

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

IN THE MATTER OF THE REVIEW OF CANCELLED)
PERMIT 35112, TO APPROPRIATE THE)
UNDERGROUND WATERS OF THE TRUCKEE CANYON)
SEGMENT GROUNDWATER BASIN, WASHOE)
COUNTY, NEVADA.)

RULING
4033

GENERAL

I.

Application 35112 was filed on March 14, 1978, by Lucille Vinson, to appropriate 0.5 cubic feet per second (cfs) of water from an underground source for quasi-municipal and domestic purposes within portions of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.19N., R.18E., M.D.B.&M. The point of diversion is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.19N., R.18E., M.D.B.&M. Permit 35112 was approved on December 18, 1979 for 0.5 cfs, and not to exceed 28.8 million gallons annually or 88.38 acre feet annually (AFA) for quasi-municipal and domestic purposes to serve 220 condominium dwelling units, a four unit apartment, and a single family residence. The owner of record of Permit 35112 is Lucille L. Peterson.¹

II.

The proof of completion of work was originally due on July 18, 1981 and one extension of time was granted to July 18, 1982. The proof of completion of work was timely filed on June 22, 1982.¹

III.

On March 26, 1990, the Permittee submitted the proof of beneficial use for Permit 35112 which indicated that water in the amount of 2.45 AFA had been used to serve six dwelling units (one four-plex unit and one duplex unit). On October 9, 1990, the permittee withdrew the proof of beneficial use.¹

¹ File No. 35112, official records of the office of the State Engineer.

IV.

On July 15, 1991, Permit 55354 was approved. Permit 55354 changed 0.45 cfs, not to exceed 10 AFA, a portion of water appropriated under Permit 35112.²

V.

The proof of beneficial use of Permit 35112 was last due on April 1, 1992. Up until that time, eight extensions of time for filing the proof of beneficial use had been granted. An application for extension of time was filed on May 1, 1992, in which the agent for the permittee stated that, "the owner has made several attempts to develop her own property as well as carrying on continuing negotiations with other developers to put the water to beneficial use. The current economic situation (recession) has made it virtually impossible to get financing for housing developments." In a letter dated February 1, 1993, the State Engineer approved this request for extension of time for 2.45 AFA to serve the existing six living units and cancelled 75.93 AFA the remaining portion of water appropriated under Permit 35112. The State Engineer cited the record which shows that 75.93 AFA of water was uncommitted to any use and that there has not been satisfactory progress toward putting the water to beneficial use.¹

VI.

On March 29, 1993, the State Engineer received a written petition on behalf of the permittee, requesting a hearing to reconsider the cancellation of a portion of Permit 35112. On June 2, 1993, a hearing was held on this matter.¹

FINDINGS OF FACT

I.

At the hearing, the Agent for the permittee stated that the permittee has made several attempts to develop the property as a

² File No. 55354, official records in the office of the State Engineer.

mobile home park or for a multi-family living unit.³ She has been unsuccessful in locating a developer with the financing required for such a project.⁴ The Agent cited problems with the shape of the property, the topography of the area,⁵ and the location relative to the Southern Pacific Railroad tracks.⁶ A devastating illness in her family has ended her attempts to develop the property.⁷ The State Engineer finds that the effort made to develop the property and place the water to beneficial use, prior to the family illness, is evidence of good faith to perfect the appropriation. Furthermore, the State Engineer finds that the hardship caused by the family illness provides justification for granting one additional extension of time to file the proof of beneficial use.

II.

On April 30, 1993, the agent for the permittee submitted a proof of beneficial use for Permit 35112. The quantity of water used as stated in the proof of beneficial use is 6.1144 AFA, and the well under Permit 35112 serves six living units.¹ At the hearing, the agent for the permittee stated that this figure, 6.1144 AFA compares favorably with the quantity of water required

³ Transcript pp. 5-6, Public Administrative Hearing before the State Engineer, June 2, 1993.

⁴ Transcript pp. 6-7, Public Administrative Hearing before the State Engineer, June 2, 1993.

⁵ Transcript p. 5, Public Administrative Hearing before the State Engineer, June 2, 1993.

⁶ Transcript p. 11, Public Administrative Hearing before the State Engineer, June 2, 1993.

⁷ Transcript pp. 7-8, Public Administrative Hearing before the State Engineer, June 2, 1993.

by Westpac for six living units, i.e., 1.12 AFA of water per living unit for six living units equates to 6.72 AFA⁸

At the hearing, the agent for the permittee testified that a seventh unit, a single family living unit, is being remodeled. This living unit had been served by a very old hand dug well that is not satisfactory. The permittee would like to add this unit to the water system that serves the other six units. That would bring the total to seven living units being served by the well under Permit 35112.⁹ The State Engineer finds that adding the seventh living unit to the water system is acceptable. The State Engineer finds that the total quantity of water committed to serve the seven living units is 8.84 AFA.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.¹⁰

II.

If, in the State Engineer's judgement, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit.¹¹

III.

The State Engineer may, after receiving and considering evidence regarding a cancelled permit, affirm, modify, or rescind

⁸ Transcript p. 9, Public Administrative Hearing before the State Engineer, June 2, 1993.

⁹ Transcript p. 8, Public Administrative Hearing before the State Engineer, June 2, 1993.

¹⁰ NRS 533. and 534.

¹¹ NRS 533.395(1).

the cancellation.¹² If the State Engineer rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition.¹³

IV.

The State Engineer concludes that the quantity of water under Permit 35112 that is committed to serve the seven existing living units is 8.84 AFA.

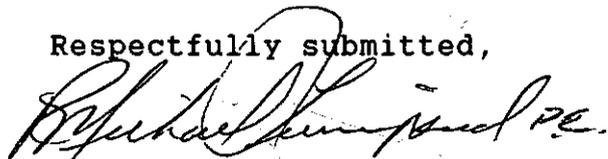
V.

The State Engineer concludes that the Permittee has proceeded in good faith and with reasonable diligence to perfect the appropriation of water under Permit 35112. The State Engineer also concludes that there is good cause shown to grant one additional extension of time.

RULING

The cancellation of a portion of Permit 35112 is hereby rescinded. The effective date of the appropriation is hereby changed to March 29, 1993, the date of filing the written petition. The Permittee is granted until October 1, 1993 to file a request for extension of time

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 23rd day of
August, 1993.

¹² NRS 533.395(2).

¹³ NRS 533.395(3).