

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

IN THE MATTER OF THE CANCELLATION)
OF PERMIT 45477, CHURCHILL VALLEY)
GROUNDWATER BASIN (102), LYON)
COUNTY, NEVADA)

RULING

4305

GENERAL

I.

Permit 45477 was granted on December 15, 1982, to appropriate 0.5 cubic feet per second (cfs), not to exceed 7.26 million gallons annually (mga) or 22.280 acre-feet annually (afa), of water from the Churchill Valley Groundwater Basin with the point of diversion being described as located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 27, T.18N., R.24E., M.D.B. & M.¹ The permit was approved for quasi-municipal purposes within Lots 8 and 21 within portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 27.¹ The application identified that the waters were to be used to establish a mobile home park with 53 spaces, laundromat, kiddie park and related landscaping, plus a commercial/industrial building.¹

II.

Under the terms of Permit 45477, the permittee was to file in the Office of the State Engineer proof of beneficial use of the waters on or before January 15, 1988.¹ Six requests for extensions of time for filing proof of beneficial use have been granted by the State Engineer, with said proof last due to be filed on June 15, 1994. On June 14, 1994, the permittee filed another request for extension of time for filing proof of beneficial use of the waters. On April 25, 1995, the State Engineer granted the permittee until June 15, 1995, to file proof of beneficial use on a 1.460 mga (4.48 afa) portion of the waters that had been beneficially used and cancelled the remaining portion of Permit 45477.

¹ File No. 45477, official records of the Office of the State Engineer.

III.

On June 22, 1995, the permittee requested a hearing pursuant to NRS 533.395 on the cancellation of Permit 45477.¹ After all parties of interest were duly noticed by certified mail, an administrative hearing was held on October 6, 1995, before representatives of the Office of the State Engineer with regard to the cancellation of Permit 45477, at Carson City, Nevada.²

FINDINGS OF FACT

I.

On February 1, 1988, the permittee filed a request for extension of time for filing proof of completion of the diversion works and proof of beneficial use stating that the building was vacant, had been vandalized and the permittee wanted to wait until the building was occupied to install the pump and pressure tank.¹ The request for extension of time was granted with proof of beneficial and completion of the diversion works due on January 15, 1989.¹

On February 13, 1989, the permittee filed another request for extension of time for filing proof of completion and proof of beneficial use, with the stated reason being that the well had been drilled and the pump installed, but the power company had yet to install a power source.¹ The permittee's request for extension of time was granted until June 15, 1989; however, by letter dated April 11, 1989, the permittee was informed by the Office of the State Engineer that failure to proceed in good faith and with reasonable diligence, as provided under NRS 533.395(1), would result in the denial of any additional requests for extensions of time and cancellation of the permit.¹

The permittee failed to timely file proof of beneficial use on June 15, 1989. After being informed of this oversight, on August 9, 1989, the permittee filed a request for extension of time to

² Transcript, public administrative hearing before the State Engineer, October 6, 1995.

file proof of beneficial use of the waters under Permit 45477 with the stated reason being "financial difficulties with lessee."¹ The State Engineer granted the request for extension of time until June 15, 1990.¹ The permittee again failed to timely file the proof of beneficial use with the Office of the State Engineer.

Again, after being informed of the oversight, on February 22, 1991, the permittee filed a request for extension of time to file proof of beneficial use of the water with the stated reason this time being that the building had been vacant for ten months and the economy was not good for renting or selling. Once again, the State Engineer granted the request and gave the permittee until June 15, 1991, to file proof of beneficial use.¹

On June 18, 1991, the permittee filed another request for extension of time to file proof of beneficial use with the stated reason being that the building had been rented on June 1, 1991, with an option to purchase and one year was needed to measure the water use.¹ The request was granted with proof of beneficial use due on or before June 15, 1992.¹

The permittee once again failed to timely file the proof of beneficial use and when informed of said failure on June 18, 1992, filed another request for extension of time with the stated reason being "due to bad economy." The request was granted with proof of beneficial use due on or before June 15, 1993.¹ Again the permittee failed to timely file the proof of beneficial use and when informed of said failure on June 18, 1993, filed another request for extension of time with the stated reason again being "due to bad economy."¹

By letter dated April 22, 1994, the State Engineer found the permittee was not proceeding in good faith and with reasonable diligence as required under NRS 533.395(1).¹ The State Engineer informed the permittee that seven extensions of time had been granted to establish beneficial use of the water, and that unless good faith and reasonable diligence were demonstrated, further

requests for extensions of time would be denied. The permittee was requested to furnish information and documentation before June 15, 1994, explaining the progress made towards completion of the project to be served as authorized under Permit 45477.

On June 14, 1994, the permittee filed yet another request for extension of time to file proof of beneficial use.¹ On the work progress information sheet attached to the request it was noted that a tentative subdivision map had been approved by Lyon County; however, development of the park including the final subdivision map had not been completed due to economic conditions. By letter dated November 15, 1994, the State Engineer requested the permittee to advise the State Engineer of the date of approval by Lyon County of the tentative subdivision map for the Tri-County Mobile Home Park and the date of the expiration of the tentative approval. The permittee informed the State Engineer that the approval was merely verbal approval and had been given approximately 10-12 years prior to 1994.¹ Upon contacting the Lyon County Planning Department, the State Engineer learned that Lyon County had no record of approval of a Tri-County Mobile Home Park and that such approval would require a change of zoning for the identified place of use.

Based on this information, on January 12, 1995, the State Engineer requested the permittee to provide a certified copy of any final subdivision map or project map recorded for the project envisioned under Permit 45477.¹ The State Engineer finds that to date no final subdivision map has been filed in the Office of the State Engineer for the project envisioned under Permit 45477 nor has any final subdivision map or project map ever been recorded for the project identified under Permit 45477.

II.

The State Engineer finds that the place of use identified under Permit 45477 is located within the Ramsey Subdivision #4, with that subdivision map being recorded on or about September 5, 1956, in Lyon County, and which is to date still a valid

subdivision map for the place of use identified under Permit 45477. The State Engineer further finds that Lyon County has no record of a mobile home park being approved for this place of use nor any record of a request for a zoning change or building permit as of April 18, 1995.

III.

The permittee provided a document which showed that he had listed the property for sale with the Last Oasis Realty Company.¹ The State Engineer finds that a proposed sale, a sale, or a lease of the property is insufficient cause to grant any further extensions of time without a showing of reasonable progress toward complying with the beneficial use requirements set forth in the permit.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

In Nevada, water may be appropriated for beneficial use as provided under the law and not otherwise⁴ and beneficial use is the basis, the measure and the limit of the right to the use of water.

III.

A permit to appropriate water grants to the permittee the right to develop a certain amount of water from a particular source for a certain purpose to be used at a definite location.⁵ In the perfection of a water right a permittee is generally allowed under the law sufficient time after the date of approval of the

³ NRS Chapters 533 and 534

⁴ NRS 533.030 and 533.035.

⁵ NRS 533.330 and 533.335.

application to complete application of the water to beneficial use.⁶ Nevada water law provides that the State Engineer may for good cause shown extend the time within which the water is to be placed to beneficial use. The State Engineer shall not grant an extension of time unless proof and evidence is submitted that shows the permittee is proceeding in good faith and with reasonable diligence to perfect the application.⁷

The intent of the extension of time provision under Nevada law is to provide the opportunity for the permittee to resolve temporary adverse conditions, which prevent compliance with the proof of completion of works and proof of beneficial use requirements set forth on the permit. When Application 45477 was filed, it was estimated that two years would be needed to complete the diversion works and seven years to prove beneficial use of the waters under the permit. More than twelve years have passed since Permit 45477 was approved.

To ensure and maintain the integrity and equity of the appropriation process, it is essential that the process must not be improperly applied to reserve the water resource without beneficial use of the water or to retain a water right without reasonable progress to comply with the beneficial use requirements. Permit 45477 was granted in 1982 to establish a mobile home park, laundromat, kiddie park, related landscaping and a commercial/industrial building. No final subdivision map was ever approved by Lyon County nor was the zoning ever changed to accommodate said project. The State Engineer concludes the permittee was given ample time to make progress towards development of the project envisioned under Permit 45477 and ample time to prove beneficial use of the waters under Permit 45477.

⁶ NRS 533.380.

⁷ NRS 533.380.

IV.

At the administrative hearing the permittee testified that "he thought he was land banking for future use."⁸ The appropriative system of water rights found under Nevada law is known as a "use it or lose it system" which does not allow for a person holding a water right to sit on that right in anticipation that some time in the future there may be some use for the water. It is this system that is reflected in the time limitations set forth in every water right permit for completing the diversion works and placing the water to beneficial use. The State Engineer concludes that Nevada water law does not provide for banking water for future use.

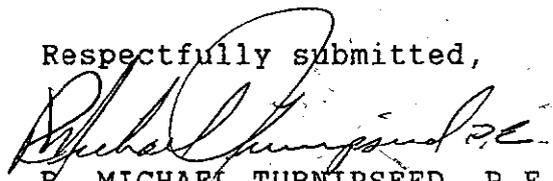
V.

At the administrative hearing the permittee also testified that he has seven children with several of them in college. While sympathizing with the financial burden this must place on the permittee, the State Engineer concludes this is not a reason for granting an extension of time to prove beneficial use of the water under Permit 45477.

RULING

The cancellation of Permit 45477 is hereby affirmed.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 28th day of
February, 1996.

⁸ Transcript, p. 4, public administrative hearing before the State Engineer, October 6, 1995.