

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

IN THE MATTER OF CANCELLED )  
PORTIONS OF PERMITS 35147, 35148, )  
35149, 35150, AND 58926 FILED TO )  
APPROPRIATE UNDERGROUND WATERS )  
WITHIN THE PLEASANT VALLEY )  
GROUNDWATER BASIN (88), WASHOE )  
COUNTY, NEVADA. )

RULING

# 4741

GENERAL

I.

Application 35147 was filed on March 17, 1978, by the Mt. Rose Water Co., Inc., to change the place of use of 5.0 cubic feet per second (cfs) of water under Permit 28424 previously appropriated in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. Permit 35147 was approved on July 5, 1978, for 5.0 cfs, not to exceed 1,095.0 million gallons annually (mga), for quasi-municipal purposes (3,000 single family dwelling units) within Sections 1, 2, 3, 10, 11 and 12, portions of Sections 4 and 9, T.17N., R.19E., and portions of Sections 25, 34, 35 and 36, T.18N., R.19E., M.D.B. & M., as described in the agreement dated June 18, 1978, filed under Application 35147.<sup>1</sup> The point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T.17N., R.19E., M.D.B. & M.

II.

Application 35148 was filed on March 17, 1978, by the Mt. Rose Water Co., Inc., to change the place of use of 5.0 cfs of water under Permit 28425 previously appropriated in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. Permit 35148 was approved on July 5, 1978, for 5.0 cfs, not to exceed 1,095.0 mga, for quasi-municipal purposes within the same place of use as identified under Application 35147.<sup>2</sup> The point of diversion is

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<sup>1</sup> File No. 35147, official records of the office of the State Engineer.

<sup>2</sup> File No. 35148, official records of the office of the State Engineer.

described as being located within the NE¼ SE¼ of Section 2, T.17N., R.19E., M.D.B. & M.

III.

Application 35149 was filed on March 17, 1978, by the Mt. Rose Water Co., Inc., to change the place of use of 5.0 cfs of water under Permit 28426 previously appropriated in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. Permit 35149 was approved on July 5, 1978, for 5.0 cfs, not to exceed 1,095.0 mga for quasi-municipal purposes within the same place of use as identified under Application 35147.<sup>3</sup> The point of diversion is described as being located within the NE¼ SE¼ of Section 2, T.17N., R.19E., M.D.B. & M.

IV.

Application 35150 was filed on March 17, 1978, by the Mt. Rose Water Co., Inc., to change the place of use of 5.0 cfs of water under Permit 28427 previously appropriated in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. Permit 35150 was approved on July 5, 1978, for 5.0 cfs, not to exceed 1,095.0 mga for quasi-municipal purposes within the same place of use as identified under Application 35147.<sup>4</sup> The point of diversion is described as being located within the NE¼ SE¼ of Section 2, T.17N., R.19E., M.D.B. & M. The total combined annual duty of water under Permits 35147 through 35150, inclusive, shall not exceed 1,095.0 mga.

V.

Application 58926 was filed on June 16, 1993, by Washoe County to change the point of diversion of a 4.4884 cfs, not to exceed 1886.78 acre-feet annually, of Permit 35148 previously appropriated in the Pleasant Valley Groundwater Basin. Permit 58926 was

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<sup>3</sup> File No. 35149, official records of the office of the State Engineer.

<sup>4</sup> File No. 35150, official records of the office of the State Engineer.

approved on April 26, 1996, for quasi-municipal purposes within the same place of use as identified under Application 35147.<sup>5</sup> The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 3, T.17N., R.19E., M.D.B. & M.

VI.

Applications 35147 through 35150 were assigned in part in the records of the State Engineer from the Mt. Rose Water Co., Inc., to the Mt. Rose Service Company, Inc., to Washoe County.<sup>1, 2, 3, 4</sup>

VII.

Under the terms of Permits 35147 through 35150, inclusive, Proof of Completion of Work was first due to be filed in the office of the State Engineer on or before October 5, 1978, with Proof of Beneficial Use of the waters due to be filed on or before May 30, 1979.

VIII.

On January 15, 1999, the State Engineer cancelled 421.12 acre-feet being a portion of Permit 58926 owned by Washoe County, but allocated to the Mt. Rose Service Company, and cancelled 2.87 acre-feet being a portion of Permits 35147 through 35150, inclusive, also owned by Washoe County but allocated to George Poore.

IX.

Petitions for review of the cancellations were timely filed by Washoe County and George Poore.

X.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held on May 20, 1999, in Carson City, Nevada, before representatives of the office of the State Engineer regarding the petitions for review of the cancellations of portions of Permits 35147 through 35150, inclusive and 58926.

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<sup>5</sup> File No. 58926, official records of the office of the State Engineer.

FINDINGS OF FACT

I.

The State Engineer finds that testimony presented at the public administrative hearing provides that the Mt. Rose Service Company and George Poore assigned ownership of some of their water rights under Permits 35147 through 35150 to Washoe County in return for a certain number of new equivalent residential service unit connections to the water system.<sup>6</sup>

II.

In Washoe County's applications for extension of time to file proof of beneficial use under Permits 35147, 35148, 35149, 35150 and 58926, it was indicated that portions of the water rights were not committed to specific developments, but that the "remaining portions of the water rights are committed to future development within the water service area."<sup>1, 2, 3, 4, 5</sup> On July 30, 1998, in response to applications for extensions of time for filing proof of beneficial use, and in light of the fact that it has been more than 24 years since the base rights associated with these permits were issued, the Deputy State Engineer requested that Washoe County specifically identify the projects, lots, and parcels to which the water rights were currently committed for development.<sup>1, 2, 3, 4, 5</sup> In response, by letter dated October 1, 1998, Washoe County indicated that 421.12 acre-feet of water rights were yet uncommitted and 2.87 acre-feet was held by George Poore for some future use.

The State Engineer finds that the basis of the cancellations were that after 24 years there still remained 423.99 acre-feet of water rights uncommitted to development under Permit 58926 and 2.87 acre-feet under Permits 35147, 35148, 35149, and 35150 demonstrating a lack of good faith and due diligence in placing the water rights to beneficial use.

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<sup>6</sup> Transcript, pp. 14-16, 95-96, public administrative hearing before the State Engineer, May 20, 1999 (hereinafter "Transcript").

III.

The manager of the Utilities Services Division of the Washoe County Department of Water Resources testified that when the County used the term "uncommitted"<sup>7</sup>, as to the 423.99 acre-feet of water rights, what was meant was that the water rights were uncommitted to a specific customer that would receive water service, but were in fact committed to provide service within the service territory for reasonably anticipated future needs pursuant to the County's Master Plan.<sup>8</sup>

At the administrative hearing, the permittee, Washoe County, through the president of Mt. Rose Service Company and others, presented testimony as to the uncommitted service connections. The testimony provides that in September or October of 1998 175 service connections were sold to Callamont Associates for property the company was contemplating purchasing in the Galena area.<sup>9</sup> However, evidence presented demonstrates that perhaps the date of that sale was earlier.<sup>10</sup> Exhibit No. 15 indicates that subsequent to the sale of the 175 service connections Mt. Rose received an offer dated March 16, 1997, from Callamont Associates to purchase all of the new equivalent service connections owned by the Mt. Rose Service Company. By Agreement dated April 10, 1999, Mt. Rose accepted Callamont Associates' offer to purchase all the remaining 201 water service connections held by the Mt. Rose Service Company for use on Callamont property described in the agreement.<sup>11</sup> Testimony presented also provided that the purchaser of the service connections, Callamont Associates, is a very successful developer

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<sup>7</sup> See Exhibit No. 16, map no. 3, public administrative hearing before the State Engineer, May 20, 1999 (hereinafter "Exhibits").

<sup>8</sup> Transcript, p. 35.

<sup>9</sup> Transcript, p. 17.

<sup>10</sup> Exhibit No. 15.

<sup>11</sup> Exhibit No. 15.

that is financially responsible and completes its developments in an expeditious manner.<sup>12</sup> Further, testimony indicates that Callamont Associates was in escrow at the time of the hearing for the purchase of real property for the development for which they anticipated use for the new service connections,<sup>13</sup> and that studies for development of the parcel had already been drawn up to help Callamont Associates decide what would be the most advantageous real estate development for the property.<sup>14</sup>

The State Engineer finds that evidence presented at the administrative hearing demonstrates that in very recent times the Mt. Rose Service Company (the entity controlling the 421.12 acre-feet of water rights under agreement with Washoe County in exchange for new equivalent residential service unit connections under Permit 58926) has sold those residential service connections to Callamont Associates which is in escrow to purchase land upon which it could place these water rights to beneficial use. Further, the evidence demonstrates that Callamont Associates has seriously pursued design ideas for development of that specific property with these specific water rights, and is known for progressing through projects with reasonable diligence demonstrating good faith and reasonable diligence to perfect the appropriation.

The State Engineer finds that sufficient evidence was provided to demonstrate good faith and reasonable diligence on the part of Callamont Associates to put the water at issue to beneficial use, but that demonstration is limited to the specific project for which evidence was provided at the May 20, 1999, administrative hearing, and this specific developer. The State Engineer finds Washoe County on behalf of Callamont Associates provided some evidence that Callamont Associates is proceeding with some diligence towards

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<sup>12</sup> Transcript, pp. 18-19.

<sup>13</sup> Transcript, pp. 19, 26, 58-60.

<sup>14</sup> Transcript, pp. 50-57.

development of the water rights to warrant rescinding the cancellation at this time. However, as provided below, Callamont Associates will be required to show substantial progress towards development of these water rights in support of any additional applications for extension of time to file proof of beneficial use, if any are filed. As Washoe County has actual ownership of the water rights in the records of the State Engineer, the State Engineer is requiring Washoe County to coordinate with Callamont Associates for the filing of that required information.

IV.

As to the 2.87 acre-feet of water rights cancelled under Permits 35147, 35148, 35149 and 35150, Mr. Poore stated that the water was committed to a Mr. Ron Osborn on August 10, 1998, for parcel number 4921-06 in the Timber Line Estates area and Mt. Rose Service Company service area.<sup>15</sup> Mr. Poore did not provide the State Engineer with much information concerning Mr. Osborn other than a statement that he has proceeded with parcelling the property, but will require more water rights than the 2.87 acre-feet if he plans to develop the 6 parcels which the large parcel has been divided into, and was preparing to finish 400 feet of pavement on Timber Line Drive which "he has bonded to the county as part of our agreement."<sup>16</sup> The public records of the Washoe County Assessor's office do not show Mr. Osborn as owner of Assessor's Parcel Number 4921-06 and a mere statement that someone is parcelling property does not rise to the level of demonstrating good faith and reasonable diligence in placing the 2.87 acre-feet to beneficial use.

The State Engineer finds Mr. Poore's evidence of due diligence and reasonable progress towards placing the 2.87 acre-feet of water rights to beneficial use to be insufficient to warrant rescinding the cancellation.

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<sup>15</sup> Transcript, pp. 96-97.

<sup>16</sup> Transcript, pp. 96-99.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.<sup>17</sup>

II.

The State Engineer concludes that good cause was presented at the administrative hearing for rescinding the cancellation of the 421.12 acre-foot portion of Permit 58926. The State Engineer concludes the evidence is insufficient to support rescinding the cancellation of the 2.87 acre-foot portion of Permits 35147 through 35150, inclusive.

RULING

The cancellations of the 2.87 acre-foot portion of Permits 35147 through 35150, inclusive, is hereby upheld, and the cancellation of the 421.12 acre-foot portion of Permit 58926 is hereby rescinded. The Application for Extension of Time filed May 6, 1999, under Permit 58926 is hereby granted through May 30, 2000. This extension of time is granted solely on the grounds of the testimony presented at the administrative hearing of May 20, 1999, as to the specific development under consideration by Callamont Associates for the portion that was cancelled. Any further extensions of time requested will be confined to considerations as to that specific development. If any additional application for extension of time is filed as to the portion of the water right under Application 58926 under consideration in this ruling, it must

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<sup>17</sup>NRS Chapters 533 and 534.

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be accompanied by specific information demonstrating substantial progress towards placing the waters to beneficial use. The priority date of Permit 58926 relative to the portion of the water right at issue under this ruling is now March 11, 1999.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/cl

Dated this 9th day of  
June, 1999.