

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

IN THE MATTER OF THE REVIEW OF CANCELLED )  
PERMIT 35217, TO APPROPRIATE THE )  
UNDERGROUND WATERS OF WASHOE VALLEY )  
GROUNDWATER BASIN, WASHOE COUNTY, )  
NEVADA. )

RULING

# 3998

GENERAL

I.

Application 35217 was filed on March 24, 1978, by George H. Buck and Amerigo Delulio to appropriate 2.0 c.f.s. of water from an underground source for quasi-municipal purposes within portions of Section 25 and Section 36, T.16N., R.19E., M.D.B.&M. The point of diversion is described as being in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 25, T.16N., R.19E., M.D.B.&M. Permit 35217 was approved on November 2, 1978 for 2.0 c.f.s. and not to exceed 73 million gallons annually for quasi-municipal purposes to serve 200 residential and commercial units.<sup>1</sup>

II.

Proof of beneficial use was last due on December 2, 1990. Eight extensions of time had been granted. Application for extension of time was filed on November 28, 1990, in which the permittee stated that negotiations were ongoing with the Nevada Department of Transportation and the Nevada Division of State Parks for the possible sale of these water rights. In a letter dated September 24, 1991, the State Engineer denied the application for extension of time. The State Engineer cited the record which includes evidence that the Nevada Division of State Parks no longer intends to pursue the negotiations for acquisition of land. The State Engineer found that the permittees have not shown good cause to grant the request for extension of time and the permittees are not proceeding in good faith and with reasonable diligence as required under NRS 533.395. Therefore, the State Engineer

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<sup>1</sup> File No. 35217, official records in the office of the State Engineer.

cancelled Permit 35217.<sup>2</sup>

III.

On November 15, 1991, the permittees, through their agent filed a written petition for a hearing to review the cancellation of Permit 35217.<sup>3</sup>

On February 4, 1993, the State Engineer held a hearing to consider the review of cancelled Permit 35217.<sup>4</sup>

FINDINGS OF FACT

I.

Permit 35217 was approved on November 2, 1978.<sup>1</sup> The applicants estimated that the time required to place the water to beneficial use would be five years.<sup>1</sup> In the fourteen years since Permit 35217 was approved, no water has been placed to beneficial use.

The proof of completion of work was originally due on June 2, 1980. After one extension of time, it was filed on January 16, 1981, indicating that the well was completed.<sup>1</sup> It has been over twelve years since the well was drilled and still no water has ever been placed to beneficial use.

The proof of beneficial use was first due on June 2, 1983. Seven extensions of time have been granted until September 24, 1991, when Permit 35217 was cancelled.<sup>1</sup> The State Engineer finds that the permittees have had ample time to place the water to beneficial use.

II.

At the hearing, the permittees presented testimony and evidence related to attempts to obtain all required approvals to

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<sup>2</sup> Exhibit No. 4, Public Administrative Hearing before the State Engineer, February 4, 1993.

<sup>3</sup> Exhibit No. 3, Public Administrative Hearing before the State Engineer, February 4, 1993.

<sup>4</sup> Exhibit No. 1, Public Administrative Hearing before the State Engineer, February 4, 1993.

develop the property.<sup>5</sup> However, final subdivision maps are still not approved and the permittees are unable to state when the approvals can be obtained.<sup>6</sup> The State Engineer finds that the permittees are not proceeding in good faith and with reasonable diligence to perfect the appropriation.

III.

The permittees have attempted to sell the water rights under Permit 35217.<sup>7</sup> The State Engineer finds that holding this water right for possible sale is not sufficient grounds for granting additional extensions of time. The State Engineer further finds that the permittees are not proceeding in good faith and with reasonable diligence to place the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.<sup>8</sup>

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>9</sup>

III.

The State Engineer may, after receiving and considering evidence regarding a cancelled permit, affirm, modify, or rescind the cancellation.<sup>10</sup>

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<sup>5</sup> Transcript pp. 8-32, Public Administrative Hearing before the State Engineer, February 4, 1993.

<sup>6</sup> Transcript p. 19, Public Administrative Hearing before the State Engineer, February 4, 1993.

<sup>7</sup> Transcript pp. 19-21, Public Administrative Hearing before the State Engineer, February 4, 1993.

<sup>8</sup> NRS 533 and 534.

<sup>9</sup> NRS 533.395(1).

<sup>10</sup> NRS 533.395(2).

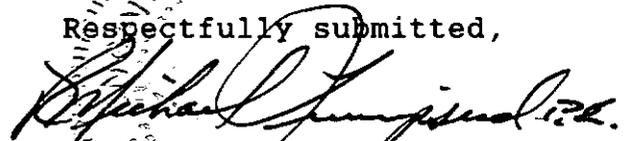
IV.

Based on the testimony and evidence on the record, it can be concluded that the permittees, in the fourteen years since Permit 35217 was approved, have not proceeded in good faith and with reasonable diligence to perfect the appropriation. Therefore, the cancellation of Permit 35217 should be affirmed.

RULING

The cancellation of Permit 35217 is hereby affirmed..

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 28th day of  
May, 1993.