

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

IN THE MATTER OF CANCELLED PERMIT)
48016 FILED TO APPROPRIATE)
UNDERGROUND WATERS WITHIN THE)
TRUCKEE MEADOWS GROUNDWATER BASIN)
(87), WASHOE COUNTY, NEVADA.)

RULING

4485

GENERAL

I.

Application 48016 was filed by Salem Plaza Condominium Association (hereinafter "Salem") on May 2, 1984, to appropriate 2.5 cubic feet per second (annual consumptive use of zero acre-feet) of the underground waters of the Truckee Meadows Groundwater Basin, Washoe County, Nevada, for geothermal heating of the condominium complex within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.19N., R.19E., M.D.B.&M.¹ The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 23.

II.

The United States Department of Energy (DOE) funded Hydrothermal Energy Corporation (HEC) in 1979 to demonstrate space of heating of residential complexes in the southern Reno, Nevada, area using geothermal water.¹ The DOE terminated the HEC contract in October 1983, and subsequently entered into a contract with Chilton Engineers in Reno, Nevada, to complete the project.¹

III.

Permit 48016 was approved on July 17, 1986. Under Permit 48016 Proof of Completion of Work was first due to be filed in the Office of the State Engineer on August 17, 1987, and Proof of Beneficial Use of the water was first due to be filed on August 17, 1990.¹

¹File No. 48016, official records in the Office of the State Engineer.

IV.

On March 27, 1996, the State Engineer denied Salem's Application for Extension of Time for filing Proof of Completion of Work and Proof of Beneficial Use and cancelled Permit 48016.¹ As provided pursuant to NRS 533.395, on May 22, 1996, the State Engineer received a written petition from Salem requesting review of the cancellation at a public hearing before the State Engineer.¹

V.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held before representatives of the Office of the State Engineer on October 23, 1996, at Carson City, Nevada.²

FINDINGS OF FACT

I.

On September 8, 1987, Salem filed an Application for Extension of Time for filing Proof of Completion of Work stating that additional time of one year was needed due to the fact a comprehensive testing program over the past six months had been completed, but the final pump design was still in progress. It was indicated that the well had been completed and cased to a depth of 1,500 feet.¹ The State Engineer granted the requested extension of time through August 17, 1988.

On September 19, 1988, Salem filed an Application for Extension of Time for filing Proof of Completion stating that additional time of one year was needed due to the fact that the drilling of the re-injection well was completed in late August, that Salem was currently performing tests on the well, and that once the results were analyzed it could determine which pump and motor to select for the production well.¹ The request for extension of time indicated that the production well had been

²Transcript, public administrative hearing before the State Engineer, October 23, 1996. (Hereinafter "Transcript".)

drilled, cased and a new test pump was conducted in July 1988. The State Engineer granted the requested extension of time through August 17, 1989.

On September 18, 1989, Salem filed an Application for Extension of Time for filing Proof of Completion stating that additional time of one year was needed due to the fact that this is a geothermal production well and the final installation of the pump, motor and piping was dependent on the satisfactory completion of the injection well.¹ The application for extension of time indicated that the project was being re-evaluated to determine if it was viable due to poor test results on the injection well. The State Engineer granted the requested extension of time through August 17, 1990.

On December 3, 1990, the State Engineer cancelled Permit 48016 as the permittee had failed to comply with the terms of the permit by filing the Proof of Completion of Work and Proof of Beneficial Use.¹ After receiving a written petition for review of the cancellation, in October 1991, the State Engineer held a public administrative hearing on the cancellation of the permit and reinstated the cancelled permit.

On October 29, 1991, Salem filed an Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use stating that additional time of one year was needed due to the fact that tests on the injection well were not satisfactory and Salem was working with the DOE to see what options remained for continuing the project and whether or not DOE funds would be available.¹ The State Engineer granted the requested extension of time through October 1, 1992.

Again, on September 30, 1992, Salem filed another Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use stating that additional time of one year was needed.¹ The reasons given for the requested extension were nearly identical to the reasons given the year before, but added that

Salem was also negotiating with a private party to complete the proposed project. The State Engineer granted the requested extension of time through October 1, 1993.

On September 15, 1993, Salem filed yet another Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use stating that additional time of one year was needed. The reasons given for the requested extension were identical to the reasons given the year before. The State Engineer granted the requested extension of time through October 1, 1994; however, the State Engineer also informed Salem at that time that additional extensions of time would be reviewed to determine progress toward completion of the diversion work and proof of beneficial use of the water, and that unless good faith and reasonable diligence were demonstrated, further requests for extensions of time would be denied.¹

On November 29 1994, Salem filed another Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use stating that additional time of one year was needed. The reasons given for the requested extension were identical to the reasons given the year before, but added that since the tests on the injection well at the 1,600 foot level had been unsuccessful it was discussing with the Department of Minerals options for injecting at a different level. The State Engineer granted the requested extension of time through June 30, 1995; however, for a second time informed the permittee that additional extensions of time would be reviewed to determine progress toward completion of the diversion work and proof of beneficial use of the water, and that unless good faith and reasonable diligence were demonstrated, further requests for extensions of time would be denied.¹

The permittee was informed that the Proof of Completion had to be filed by June 30, 1995, the extraction well completed, the pump, motor, discharge piping, and measuring device installed, and the facility capable of diverting and that failure to comply would

result in cancellation of the permit.¹ The State Engineer further informed the permittee that when the proof of completion was filed he would consider the merits of granting any further extensions of time as to the filing of Proof of Beneficial Use.

After being informed of its failure to comply with the June 30, 1995, filing deadline, on July 3, 1995, Salem filed yet another Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use stating that additional time of one year was needed.¹ The reasons given for the requested extension were identical to the reasons given the year before, but added that Salem was working with the Geo-Heat Center of the Oregon Institute of Technology in the preparation of a new utilization plan to determine the size of the pump, motor, etc. needed for the well, was working with another company on a review of the materials to be used in the system, and that some additional engineering would be required after those two projects were complete.

On March 27, 1996, the State Engineer denied Salem's Application for Extension of Time for filing Proof of Completion of Work and Proof of Beneficial Use and cancelled Permit 48016.¹ The State Engineer found that the record did not demonstrate any significant additional expenditures towards completion of the project had been incurred since 1991 demonstrating a lack of commitment or financial ability to complete the project within a reasonable time, which did not demonstrate a good faith cause to grant the extension of time.

The State Engineer finds that Salem has been given ample time to develop this project and bring it to fruition.

II.

A representative for the Applicant testified at the public administrative hearing that it was not the initial entity pursuing this project and that eventually the funding from the DOE dried

up.³ The evidence indicates that this project is no longer being pursued by any entity other than the association of condominium owners which argued they should be given latitude in their progression toward development because the Applicant is comprised of a voluntary board of directors.⁴ The State Engineer finds that the law does not discriminate between voluntary boards or corporations with regard to proving completion of work and proof of beneficial use of the waters of Nevada. The beneficial use requirements apply to all equally.

III.

The Applicant testified that it drilled the injection well only to find it would not satisfy the entire project envisioned, and, therefore, had to reconsider the extent of the project and was doing so in August 1995.⁵ The Applicant provided evidence of its discussions around August 1995 with Geo-Heat Center of the Oregon Institute of Technology as to using the geothermal wells for heating domestic hot water and the swimming pool, and equipment required to utilize the system.⁶

The Applicant provided evidence that after the pairing down of the extent of the project that around October 1996 it pursued discussions with a local engineering firm regarding the production of mechanical engineering design drawings and specifications for the project, and had been given a bid for said work.⁷ After receiving the above-referenced information the Board of Directors approached the association membership and inquired as to whether or not they wanted to complete the project, which the membership voted

³Transcript, pp. 14 - 15.

⁴Transcript, pp. 10, 14, 25.

⁵Transcript, pp. 15 - 16; Exhibit No. 3.

⁶Exhibit No. 3.

⁷Transcript, p. 16; Exhibit No. 1.

to pursue.⁸ The Applicant then provided testimony that it had pursued discussions with Pioneer Citizens Bank as to financing the approximately \$82,000 dollars needed to complete the project.⁹ The Hearing Officer requested proof of a firm commitment of financing from Pioneer Bank regarding financing of the project be filed and left the record open for the filing of said proof.¹⁰

The State Engineer finds that the Applicant provided a letter from Pioneer Citizens Bank dated November 21, 1996, that it was expecting to finalize a loan for approximately \$82,000 dollars within ten days from the date of the letter. The State Engineer finds that Salem has been making an effort, albeit recent effort, to bring this project to completion.

IV.

The evidence indicates that the Nevada Division of Environmental Protection has allowed the permit approved through it to remain active with the intention of renewing it¹¹, even though said permit expired on July 24, 1992, and that if the cancellation of water right permit is rescinded, Salem will be given 120 days to submit an UIC renewal application with all the necessary information or their permit will be cancelled.¹² The evidence further indicates that the Nevada Department of Minerals' permit is still valid.¹¹

The Applicant testified that it needs six months for completion of the project, and that it is prepared to complete the

⁸ Transcript, pp. 16 - 17.

⁹ Transcript, p. 17.

¹⁰ Transcript, p. 19.

¹¹ Transcript, pp. 20 - 22.

¹² Supplemental information provided after the actual hearing, but within the time frame the Hearing Officer left the record open for providing said information.

project at this time.¹³ The State Engineer finds that with the financing in place Salem appears able to put the water to beneficial use within a one year time frame.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the persons and of the subject matter of this action and determination.¹⁴

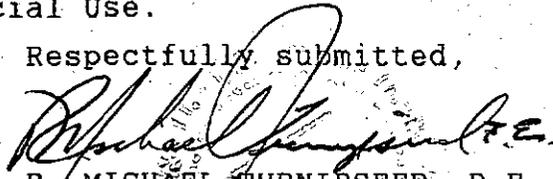
II.

The State Engineer concludes that the applicant provided sufficient evidence at the public administrative hearing to demonstrate its good faith efforts, albeit recent efforts, at bringing the project to completion within a relatively short amount of time.

RULING

The cancellation of Permit 48016 is hereby rescinded. The new priority date of Permit 48016 is May 22, 1996. Salem has 30 days from the date of this ruling to file a new Application for Extension of Time for filing Proof of Completion and Proof of Beneficial Use with the appropriate filing fee. Upon receipt of the new Application for Extension of Time the State Engineer will grant the permittee through October 23, 1997, for filing the Proof of Completion and Proof of Beneficial Use.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 10th day of
January, 1997.

¹³ Transcript, p. 18 - 19.

¹⁴ NRS Chapters 533 and 534.