

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

IN THE MATTER OF THE CANCELLATION)  
OF A PORTION OF PERMIT 29905, )  
CRESCENT VALLEY GROUNDWATER BASIN )  
(54), EUREKA COUNTY, NEVADA. )

RULING

**# 4313**

GENERAL

I.

Permit 29905 was granted to Sonia Walker on May 13, 1976, to appropriate 3.0 cubic feet per second (cfs), not to exceed 195.64 million gallons annually (mga), of water from an underground source for quasi-municipal and domestic purposes within portions of the SW $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 9, T.29N., R.48E., M.D.B.&M.<sup>1</sup> The point of diversion is described as being located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 9.<sup>1</sup>

II.

Proof of beneficial use of the waters was first due to be filed in the Office of the State Engineer on December 13, 1980.<sup>1</sup> Twelve extensions of time had been granted under Permit 29905 to establish beneficial use of the water with proof of beneficial use of the water last due to be filed in the Office of the State Engineer on December 13, 1992.<sup>1</sup>

III.

On February 21, 1992, the State Engineer granted an extension of time for filing proof of beneficial use as to a 43.80 mga portion of Permit 29905, a sufficient quantity to serve 120 lots of the Walker Villa Subdivision. However, the State Engineer also cancelled a 151.84 mga portion of Permit 29905 finding that the permittee was not proceeding in good faith or with reasonable diligence in perfecting that portion of the water right as required under NRS 533.395.<sup>1</sup> The State Engineer did not find good cause to grant another extension of time for filing proof of beneficial use on the 151.84 mga portion of Permit 29905.

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<sup>1</sup> File No. 29905, official records of the Office of the State Engineer.

IV.

On April 6, 1992, pursuant to NRS 533.395, a request was made for an public administrative hearing regarding the cancellation of Permit 29905.<sup>1</sup> After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the cancellation on January 17, 1996, at Carson City, Nevada, before representatives of the Office of the State Engineer.<sup>2</sup>

FINDINGS OF FACT

I.

The approval of Permit 29905 on May 13, 1976, granted to the permittee the opportunity to proceed with developing a water source to serve a community planned to consist of 536 single family residences. When proof of beneficial use was first due to be filed on December 13, 1980, the permittee filed a request for extension of time for filing said proof stating that the permittee had been negotiating with contractors for approximately 1½ years, but that "he has been waiting to see how the MX reports turn out so he would know which type of buildings to build."<sup>1</sup>

The request for extension of time filed in 1981 stated that the high interest rate and poor sales for housing prevented the filing of proof of beneficial use.<sup>1</sup> The 1982 request for extension of time again stated that the high interest rate was the reason for the permittees failure to place the water to beneficial use, but that he was working with a company from Arizona regarding financing for the project.<sup>1</sup>

The 1983 request for extension of time stated that the economy and financing were still a problem, but that now he was working with a company from Houston, Texas, on financing the project.<sup>1</sup> In January 1985, the permittee filed another request for extension of time, this time stating that the interest rates were falling, he had entered into a contract for partial interest in the proposed

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<sup>2</sup> Transcript, public administrative hearing before the State Engineer, January 17, 1996, (hereinafter "Transcript").

subdivision which would give the permittee a chance to move forward with the project, and that Sierra Pacific Power Company was calculating the cost of supplying power to the well.<sup>1</sup>

In December 1985, the permittee's request for extension of time stated that Sierra Pacific Power Company had not been able to run the power lines to the well due to its backlog of work.<sup>1</sup> The reason presented in the 1986 request for extension of time was that the economy had caused banks to back off on financing, that he had been owed a substantial amount of money for over one year, and that he was now discussing the project with two development companies.<sup>1</sup>

The reason given in the 1987 request for extension of time was that the slump in the economy had caused others who owed him money to extend their repayment periods and that power had still not been installed to the well.<sup>1</sup> In 1988 the reason given supporting the requested extension was that the permittee was just concluding negotiations with Sierra Pacific Power Company for installing power to the well.

By letter dated March 16, 1989, the State Engineer informed the permittee that failure to proceed in good faith and with reasonable diligence, as provided under NRS 533.395(1) would result in denial of any further requests for extensions of time and the cancellation of the permit.<sup>1</sup> The permittee was informed that nine extensions of time had been granted and he should be prepared to file proof of beneficial use under the permit.

However, in 1989 the permittee filed another request for extension of time with the stated reason this time being that the two development companies the permittee was working with had not finished their marketing analysis, water usage and environmental protection review, but that he anticipated prompt completion of that work.<sup>1</sup> The 1990 request for extension of time stated that

time was needed to extend the water lines from the well to the first lots sold, while the reason stated in 1991 was that financing had been obtained so time was needed to go ahead with the project.<sup>1</sup>

The request for extension of time filed in 1991 was granted through December 13, 1992. However, the permittee failed to timely file the proof of beneficial use by the required deadline. In a request for extension of time filed on February 2, 1993, the permittee stated that the developers had defaulted on their contract.<sup>1</sup>

By letter dated February 21, 1992, the permittee was reminded that when the last extension of time had been granted he was advised that no further requests for extension of time would be granted except for good cause shown as provided under NRS 533.390 and 533.410. The State Engineer finding good cause as to a portion of Permit 29905, granted the permittee an extension of time on a sufficient quantity of water to serve 120 lots within the proposed subdivision, those 120 lots encompassing areas where lots had already been sold to third parties. However, the State Engineer cancelled the remaining portion of Permit 29905.

The State Engineer finds that the twelve years of extensions granted to the permittee for filing proof of beneficial use was ample time to finalize financing and development plans for the project envisioned under Permit 29905.

## II.

The State Engineer finds that by the letter dated March 16, 1989, the permittee was put on notice that failure to proceed with good faith and reasonable diligence in perfecting the water right would result in denial of any further extensions of time and cancellation of the permit, but that in the two year period following that warning the permittee still failed to complete the plans and move forward with developing the entire project as envisioned under Permit 29905.

III.

At the January 17, 1996, public administrative hearing the permittee provided evidence that he thinks he now has another investor lined up to develop the project.<sup>3</sup> The permittee also provided documents which indicate he may have a seller for the property.<sup>4</sup> The State Engineer finds that over the twelve year period that extensions of time were granted money was almost always an issue preventing the permittee from going forward and developing the project envisioned under Permit 29905, and that speculating that some time in the future the permittee may be able to arrange an agreement for financing and development of the subdivision and for placing the water to beneficial use is not the required good faith and reasonable diligence in perfecting this water right permit and is not good cause for granting an extension of time to perfect the water right. The State Engineer further finds that a sale of the property identified as the place of use under the permit is also not evidence of good faith and reasonable diligence in placing the water to beneficial use.

IV.

The permittee also presented a January 1993 newspaper article indicating that mining projects in the related area are anticipated to bring hundreds of workers to the area.<sup>5</sup> The State Engineer finds that Permit 29905 was granted in 1976, and that speculating that lots of new homes may be needed in the area in the future post-1993 is also not evidence of good faith and reasonable diligence in placing the water to beneficial use.

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<sup>3</sup> Transcript, pp. 5-6.

<sup>4</sup> Exhibit Nos. 1, 2, 4, 5, Transcript, pp. 5-8, 22-23 public administrative hearing before the State Engineer, January 17, 1996.

<sup>5</sup> Exhibit No. 6, public administrative hearing before the State Engineer, January 17, 1996.

V.

The permittee presented evidence of a 1981 estimate of the cost of completing the entire water system (with a 10% figure of inflation to today's costs), and a 1987 estimate of the cost of Sierra Pacific Power Company providing electric service to the well.<sup>6</sup> The State Engineer finds that simply estimating the cost of materials or labor that would be needed to complete the project is not good faith and reasonable diligence in placing the water to beneficial use. It is merely an estimate of cost and does not reflect actually moving forward in putting the water system in place and placing the water to beneficial use.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>7</sup>

II.

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.<sup>8</sup> In the perfection of a water right, a permittee is allowed under the law sufficient time after the date of approval of the application to complete application of the water to beneficial use.<sup>9</sup> 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

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<sup>6</sup> Transcript, pp 12-15, Exhibit Nos. 8 and 9, public administrative hearing before the State Engineer, January 17, 1996.

<sup>7</sup> NRS Chapters 533 and 534.

<sup>8</sup> NRS 533.330 and 533.335.

<sup>9</sup> NRS 533.380.

to perfect the application.<sup>10</sup> The measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances.<sup>11</sup> The State Engineer concludes that while the permittees still hope they can obtain financing and support in developing the project identified under Permit 29905, this hope does not amount to the good faith and reasonable diligence as required under the law for actually placing the water to beneficial use.

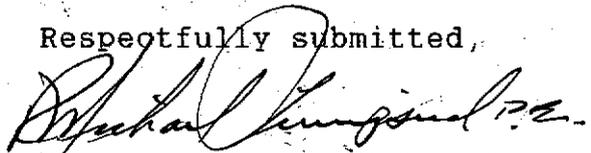
III.

The State Engineer concludes that speculating that the permittee may actually be able to arrange financing after twelve years of trying is a clear indication that the permittee still does not have a viable plan for the development of the water under this permit, and that speculating about a future use for the water or trying to sell the property identified as the place of use under the permit is not good cause and reasonable diligence warranting reversal of the State Engineer's decision cancelling a portion of Permit 29905.

RULING

The cancellation of a portion of Permit 29905 is hereby affirmed.

Respectfully submitted,



B. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 19th day of  
March, 1996.

<sup>10</sup> NRS 533.380.

<sup>11</sup> NRS 533.395(5).