

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

IN THE MATTER OF THE REVIEW OF THE )  
CANCELLED PORTION OF PERMITS 35074 )  
AND 35226, APPROPRIATED FROM THE )  
UNDERGROUND WATERS OF THE PLEASANT )  
VALLEY GROUNDWATER BASIN, WASHOE )  
COUNTY, NEVADA. )

RULING

# 4138

GENERAL

I.

Application 35074 was filed on March 8, 1978, by Morrison & Dale Realty, Inc., Vari-Build, Inc., Nikkory, Inc., a Partnership, Tenants in Common, to appropriate 0.50 cfs of water from an underground source in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. The proposed manner of use was to be a quasi-municipal subdivision, to serve approximately 90 homes located within the SW $\frac{1}{4}$  Section 7, T.17N., R.20E., MDB&M. The point of diversion is located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 17. On August 15, 1978, Permit 35074 was approved for 0.50 cfs for quasi-municipal and domestic use.<sup>1</sup>

Application 35226 was filed on March 28, 1978, by Morrison & Dale Realty, Inc., Vari-Build, Inc., Nikkory, Inc., a Partnership, Tenants in Common, to appropriate 0.50 cfs of water from an underground source in the Pleasant Valley Groundwater Basin, Washoe County, Nevada. The proposed manner of use was to be a quasi-municipal subdivision, to serve the same 90 homes located as described above. The point of diversion is another well located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 17, T.17N., R.20E., MDB&M. On November 1, 1978, Permit 35226 was approved for 0.50 cfs for quasi-municipal and domestic use.<sup>2</sup>

Permits 35074 and 35226 were issued for a total combined duty of 145 acre feet annually (AFA).<sup>1,2</sup> This figure was calculated

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<sup>1</sup> Exhibit No. 2, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>2</sup> Exhibit No. 3, Public Administrative Hearing before the State Engineer, April 13, 1993.

based on an allowance of one gallon per minute (gpm) for each of the 90 homes.<sup>3</sup>

Documents have been filed with the State Engineer purporting to assign ownership of Permits 35074 and 35226 to Washoe County, with conditional "will serve" rights and optional ownership conveyance rights assigned to Winston and Elaine Logan and to Michael and Julie Winkel.<sup>4</sup>

## II.

Proof of Beneficial Use under Permit 35074 was first due on March 15, 1983 and that for Permit 35226 was first due on June 1, 1983. Eight extensions of time had been granted until February 11, 1992, when a portion of Permit 35074 and a portion of Permit 35226 were cancelled.<sup>5</sup> The State Engineer found that the permit holder had not shown good cause to grant another extension of time for 83.12 AFA. The State Engineer also found that the permittee had not been proceeding in good faith and with reasonable diligence in perfecting the water right by putting the water to beneficial use.<sup>5</sup> The findings were based on the records in the Office of the State Engineer which lacked any evidence that the 83.12 AFA had ever been committed to any beneficial use or committed to subdivided lots not yet built, under Permits 35074 and 35226.

## III.

On March 24, 1992, the Permittee filed a written petition, requesting the State Engineer to review the cancellation of the portion of Permit 35074 and the portion of Permit 35226 that were

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<sup>3</sup> Transcript p. 39, Public Administrative Hearing before the State Engineer, July 18, 1978.

<sup>4</sup> Official records in the Office of the State Engineer.

<sup>5</sup> Exhibit No. 4, Public Administrative Hearing before the State Engineer, April 13, 1993.

cancelled.<sup>6</sup> On April 13, 1993, a Public Administrative Hearing was held before the State Engineer to consider this matter.<sup>7</sup>

IV.

Applications for Extension of Time for filing the Proof of Beneficial Use under Permits 35074 and 35226 were filed on April 9, 1992. No action was taken on these applications, pending the review of the cancellation at a hearing.

FINDINGS OF FACT

I.

Testimony and evidence presented at the hearing on behalf of the Permittee illustrate what commitments exist to serve water under Permits 35074 and 35226.

A portion of the quantity of water allowed under Permit 35074 and 35226, amounting to 48.3 AFA was committed to serve the thirty lots in the Sunrise Estates Subdivision.<sup>8</sup> Sunrise Estates Subdivision was approved in 1978<sup>9</sup> and presently water is being served to the thirty lots.<sup>10</sup>

When Permits 35074 and 35226 were approved in 1978, the quantity of water allocated to each lot was one gallon per minute or 1.61 AFA.<sup>3</sup> After developing years of data on municipal use, the State Engineer now approves subdivisions based on 1.12 AFA per lot. This figure is very close to the actual water usage in Sunrise Estates Subdivision of 1.01 AFA for each lot.<sup>10</sup> The State Engineer finds that the figure of 1.12 AFA per lot accurately reflects the

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<sup>6</sup> Exhibit No.'s 5 and 6, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>7</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>8</sup> Transcript p. 52 and Security Bank Exhibit No's. 1 and 2, Public Administrative Hearing before the State Engineer, April 7, 1983.

<sup>9</sup> File No's 35074 and 35226, official records in the Office of the State Engineer.

<sup>10</sup> Exhibit No. 10, Public Administrative Hearing before the State Engineer, April 13, 1993.

quantity of water necessary to serve the Sunrise Estates Subdivision. The State Engineer further finds that the total quantity of water committed to serve the thirty lots in the subdivision is calculated to be 33.6 AFA.

Since 1978, when Permits 35074 and 35226 were approved, the different owners of these water rights have always held that 48.3 AFA were committed to the Sunrise Estates Subdivision.<sup>8,11</sup> Now, 33.6 AFA are determined to be the total quantity of water necessary to serve the subdivision. The State Engineer finds that the remaining 14.7 AFA of water has never been committed to any other purpose. The State Engineer further finds that the holders of these permits were not proceeding in good faith and with reasonable diligence to perfect the 14.7 AFA of water.

## II.

In 1987, Mr. Mike Winkel received a commitment from Washoe County to receive service of 65 AFA of water to his 44 acres of land located within the place of use of Permits 35074 and 35226.<sup>12</sup> Of the 65 AFA of water committed to Mr. Winkel, 20.2 AFA of water were changed by Permits 54934 through 54942 and Permit 56537, leaving 44.8 AFA to serve the Winkel Property.

Maplewood Stables, an equestrian facility owned by the Winkels, moved to the property in 1987.<sup>13</sup> Since that time, water was used for dust control, domestic use, stockwatering, landscaping, and irrigation, all in support of the day to day operation and the special equestrian events which occur at Maplewood Stables.<sup>13</sup> Water usage was increased to a peak use of 20.9 acre feet in 1991.<sup>14</sup> The Winkels have plans for continued

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<sup>11</sup> Transcript pp. 9-10, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>12</sup> Exhibit No. 9, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>13</sup> Post Hearing Brief Submitted on behalf of Maplewood Stables.

<sup>14</sup> Exhibit No. 11, Public Administrative Hearing before the State Engineer, April 13, 1993.

expansion of the facility that will require the entire 44.8 acre feet of water committed to them by Washoe County.<sup>13</sup> The State Engineer finds that 44.8 AFA are committed to a beneficial use to serve the Maplewood Stables under Permits 35074 and 35226. The State Engineer further finds that 20.2 AFA are committed to a beneficial use under change Permits 54934 through 54942, and 56537.

### III.

In 1986, Washoe County committed 31.7 AFA to serve the Logan property consisting of 21.3 acres, and the four lots west of the Pleasant Valley School, identified by APN 45-310-68, 45-310-69, 45-310-70 and 45-310-71, all within the place of use of Permits 35074 and 35226.<sup>15,16</sup> The quantity of water required to serve the four lots is 4.48 AFA, leaving 27.22 AFA available to serve the Logan property. From 1986 to the present time Mr. Logan contracted for the following activities: preparation of a subdivision map allowing for 32 residential lots; survey work on the proposed subdivision; construction of an access road and bridge across Galena Creek; and dedication of a 200,000 gallon water storage tank to Washoe County.<sup>16</sup> However, even after all of these activities, Mr. Logan's property is still undeveloped and the proposed subdivision is still not approved. Mr. Logan is no closer to placing the water to beneficial use now than he was in 1986 when Washoe County agreed to serve water to his property. The State Engineer finds that Mr. Logan is not proceeding in good faith and with reasonable diligence in placing 27.22 AFA of water to beneficial use. The State Engineer further finds that 4.48 AFA is committed to serve the four lots west of Pleasant Valley School.

### CONCLUSIONS

#### I.

The State Engineer has jurisdiction in this matter.<sup>17</sup>

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<sup>15</sup> Transcript p. 19, Public Administrative Hearing before the State Engineer, April 13, 1993.

<sup>16</sup> Post Hearing Brief submitted on behalf of Winston Logan.

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

II.

If, in the State Engineer's judgement, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit.<sup>18</sup>

III.

The holder of a cancelled permit may file a written petition requesting a review of the cancellation by the State Engineer at a public hearing. The State Engineer may, after receiving and considering evidence regarding a cancelled permit, affirm, modify, or rescind the cancellation.<sup>19</sup>

IV.

If the decision of the State Engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the State Engineer.<sup>20</sup>

V.

The quantity of water needed to serve the thirty lots in the Sunrise Estates Subdivision is 33.6 AFA. Because 48.3 AFA had been allocated to the subdivision by previous owners and by Washoe County, 14.7 AFA has been uncommitted to any beneficial use since 1978. The State Engineer concludes that 14.7 AFA, a portion of water right cancelled under Permit 35074 and 35226, should remain cancelled.

VI.

The State Engineer concludes that the 44.8 AFA of water allocated to Mr. Winkel to serve Maplewood Stables, is committed to a beneficial use.

VII.

Of the 31.7 AFA of water allotted to Mr. Logan, 4.48 AFA has been committed to serve the four lots identified by APN 45-310-68,

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18 NRS 533.395(1).

19 NRS 533.395(2).

20 NRS 533.395(3).

45-310-69, 45-310-70 and 45-310-71. Mr. Logan has not proceeded in good faith and with reasonable diligence in placing the remaining 27.22 AFA to a beneficial use. Therefore, this 27.22 AFA should remain cancelled.

VIII.

The quantity of water that should remain cancelled is 41.92 AFA. This is the sum of the uncommitted Sunrise Estates portion (14.7 AFA) and the uncommitted Logan portion (27.22 AFA). The cancellation of 83.12 AFA of water under Permits 35074 and 35226 should be modified to reflect that 41.92 AFA remain cancelled and 41.20 AFA are reinstated. The effective date of appropriation of 41.20 AFA should be changed to March 24, 1992.

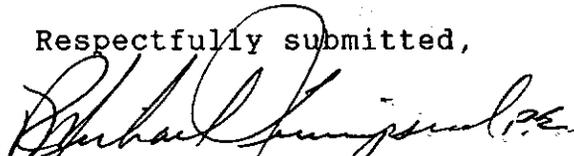
IX.

The quantity of water in good standing under Permits 35074 and 35226 would be 82.88 AFA, broken down as follows: Sunrise Estates Subdivision, 33.6 AFA; Winkel, 44.8 AFA; and Logan, 4.48 AFA.

RULING

The cancellation of portions of Permits 35074 and 35226 is hereby modified so that 41.20 AFA is reinstated with an effective date of appropriation of March 24, 1992. The cancellation of 41.92 AFA is hereby affirmed.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 7th day of  
September, 1994.