10, 1995. File No. 51142, official records of the Office of the State Engineer.

in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, and 186.75 acre-feet remained appurtenant to 37.35 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8, with a remaining total diversion rate of 0.7312 cfs.

III.

The State Engineer initially described and designated a portion of the Pahrump Valley Artesian Groundwater Basin on March 11, 1941.⁵ The State Engineer subsequently extended the boundaries of the designated area of the Pahrump Valley Artesian Groundwater Basin on January 15, 1948,⁶ and on January 23, 1953.⁷

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 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 dated October 17, 1988, an administrative hearing was held with regard to the forfeiture of Permit 18901, Certificate 6108, on

⁵State Engineer's Order No. 176, dated March 11, 1941, official records in the Office of the State Engineer.

⁶State Engineer's Order No. 193, dated January 15, 1948, official records in the Office of the State Engineer.

⁷State Engineer's Order No. 205, dated January 23, 1953, official records in the Office of the State Engineer.

December 14, 1988, at Pahrump, Nevada, before representatives of the Office of the State Engineer.⁸

FINDINGS OF FACT

I.

The State Engineer finds 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 the authorized beneficial use within the time frame set forth in the permit or in any extension of time granted by the State Engineer.⁹ 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.¹⁰

II.

Testimony and evidence presented at the administrative hearing showed that 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 6108.¹¹ Testimony and evidence indicate that from 1982 through 1986 no irrigation took place as authorized under Certificate 6108 at the certificated

⁸Transcript, public administrative hearing before the State Engineer, December 14, 1988. (Hereinafter "Transcript".)

⁹NRS 533.410.

¹⁰NRS 534.090.

¹¹State's Exhibit No. 2; State's Exhibit No. 11.

place of use. However, testimony and evidence do indicate that in 1987 approximately 8 to 10 acres in the NE corner of the place of use around the well was irrigated.¹²

Testimony and evidence provided by staff from the Division of Water Resources indicate that on July 19 & 21, 1988, a staff person visited the place of use under Permit 18901 and found that approximately 8 to 10 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 8 was being irrigated,¹³ more specifically identified as Lot 10 of the Morgan Manor Subdivision, APN 36-361-10.¹⁴ Further testimony indicated that irrigation had taken place on those 8 to 10 acres in perhaps 1984, but certainly in 1985 through 1987.

The State Engineer finds that from 1982 through 1986 no water was used for irrigation as allowed under the certificate except for the irrigation of 6.19 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8 in 1985, 1986 and 1987.

III.

Pursuant to the Quitclaim deed filed on September 6, 1983, the holder of the water right relinquished to the State of Nevada 13.74 acres (68.70 acre-feet) for the Morgan Manor Subdivision consisting of 34 lots.¹ The testimony as to the approximately 8 to 10 acres being irrigated was that it was Lot 10 of the Morgan Manor Subdivision located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 8.¹⁵ The State Engineer finds that Lot 10 of the Morgan Manor Subdivision, APN 36-361-10, while part of the domestic well subdivision for which water rights were relinquished, still had a portion of the irrigation water right remaining appurtenant to the lot as the land under Lot 10 had not been stripped of water rights to support the

¹²State's Exhibit No. 11; Transcript, p. 39 - 54.

¹³State's Exhibit No. 3.

¹⁴State's Exhibit No. 16; Transcript, pp. 41-55.

¹⁵Transcript, pp. 39-55.

domestic well subdivision, and there is no record in the Office of the State Engineer indicating that the water right did not pass with the land. The State Engineer finds that Lot 10 was the 6.19 acres of land irrigated from 1985 through 1987, and State's Exhibit No. 16 indicates that Lot 10 of the Morgan Manor Subdivision consists of 8.839 acres of land, 6.19 acres were certificated under Permit 18901, Certificate 6108. The State Engineer further finds that no other evidence was presented as to any use of water under Permit 18901, Certificate 6108, except for the use of water in Lot 10.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.¹⁶

II.

Forfeiture must be demonstrated by clear and convincing evidence.¹⁷ 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.¹⁸ 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.¹⁹

The State Engineer finds clear and convincing evidence was provided that the holder of the water rights under Permit 18901, Certificate 6108, failed for 5 successive years to beneficially use

¹⁶NRS Chapters 533 and 534.

¹⁷Town of Eureka v. Office of the State Engineer, 826 P.2d. 948 (1992).

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

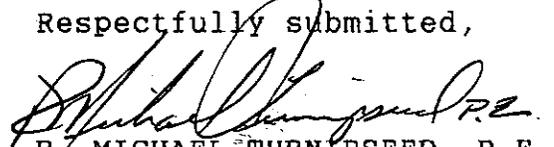
¹⁹Id. at 239.

the substantial part of the waters remaining under Permit 18901, Certificate 6108, for the purpose for which the water right was acquired working a forfeiture all the remaining water rights under Permit 18901, Certificate 6108, except for those water rights appurtenant to the 6.19 acres in Lot 10, APN 36-361-10 (30.95 acre-feet) as that lot existed on December 14, 1988.

RULING

Of the 211 acre-feet that remained under Permit 18901, Certificate 6108, after the changes and relinquishments as noted above, the right to beneficially use 180.05 acre-feet under Permit 18901, Certificate 6108, is hereby declared forfeited based on the failure for a period of five successive years on the part of the holder of the certificate to beneficially use the water for the purposes for which the subject water right was acquired. The 30.95 acre-feet, 0.1073 cfs, portion of Permit 18901, Certificate 6108, appurtenant to Lot 10 (APN 36-361-10) of the Morgan Manor Subdivision, as Lot 10 existed on December 14, 1988, was in good standing and not forfeited as of that date. No finding is made as to the status of the water right under Permit 18901, Certificate 6108, from December 14, 1988, to the present time.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 26th day of
July, 1996.