BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF EDWIN F. CHVATAL, Appellant,	)	PCHB No. 471
vs.	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	)	

THIS MATTER being an appeal of an Order of Cancellation of Permit to Appropriate Ground Waters; having come on regularly for hearing before the Pollution Control Hearings Board on the 15th day of January, 1974, at Spokane, Washington; and appellant Edwin F. Chvatal appearing pro se and respondent Dept. of Ecology appearing through its attorney, Charles W. Lean; and Board member present at the hearing being W. A. Gissberg; and the Board having considered the transcript of the testimony, exhibits, records and files herein and arguments of the parties and having entered on the 5th day of February, 1974, its proposed Findings of Fact, Conclusions and Order,

and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received no exceptions to said proposed Findings, Conclusions and Order; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 5th day of February, 1974, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington, this 20th day of March, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Mary Ellen McCaffree

MARY ELLEN McCAFFREE, Member

S.F No 9928-A-

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
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IN THE MATTER OF EDWIN F. CHVATAL, Appellant, vs. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent.	PCHB No. 471 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

An informal hearing on this appeal came on before Board member W. A. Gissberg, presiding, in Spokane, Washington on January 15, 1974. Appellant, Edwin F. Chvatal, appeared pro se; respondent, Department of Ecology, appeared by its attorney, Charles W. Lean.

Having reviewed the transcript of the testimony adduced at the hearing and considered the exhibits in evidence and the statements and argument of the parties and being fully advised the Board makes and enters these

EXHIBIT A

FINDINGS OF FACT

I.

Leonard O. and Frank H. Gardner were granted a ground water permit under Application No. 1381 on June 19, 1950 for use as a domestic supply and irrigation not to exceed 950 gallons per minute and 600 acre-feet per year on land they owned in Walla Walla County. The permit required that construction work on the well be completed and that the permitted water be applied to its authorized use on or before June 1, 1951. The permit also allows the well to be drilled to a maximum depth of 350 feet.

II.

Appellant purchased the property for which the permit was issued in 1957 and received an assignment of the permit on September 23, 1958. At that time the well had already been dug to a depth of 90 feet. Digging of the well proceeded slowly and because water in sufficient quantities had not been located at the maximum depth of 350 feet, appellant caused the drilling of the well to continue to its present depth of 1613 feet. This drilling occurred over the years since the permit was granted. Extensions to the time limitations stated upon the original permit were from time to time and over the years granted by respondent's predecessor state agency. The last of such extensions expired on June 1, 1972 and appellant should have filed his Proof of Appropriation and use of the water by that date, which he did not do.

II.

On May 31, 1973 appellant received a letter from respondent advising him that he had not filed his Proof of Appropriation and his

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well driller's report; that if he needed an extension of time to do so he should request the same within sixty days; that otherwise, and failing to hear from appellant, respondent would take action "resulting in cancellation" of his permit.

III.

Appellant instructed his licensed, professional, well digger to respond to the notice received by him and to request an extension. However, due to the negligence of the well digger appellant made no further request for an extension of time. Accordingly, the permit was cancelled by respondent on September 11, 1973, from which this appeal followed.

IV.

One of the purposes of regulating the withdrawal of ground water is to govern the aquifer from which the water is withdrawn. The permit which was issued to appellant limits the depth of the well to 350 feet, whereas appellant has drilled to a depth in excess of 1600 feet. Each depth is in a different water aquifer.

V.

Appellant has owned his property for 16 years and has never filed Proof of Appropriation of Water under the initial permit.

VI.

If appellant now applies for a new permit, it would be granted by respondent. However, the date of its priority would be the date of the issuance of the new permit and not the date of the permit (1950) which is the subject matter of this appeal.

From which comes these

FINDINGS OF FACT
CONCLUSIONS AND ORDER

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CONCLUSIONS OF LAW

I.

RCW 90.03.320 requires appellant to prosecute his construction with diligence and complete the same within the time fixed by the permit. Appellant did not do so, nor has he acted in good faith or shown good cause why the permit should be further extended. Since appellant did not comply with the reasonable terms of the permit, and did not show cause why it should not be canceled, respondent acted correctly in cancelling the same.

II.

It would not be in the public interest to further extend the time within which applicant may apply the water to the uses prescribed in the permit. Appellant has not acted in the good faith required by the statute because he has unlawfully drilled his well to a depth not authorized by his permit.

III.

Respondent's cancellation of the subject permit was in accordance with the provisions of RCW 90.03.320 and was and is in all respects lawful, mandatory and required.

From which comes this

ORDER

The appeal is denied and respondent's Order of Cancellation of the Permit is affirmed.

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DONE at Lacey, Washington this 5th day of February, 1974.

POLLTUION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

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