

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

IN THE MATTER OF THE REVIEW OF)
CANCELLED PERMITS 36636, 36637,)
36638, 36639 AND 36640 FILED TO)
CHANGE THE UNDERGROUND WATERS)
OF THE CHURCHILL VALLEY GROUND)
WATER BASIN (102), LYON COUNTY,)
NEVADA.)

RULING

#4267

GENERAL

I.

Application 36636 was filed on February 7, 1979, by ERGS, Inc. to change the place of use of 4.0 cfs of underground water, heretofore appropriated under Permit 35142. Permit 36636 was issued on February 26, 1980, for 4.0 cfs, for quasi-municipal use within the place of use of the Silver Springs Mutual Water Company.¹ The point of diversion (POD) is located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 30, T.18N., R.25E., M.D.B.&M.²

Application 36637 was filed on February 7, 1979, by ERGS, Inc. to change the place of use of 3.0 cfs of underground water, heretofore appropriated under Permit 26926. Permit 36637 was issued on February 26, 1980, for 3.0 cfs, for quasi-municipal and domestic uses within the place of use of the Silver Springs Mutual Water Company. The POD is located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 25, T.18N., R.24E., M.D.B.&M.³

Application 36638 was filed on February 7, 1979, by ERGS, Inc. to change the point of diversion and place of use of 3.0 cfs of underground water, heretofore appropriated under Permit 27249.

¹ The place of use is described in File No. 36636 and on the map filed in support of Permit 36636, official records in the Office of the State Engineer.

² File No. 36636, official records in the Office of the State Engineer.

³ File No. 36637, official records in the Office of the State Engineer.

Permit 36638 was issued on February 26, 1980, for 3.0 cfs for quasi-municipal and domestic uses within the place of use of the Silver Springs Mutual Water Company. The POD is located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30, T.18N., R.25E., M.D.B.&M.⁴

Application 36639 was filed on February 7, 1979, by ERGS, Inc. to change the point of diversion and place of use of 3.0 cfs of underground water, heretofore appropriated under Permit 27248. Permit 36639 was issued on February 26, 1980, for 3.0 cfs for quasi-municipal and domestic uses within the place of use of the Silver Springs Mutual Water Company. The POD is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 19, T.18N., R.25E., M.D.B.&M.⁵

Application 36640 was filed on February 7, 1979, by ERGS, Inc. to change the place of use of 3.0 cfs of water, heretofore appropriated under Permit 26927. Permit 36640 was issued on February 26, 1980, for 3.0 cfs for quasi-municipal use within the place of use of the Silver Springs Mutual Water Company. The POD is located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 26, T.18N., R.24E., M.D.B.&M.⁶

The ownership of Permits 36636 through 36640 is assigned to the Silver Springs Mutual Water Company.²⁻⁶ The total combined duty of these five permits is 1.0965 billion gallons annually (3,365.0 acre-feet annually).

II.

The Proof of Beneficial Use under Permits 36636 through 36640 was first due on September 26, 1984. After that, ten extensions of time were granted until July 15, 1994, when the eleventh extension of time was granted with the provision that no further extensions

⁴ File No. 36638, official records in the Office of the State Engineer.

⁵ File No. 36639, official records in the Office of the State Engineer.

⁶ File No. 36640, official records in the Office of the State Engineer.

of time would be granted for filing the required Proofs of Beneficial Use except for good cause shown, as provided under NRS 533.390 and 533.410. On August 15, 1994, the State Engineer requested that the Silver Springs Mutual Water Company submit proof and evidence that the permittee was proceeding in good faith and with reasonable diligence to place the water to beneficial use.²⁻⁶ The information received from the permittee was used in determining the quantity of water that was committed to a beneficial use.

III.

When Applications 36636 through 36640 were filed on February 7, 1979, the applicant estimated that the water would be placed to a beneficial use within ten years. As of May 8, 1995, approximately 800 customers were being served water under Permits 36636 through 36640. The State Engineer understood that the Silver Springs Mutual Water Company had committed to serve a total of 1,494 units. The State Engineer applied a water use figure of 1,000 gallons per day per unit, to compute the total committed water quantity of 1,673.5 acre-feet annually. This left 1,691.5 acre-feet annually of water that was uncommitted to any use.

In a letter to the permittee dated May 8, 1995, the State Engineer found that the permittee had not shown good cause to grant another extension of time for the uncommitted portion of Permits 36636 through 36640. The State Engineer further found that the permittee had not proceeded in good faith and with reasonable diligence as required under NRS 533.395(1), to place that uncommitted portion (1,691.5 AFA) of subject permits to beneficial use. Therefore, the State Engineer cancelled the uncommitted portion of Permits 36636 through 36640, amounting to 1,691.5 AFA.

IV.

As provided in NRS 533.395(2), the permittee timely filed a written petition requesting that the State Engineer review the

cancellation at a public hearing. On August 29, 1995, a hearing was held to consider the cancelled portions of Permits 36636 through 36640.

FINDINGS OF FACT

I.

At the hearing, the permittee presented evidence that 1,494 existing lots lie within the place of use of Permits 36636 through 36640.⁷ An additional 34 lots were added under Permits 60749 through 60753,⁸ bringing the total to 1,528 units that can receive water service from the Silver Springs Mutual Water Company. Applying the water allocation figure of 1,000 gallons per day per lot, the State Engineer finds that 1,712 AFA are committed by the Silver Springs Mutual Water Company. This quantity of water is greater than the figure used by the State Engineer (1,673.5 AFA) when portions of Permits 36636 through 36640 were cancelled. The State Engineer finds that the cancellation of a portion of Permits 36636 through 36640 should be affirmed but the quantity of water should be changed to reflect this greater quantity of water committed to beneficial use. The quantity of the cancelled portion of Permits 36636 through 36640 should be changed to 1,653 AFA.

II.

In 1995, the Silver Springs Mutual Water Company delivered a daily average of 0.42 million gallons per day to the 800 customers connected to the system.⁹ Each unit consumed an average of 525 gallons per day, which is considerably less than 1,000 gpd, which was used in the previous section to calculate the quantity of water committed to beneficial use. If the same water conservation

⁷ Exhibit No. 1, Public Administrative Hearing before the State Engineer, dated August 29, 1995.

⁸ File Nos. 60749 through 60753, official records in the Office of the State Engineer.

⁹ File No. 36636, official records in the Office of the State Engineer.

measures are employed in the future and the average water consumption per unit remains at 525 gpd, the State Engineer finds that a total of 2,911 units or 1,383 new units could potentially be developed with the 1,712 AFA of water determined to be committed to use.

III.

At the hearing, the permittee asserted that the water company would be in violation of the Nevada Health Division regulations, if it served more lots at less than 1,000 gpd for each lot.¹⁰ The permittee did not cite any Health Division regulation or provide any evidence in support of this assertion. The State Engineer finds that the Nevada Health Division has no jurisdiction over water rights or the quantity of water rights required to serve individual lots. The State Engineer can find no violation of Nevada Health Division regulations if the Silver Springs Mutual Water Company serves less than 1,000 gpd per lot.

IV.

When a portion of Permits 36636 through 36640 were cancelled, the State Engineer found that because this portion was uncommitted to any beneficial use, the permittee has not shown good cause to grant an extension of time to file the Proof of Beneficial Use for this uncommitted portion. After considering the testimony and evidence presented at the hearing, the State Engineer finds that a portion of Permits 36636 through 36640 remains uncommitted to any beneficial use. This uncommitted portion is now found to be 1,653 AFA, modified from the original 1,691.5 AFA that was cancelled. The State Engineer further finds that the permittee has not shown good cause for not having applied this 1,653 AFA to a beneficial use.

¹⁰ Transcript, pp. 57-58, Public Administrative Hearing before the State Engineer, dated August 29, 1995.

V.

In Finding of Fact I. above, the State Engineer found that 1,712 AFA of water was committed to a beneficial use. This quantity of water was based on the number of existing lots that can be served. The State Engineer finds that the number of parcels and commercial and residential units which are contained within or planned for the place of use of the Silver Springs Mutual Water Company was considered by the State Engineer in arriving at the modified quantity of water committed and the new quantity of water in the cancelled portion of Permits 36636 through 36640.

VI.

In 1994, significant improvements to the water system were made. The Silver Springs Mutual Water Company borrowed \$880,000 to finance the construction of a new one million gallon storage tank and to make improvements to the water distribution system within the service area.¹¹ The Silver Springs Mutual Water Company will be able to serve the 1,528 units within the service area, when all of the lots are sold and developed. The State Engineer understands that additional time is needed before water service to the undeveloped lots can be realized. The development of the lots depends on several factors including the availability of real estate and construction loans, the interest rate for those loans, the financial condition of the buyers of the undeveloped lots, and other economic factors. The State Engineer finds that the economic conditions of the Silver Springs Mutual Water Company and the buyers of the undeveloped lots add many years to achieving full build-out of the service area.¹² The State Engineer further finds

¹¹ Transcript, pp. 21-22, Public Administrative Hearing before the State Engineer, August 29, 1995.

¹² The consultant for the Silver Springs Mutual Water Company estimates that 1,559 connections will be served water in the year 2010. See water demand projections submitted by Walters Engineering, File No. 36636, official records in the Office of the State Engineer.

that economic conditions are considered in taking action on the permittee's applications for extension of time.

VII.

The record contains no evidence of unanticipated natural conditions that caused any delays in the development of the area served by the Silver Springs Mutual Water Company. The State Engineer finds that there were no unanticipated natural conditions that prevented the commitment to use 1,653 AFA of water by the Silver Springs Mutual Water Company.

VIII.

The period of time, contemplated by the predecessor to the Silver Springs Mutual Water Company, to place the water to beneficial use was ten years, when Applications 36636 through 36640 were filed in 1979.¹³ Sixteen years have passed and still there is no commitment to use the 1,653 AFA, which is now found to be uncommitted to any beneficial use. The State Engineer finds that the period of time contemplated for placing the water to beneficial use was considered in acting on the request for extension of time. The State Engineer further finds that the Silver Springs Mutual Water Company and its predecessor, ERGS, Inc., had ample time to commit the 1,653 AFA of water to a beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over this matter.¹⁴

II.

If, in the judgement of the State Engineer, the holder of any permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall require the submission of such proof and evidence as may be

¹³ File Nos. 36636 through 36640, official records in the Office of the State Engineer.

¹⁴ NRS 533 and 534.

necessary to show compliance with the law. If, in his 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.¹⁵

III.

If any permit is cancelled, the holder of the permit may within 60 days of the cancellation, file a written petition with the State Engineer, requesting a review of the cancellation at a public hearing. The State Engineer may, after receiving and considering evidence, affirm, modify, or rescind the cancellation.¹⁶

IV.

Whenever the holder of a permit issued for municipal or quasi-municipal use requests an extension of time to apply the water to a beneficial use, the State Engineer shall, in determining whether to grant or deny the extension, consider, among other factors:

1. Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;
2. The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the public water company;
3. Any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use;
4. Any delays in the development of the land or the area being served by the public water company which were caused by unanticipated natural conditions; and

¹⁵ NRS. 533.395(1).

¹⁶ NRS 533.395(2).

5. The period of time contemplated in the plan for the development of a project approved by the local government pursuant to NRS 278.010 to 278.460, if any, for completing the development of the land.¹⁷

V.

On May 8, 1995, the State Engineer found that 1,673.5 AFA of water was committed to a beneficial use and the remaining quantity of water under Permits 36636 through 36640 (1,691.5 AFA) was cancelled. At the hearing held to review the cancellation, evidence showed that, in fact, the Silver Springs Mutual Water Company had committed to serve 1,528 residential and commercial units. The quantity of water committed to serve these lots, at a rate of 1,000 gpd per unit, is calculated to be 1,712 AFA. The uncommitted portion of Permits 36636 through 36640 is changed to 1,653 AFA. The State Engineer concludes that the cancellation of a portion of Permits 36636 through 36640 should be affirmed but the quantity of water of the cancelled portion of said permits should be changed to 1,653 AFA. The portion of said permits that remains in good standing is 1,712 AFA.

VI.

The figure of 1,000 gpd per lot is used to calculate the total quantity of water right allocated for municipal or quasi-municipal use. The actual water use can be measured and by efficient water management practice and conservation, the use is often less than 1,000 gpd per lot. Regarding the Silver Springs Mutual Water Company, the actual water consumption in 1995 was 525 gpd per lot. If the water company is able to maintain the use of 525 gpd per lot, then the number of potential lots that may be served, given the 1,712 AFA of water remaining in good standing, is calculated to be 2,911.

¹⁷ NRS 533.380(4).

VII.

The State Engineer concludes that there would be no violation of the Nevada Health Division regulations if the actual water consumption is less than 1,000 gpd per lot.

VIII.

The State Engineer concludes that the Silver Springs Mutual Water Company has not proceeded in good faith and with reasonable diligence to perfect the 1,653 AFA of water that is still uncommitted. The State Engineer further concludes that the permittee has not shown good cause to grant an extension of time for the 1,653 AFA.

IX.

The State Engineer concludes that the number of parcels and commercial and residential units was properly considered in determining whether to grant or deny the application for extension of time.

X.

The State Engineer concludes that the economic conditions prevailing in the area of the Silver Springs Mutual Water Company did not prevent the commitment of the 1,653 AFA of water to a beneficial use.

XI.

The State Engineer concludes that there were no unanticipated natural conditions causing any delay in the commitment of the 1,653 AFA of water to a beneficial use.

XII.

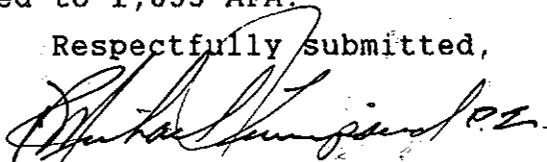
Sixteen years have passed since the predecessor to the Silver Springs Mutual Water Company stated that ten years would be required to place the water under Permits 36636 through 36640 to a beneficial use. The State Engineer concludes that the permittee had ample time to commit the 1,653 AFA of water to beneficial use.

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The cancellation of a portion of Permits 36636 through 36640 is hereby affirmed but the quantity of water that is cancelled under said permits is changed to 1,653 AFA.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/ab

Dated this 8th day of
December, 1995.