

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

IN THE MATTER OF THE REINSTATEMENT OF )  
CANCELLED PERMITS 47918, 47919, 47920, )  
47921 AND 47790 FILED TO CHANGE THE )  
PLACE OF USE OF A PORTION OF THE WATERS )  
OF AN UNDERGROUND SOURCE HERETOFORE )  
APPROPRIATED UNDER PERMITS 36589, 36590 )  
AND 36055 WITHIN THE SPANISH SPRINGS )  
GROUNDWATER BASIN, WASHOE COUNTY, )  
NEVADA. )

RULING  
#3858

GENERAL

I.

Application 47918 was filed on March 20, 1984 by Spring Creek Development Company to change the place of use of a portion of the waters of an underground source heretofore appropriated under Permit 36589. A permit was issued under Application 47918 on June 4, 1985, for 0.4118 c.f.s. of water for quasi-municipal and domestic use.<sup>1</sup>

II.

Application 49719 was filed on March 20, 1984 by Spring Creek Development Company to change the place of use of a portion of the waters of an underground source heretofore appropriated under Permit 36590. A permit was issued under Application 47919 on June 4, 1985 for 0.4118 c.f.s. of water for quasi-municipal and domestic purposes.<sup>2</sup>

III.

Application 47920 was filed on March 20, 1984 by Joyce Sweger to change the place of use of a portion of the waters of an underground source heretofore appropriated under Permit 36590. A permit was issued under Application 47920 on June 4, 1985 for 2.5882 c.f.s. of water for quasi-municipal and domestic purposes.<sup>3</sup>

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1 State's Exhibit No. 4, Public Administrative Hearing before representatives of the State Engineer, May 31, 1991, hereinafter referred to as Exhibit or Transcript.

2 State's Exhibit No. 5.

3 State's Exhibit No. 6.

IV.

Application 47921 was filed on March 20, 1984 by Joyce Sweger to change the place of use of a portion of the waters of an underground source heretofore appropriated under Permit 36589. A permit was issued under Application 47921 on June 4, 1985 for 2.5882 c.f.s. of water for quasi-municipal and domestic purposes.<sup>4</sup>

V.

Application 47790 was filed on March 13, 1984 by Spanish Springs Association to change the place of use of a portion of the waters of an underground source heretofore appropriated under Permit 36055. A permit was issued under Application 47790 on September 17, 1974 for 1.8 c.f.s. of water for quasi-municipal purposes.<sup>5</sup>

VI.

The proposed place of use under Permits 47918, 47919, 47920, and 47921 is described as being within portions of Sections 16 and 21, T.20N., R.20E., M.D.B.&M., portions of Sections 6 and 7, T.20N., R.21E., M.D.B.&M., and portions of Sections 23, 25, 26 and 35, in addition to Section 36, all within T.21N., R.20E., M.D.B.&M.<sup>6</sup>

VII.

The proposed place of use under Permit 47790 is described as being within portions of Sections 3 and 4, T.20N., R.20E., M.D.B.&M., portions of Sections 14, 15, 22, 23, 26, 27, 34 and 35, all within T.21N., R.20E., M.D.B.&M.<sup>5</sup>

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<sup>4</sup> State's Exhibit No. 7.

<sup>5</sup> State's Exhibit No. 8.

<sup>6</sup> State's Exhibits Nos. 11 and 12.

VIII.

The State Engineer cancelled Permits 47918-47919 on August 29, 1990, Permits 47920-47921 on October 2, 1990 and Permit 47790 on April 17, 1991, for failure to comply with the terms of the permits.<sup>7</sup>

FINDINGS OF FACT

I.

Several ownership changes have occurred under the subject permits, more specifically, portions of Permits 47918, 47919, 47920, 47921 and 47790 have been assigned to Brookside Savings and Loan Association, (the owner of record in the office of the State Engineer at the time of the cancellation<sup>8</sup>).

II.

Permits 47918, 47919, 47920 and 47921 were issued for identical places of use and manners of use with a combined duty of water not to exceed 146.00 MGA.<sup>8</sup>

III.

Permits 47918, 47919, 47920 and 47921 had been granted five extensions of time, each, to file the required Proofs of Completion and four extensions of time, each, to file the required Proofs of Beneficial Use and Cultural Maps; with February 11, 1990 being the most recent due date.<sup>8</sup>

IV.

Permit 47790 has been granted four extensions of time to file the required Proof of Beneficial Use and Cultural Map with April 18, 1990, being the most recent due date.<sup>8</sup>

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<sup>7</sup> NRS 533.

<sup>8</sup> Public record in the office of the State Engineer, See respective permit files.

V.

Upon approval of the last extensions of time Brookside Savings and Loan Association was advised by letter that no further extensions of time would be granted under the subject permits except for good cause shown as provided under N.R.S. 533.390 and 533.400.<sup>8</sup>

VI.

The latest applications for extension of time under Permits 47918 and 47919 were received on April 9, 1990. The applications explained in part the following.<sup>8</sup>

"On behalf of Brookside Savings and Loan Association, CFA has filed change in point of diversion applications for Permit Nos. 47918 and 47919. Also, CFA has filed extensions for the tentative maps for Countryside Unit 1B and 2 (62 Lots and 168 lots respectively). CFA has been awaiting authorization to proceed with final maps for the proposed subdivisions by the application. When final maps are prepared the waters rights will be dedicated to Washoe County. Proof of Beneficial Use will follow after the occupation of the residences. Proof of Completion and Well Logs have been filed for these wells under Permit Nos. 47920 and 47921."

VII.

The latest applications for extension of time under Permits 47920 and 47921 were received on July 26, 1990. The applications explained the following.<sup>8</sup>

"That due to purchasing water in 1990 the time to drill well, change place and manner of use has not been sufficient.... Castle land surveying is presently preparing a tentative map and we are working to achieve a "Will Serve" letter from either Sky Ranch or Desert Springs Utility Co."

VIII.

The latest application for extension of time under Permit 47790 was received on April 18, 1989. The application explained the following.<sup>4</sup>

"That due to inclement weather the Countryside I water system completion has been delayed. Construction has subsequently resumed and completion is expected by the end of April 1989 with dedication to Washoe County to follow shortly thereafter."

IX.

The applications for extension of time to file the required Proofs of Completion and Beneficial Use in addition to the Cultural Map under Permit 47918 and Permit 47919 were denied and the Brookside Savings and Loan Association's portion representing a total annual duty of 61.50 acre-feet was cancelled on August 29, 1990, on the basis of the records then on file within the office of the State Engineer.<sup>9</sup>

X.

The applications for extension of time to file the required Proofs of Completion and Beneficial Use in addition to the Cultural Map under Permit 47920 and Permit 47921 were denied and the Brookside Savings and Loan Association's portion representing a total annual duty of 24.94 acre-feet was cancelled on October 2, 1990, on the basis of the records then on file within the office of the State Engineer.<sup>9</sup>

XI.

No application for extension of time to file the required Proof of Beneficial Use in addition to the Cultural Map under Permit 47790 was timely received; accordingly the Brookside Savings and Loan Association's portion representing an annual duty of 106.56 acre-feet was cancelled on April 17, 1991.<sup>9</sup>

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<sup>9</sup> Exhibit No. 19, Hearing May 31, 1991.

XII.

Written petitions requesting review of the subject cancellations were timely received from parties with standing in the matter.<sup>10</sup>

XIII.

An administrative hearing in the matter of the cancellation of Permits 47918, 47919, 47920, 47921 and 47790 was held before representatives of the State Engineer in Carson City, Nevada on May 31, 1991.<sup>11</sup>

XIV.

At the hearing of May 31, 1991 the following facts were put into evidence.

1.

Title to the subject portions on Permits 47918, 47919, 47920, 47921 and 47990 was held by Brookside Industries when it filed for bankruptcy in 1986.<sup>12</sup>

2.

Brookside Savings and Loan Association was at that time providing the construction loan to construct the water system within the property Brookside Industries was developing. After considerable legal delays, Brookside Savings and Loan Association received Brookside Industries interests in the subject permits via a deed in lieu of foreclosure in September, 1987.<sup>13</sup>

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<sup>10</sup> State's Exhibit Nos. 13, 14 and 15.

<sup>11</sup> Transcript, page 5.

<sup>12</sup> Transcript, page 24.

<sup>13</sup> Transcript, page 25.

3.

Brookside Savings and Loan Association proceeded with the development of the water system and initiated a series of improvements to meet specific requirements set forth by Washoe County.<sup>14</sup>

4.

Brookside Savings and Loan Association's financial difficulties finally resulted in placing it under federal control of the Resolution Trust Corporation on November 1989, which was mandated by federal law to dispose of Brookside Savings and Loan's interests at public sale.<sup>15</sup>

5.

By means of successful bid, the Tucker family acquired Brookside Savings and Loan Association's interests in Permits 47918, 47919, 47920, 47921 and 47790 on October 15, 1990.<sup>15</sup>

CONCLUSIONS

I.

The State Engineer is specifically authorized for good cause shown to extend the time period within which the water must be applied to beneficial use.<sup>16</sup>

II.

The record in evidence and testimony establishes the fact that the permittees have proceeded in good faith and with reasonable diligence in their attempts to place Permits 47918, 47919, 47920, 47921 and 47790 to beneficial use, or have been prevented in doing so by circumstances well beyond their control.

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<sup>14</sup> Transcript, pages 25-29.

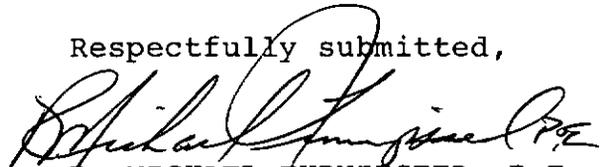
<sup>15</sup> Exhibit No. 16, Hearing May 31, 1991.

<sup>16</sup> NRS 533.380(3).

RULING

The cancellations of Permits 47918, 47919, 47920 and 47921 are hereby rescinded with the requirement that the Applications for Extension of Time for the respective Proof of Completion, Proof of Beneficial Use and Cultural maps must be filed within thirty days (30) of the date of this ruling. The cancellation of Permit 47790 is hereby rescinded with the requirement that the Application for Extension of Time for Proof of Beneficial Use and Cultural Map must be filed within thirty (30) days of the date of this ruling.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/pm

Dated this 3rd day of  
January, 1992.