

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

IN THE MATTER OF THE REINSTATEMENT )  
OF CANCELLED PERMITS 32934 AND 35284 )  
FILED TO APPROPRIATE THE PUBLIC WATERS) )  
OF AN UNDERGROUND SOURCE WITHIN THE )  
DODGE FLAT GROUNDWATER BASIN, WASHOE )  
COUNTY, NEVADA. )

RULING

3773

GENERAL

I.

Application 32934 was filed on July 27, 1977 by X-L Homes, Inc., to appropriate underground water for Quasi-Municipal and Domestic purposes within the Dodge Flat Ground Water Basin.<sup>1</sup>

Application 35284 was filed on April 14, 1978 by X-L Homes, Inc., to appropriate underground water for Quasi-Municipal and Domestic purposes within the Dodge Flat Ground Water Basin.<sup>1</sup>

Permit 32934 was approved on December 27, 1977 to appropriate 1.5 c.f.s. of water from a well located within the NE1/4 NW1/4, Section 3, T.20N., R.24E., M.D.B.&M.<sup>1</sup>

Permit 35284 was approved on December 27, 1978 to appropriate 1.5 c.f.s. of water from a well located within the NE1/4 NW1/4, Section 3, T.20N., R.24E., M.D.B.&M.<sup>1</sup>

FINDINGS OF FACT

I.

Permit 32934 and Permit 35284 were issued for identical places of use and manners of use with a combined duty of water not to exceed 149.65 MGA.<sup>1</sup>

II.

The place of use under both Permits consists of fee simple land located both within Washoe County and the historical boundaries of the Pyramid Lake Paiute Indian Reservation.<sup>2</sup>

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<sup>1</sup> Public record of the office of the State Engineer.

<sup>2</sup> Transcript, pg. 20.

III.

Ownership of Permit 32934 and Permit 35284 currently stands in the names of Winston and Elaine Logan (50% interest) and William P. Keever, Sr. and Jeannett Keever (50% interest).<sup>3</sup>

IV.

A portion of the combined duty of water under Permit 32934 consisting of 6.06 AFA was dedicated to Washoe County to service three parcels within the project's proposed place of use.<sup>4</sup>

V.

Permit 35284 and Permit 32934 have been granted six and seven extensions of time, respectively, to file the required Proofs of Beneficial Use, with September 23, 1989 being the most recent due date.<sup>5</sup>

VI.

Upon approval of the last extensions of time, the permittees were advised by letter dated March 16, 1989, that no further extensions would be granted except for good cause shown as provided under NRS 533.390 and 533.400.<sup>5</sup>

VII.

The latest applications for extension of time under Permits 32934 and 35284 were received on October 12, 1989, and additional information was received on January 5, 1990. The applications explained in part the following:

- That there is a "slow process of obtaining approvals from the governing bodies, preparing design drawings, planning concepts";

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<sup>3</sup> Public record in the office of the State Engineer.

<sup>4</sup> Transcript, pgs. 17, 29-32.

<sup>5</sup> Public record in the office of the State Engineer.

- That 6.06 AFA (i.e., 1.975 MGA) of water has been dedicated to Washoe County for three parcels;
- That a parcel map for three lots has been filed;
- That a water system is being designed;
- That the property "has gone through bankruptcy" and was acquired in 1986;
- That \$300,000 has been invested; and
- That there is a slow market for homes in the area.<sup>6</sup>

**VIII.**

An extension of time to file Proof of Beneficial Use under Permit 32934 and Permit 35284 was granted to September 23, 1990 for the 6.06 AFA portion dedicated to Washoe County.<sup>7</sup>

**IX.**

The application for extension of time to file Proof of Beneficial Use under Permit 32934 and Permit 35284 was denied for the remaining 147.675 MGA portion, and said portion of the permits was cancelled on September 25, 1990 for failure of the permittees to proceed in good faith and with reasonable diligence as provided by NRS 533.395.<sup>8</sup>

**X.**

Subsequently, a written petition from the permittee's counsel requesting a hearing to review the cancellation action was timely received by the State Engineer on October 9, 1990.<sup>9</sup>

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<sup>6</sup> State's Exhibit No. 7.

<sup>7</sup> States Exhibit No. 6.

<sup>8</sup> States Exhibit No. 7.

<sup>9</sup> States Exhibit No. 8.

XI.

An administrative hearing in the matter of aforementioned cancellations was held before representatives of the State Engineer in Carson City on November 29, 1990.<sup>10</sup>

XII.

Prior to their admission into the hearing record, the extension of time deadline on State's Exhibits No. 6 and No. 7 was incorrectly changed from September 23, 1990 to September 23, 1991.<sup>11</sup>

XIII.

Robert Coombs, appearing on the permittees behalf, testified that by reason of a dispute between the Pyramid Lake Paiute Indian Tribe and Washoe County, concerning proposed development within the reservation boundaries, and the subsequent threat of a lawsuit by the Tribe, a moratorium in essence has been placed on the development of the permittee's project.<sup>12</sup>

Additional testimony by Mr. Coombs revealed that the zone change from Agricultural to Industrial necessary to advance the project beyond the planning stage would not be considered by Washoe County until the completion of the Tribe Master Plan, which is tentatively scheduled to be completed in 1991.<sup>13</sup>

CONCLUSIONS

I.

The State Engineer has jurisdictions in this matter in accordance with NRS 533.380 and 533.410.

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10 States Exhibit No. 4.

11 States Exhibit No. 6.

12 Transcript, pgs. 19-21.

13 Transcript, pgs. 23-35.

II.

The changes made upon State's Exhibits No. 6 and No. 7 were made in error and should be rendered void.

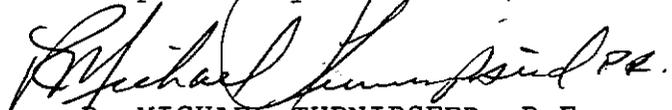
III.

The record of evidence and testimony establishes that the permittees have proceeded in good faith and with reasonable diligence in their attempt to place Permits 32934 and Permit 35284 into beneficial use and have been prevented in doing so by circumstances well beyond their control.

RULING

The cancellation of Permit 32934 and Permit 35284 is hereby rescinded with the requirement that the Extensions of Time for the respective Proofs of Beneficial Use must be received within thirty (30) days of the date of this ruling. Additionally the changes made on State's Exhibits No. 6 and No. 7 are declared void.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/pm

Dated this 17th day of  
January, 1991