

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTERS OF PROOF OF BENEFICIAL)
USE UNDER PERMIT 35933, AND)
APPLICATION FOR EXTENSION OF TIME)
UNDER PERMIT 35934; TO APPROPRIATE)
THE PUBLIC WATERS FROM AN)
UNDERGROUND SOURCE IN WASHOE)
VALLEY, WASHOE COUNTY, NEVADA.)
)

RULING

FINDINGS OF FACT

I.

Permits 35933 and 35934 were issued on July 13, 1979, to Brien B. Walters to appropriate 0.5 cubic feet per second (cfs) of water each (13.687 million gallons annually (MGA) total combined duty) from an underground source for quasi-municipal purposes within portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T.17N., R.19E. The point of diversion under Permit 35933 is described as being within NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 24, T.17N., R.19E. The point of diversion under Permit 35934 is described as being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 24, T.17N., R.19E.¹

Permits 35933 and 35934 specify the same place of use and manner of use, and are intended to serve the same commercial and residential developments.¹

II.

The points of diversion of Permits 35933 and 35934 are located in the Washoe Valley Ground Water Basin (Basin 89).¹

III.

Proof of Beneficial Use was submitted by Brien B. Walters on July 29, 1987, under Permit 35933. The Proof of Beneficial Use specifies that 12.07 acre-feet annually of water has been put to beneficial use during the period May 1, 1986, to May 1, 1987, under Permit 35933.¹

IV.

Application for Extension of Time to file beneficial use was submitted by Brien B. Walters on July 29, 1987, under Permit 35934.¹

V.

The State Engineer has reviewed Permits 35933 and 35934, pertinent records of this office, and other available information to determine appropriate action.

1 Public record in the office of the State Engineer.

VI.

A field investigation was conducted on June 19, 1986, and June 25, 1986, by staff engineers, Nevada Division of Water Resources, to determine the field conditions concerning beneficial use under Permits 35933 and 35934.²

VII.

An additional field investigation was conducted on September 14, 1987, by staff engineers, Nevada Division of Water Resources, to investigate the Proof of Beneficial Use under Permit 35933. This field investigation also considered site conditions concerning Permit 35934.²

These field investigations confirm the following:

- Water is currently irrigating approximately 400 planted live trees;
- The total area irrigated consists of 1.6 acres;
- Water waste is occurring as excess runoff and irrigating 0.8 acre of native vegetation and weeds;
- Water is also wasted on large areas between the trees;
- Estimated net area with surviving trees, allowing nine (9) square feet per tree, is 0.083 acre;
- The water is being used for irrigation purposes and not for quasi-municipal purposes as granted in the permit;
- The well under Permit 35934 is not producing water for application to the place of use.

VIII.

By order No. 707, dated March 1, 1978, the State Engineer described and designated the Washoe Valley Ground Water Basin under provisions of Nevada Revised Statutes (NRS), Chapter 534.¹

IX.

Proof of Completion of Work originally was due under each Permit 35933 and 35934 on or before February 13, 1981. Five extensions of time for one year each were granted in 1981, 1982, 1983, 1984 and 1985 under each Permit and one extension of time for five months was granted in 1986 under Permit 35934 to submit Proof of Completion of Work. Proof of Completion of Work was filed under each Permit 35933 and 35934 respectively on April 17, 1986, and July 14, 1986.¹

X.

Proof of Beneficial Use originally was due under each Permit 35933 and 35934 on or before February 13, 1984. Three extensions of time for one year each and one extension of time for five months were granted during the period 1984 through 1987 for filing Proof of Beneficial Use under each Permit.¹

² See reports of field investigation, public record in the office of the State Engineer. (Index No. 780 and 796).

XI.

By letters dated April 22, 1986, July 21, 1986, and June 11, 1987, permittee was notified that failure to proceed in good faith and with reasonable diligence will result in cancellation of Permits 35933 and 35934 and that permittee should be prepared to submit the Proof of Beneficial Use under Permits 35933 and 35934.¹

XII.

The State Engineer finds that there is a record of substantial evidence that the permittee has not proceeded to place the water granted under Permits 35933 and 35934 to beneficial use in good faith and with reasonable diligence.

CONCLUSIONS

I.

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

II.

Nevada Revised Statutes (NRS) establish that beneficial use shall be the basis, the measure and the limit of the right to the use of water.⁴

III.

Nevada Revised Statutes establish that the willful waste of water to the detriment of another is illegal.⁵

IV.

Nevada Revised Statutes establish the concepts of good faith and reasonable diligence as standards by which to judge the progress to perfect a water right appropriation, and require that the State Engineer cancel a permit when the permittee is not proceeding in good faith and with reasonable diligence to perfect the appropriation.⁶

V.

Permits 35933 and 35934 were approved July 13, 1979; five extensions of time to submit Proof of Completion of Work have been granted under Permit 35933; six extensions of time to submit Proof of Completion of Work have been granted under Permit 35934; and four extensions of time to submit Proof of Beneficial Use have been granted under each permit 35933 and 35934.

3 NRS Chapters 533 and 534.

4 NRS 533.035

5 NRS 533.460

6 NRS 533.395

VI.

The method of application of water to the place of use under Permit 35933 is characteristic of irrigation use (ie, the indiscriminate or random application of water throughout a general area, by sprinklers in this case) and not quasi-municipal use (ie, the confined or restricted application of water for specific purposes). This irrigation use resulted in a willful waste of water, and further does not comply with the permit requirement for quasi-municipal use.

VII.

Proof of Beneficial Use under Permit 35933 specified that 12.07 acre-feet of water was diverted during the one year period May 1, 1986, to May 1, 1987.

Approximately 11.74 acre-feet of this water has been wasted by irrigating native vegetation and ground. An insignificant portion of this water was necessary to sustain the planted trees.

VIII.

The well under Permit 35934 is not producing water for application to the place of use.

IX.

The record provides substantial evidence that the permittee has failed to comply with permit requirements under Permits 35933 and 35934.

X.

The record provides substantial evidence that the permittee has allowed water to be wasted.

XI.

After review of Permits 35933 and 35934, pertinent records of this office, and other available information, in the judgment of the State Engineer, the permittee has not proceeded in good faith and with reasonable diligence to perfect the appropriations under Permits 35933 and 35934.

RULING

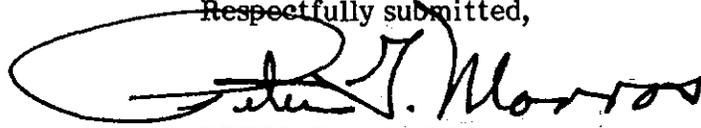
I.

Pursuant to NRS 533.395 the Proof of Beneficial Use under Permit 35933 is herewith rejected, and Permit 35933 is herewith cancelled, on the grounds that the permittee has not demonstrated good faith and reasonable diligence in perfecting the appropriation.

II.

Pursuant to NRS 533.395 the Application for Extension of Time under Permit 35934 is herewith denied, and Permit 35934 is herewith cancelled, on the grounds that the permittee has not demonstrated good faith and reasonable diligence in perfecting the appropriation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter G. Morros", written over a large, loopy oval scribble.

PETER G. MORROS
State Engineer

PGM/RLT/bk

Dated this 15th day of
March, 1988.