

IN THE MATTER OF CANCELLED PERMITS)  
21177, 23457, 25977 AND 25979, )  
PENoyer VALLEY, LINCOLN COUNTY, )  
NEVADA )

R U L I N G

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INTRODUCTION

Permits 21177, 23457, 25977 and 25979 were cancelled by the State Engineer for failure to comply with the provisions of the permits in Penoyer Valley, Lincoln County, Nevada.

FINDINGS OF FACT

I

Application 21177 was filed on April 4, 1963 by Mrs. Joyce Y. Armstrong to appropriate 5.4 c.f.s. of water from an underground source for irrigation and domestic purposes. The point of diversion is described to be within the SW1/4 SW1/4 of Section 29, T.3S., R.55E., M.D.M. and the place of use is described as 320 acres within the W1/2 of said Section 29. Permit 21177 was granted on November 14, 1963 for 5.4 c.f.s. for irrigation and domestic purposes. The Proof of Commencement of Work was filed on June 15, 1965, after one year extension of time and the Proof of Completion of Work was filed on July 19, 1965. The Proof of Beneficial Use with a cultural map was due on or before June 14, 1968, and was extended to June 14, 1970, upon application each year for two years. The 30 day notice required by statute was not sent on June 14, 1970, due to an office error, but was sent by certified mail to the owner of record on October 28, 1970 with a copy to the agent. The agent, D. C. Day, signed the certified mail receipt. Permit 21177 was cancelled on December 2, 1970 for failure to comply with the provisions of the permit. Cancelled Permit 21177 stands in the name of Oscar V. Bennett, Jr., as the owner of record. 1/

II

Application 23457 was filed on October 21, 1966 by Johnny R. Vineyard to change 4.7 c.f.s. of the point of diversion heretofore appropriated under Permit 19591 from an underground source for irrigation purposes. The proposed point of diversion is described as being within the NW1/4 SW1/4 of Section 31, T.3S., R.55E., M.D.M. The place of use remains unchanged for 280 acres within the W1/2 of said Section 31. Permit 23457 was granted on April 5, 1967 for 4.7 c.f.s. of water, thereby abrogating Permit 19591. Since the well was existing, a ninety-day period was set for filing the Proofs of Commencement and Completion of Work on or before August 5, 1967. The 30-day notice required by statute that proofs were due was forwarded by certified mail on August 5, 1967 to the agent who was no longer the agent. A second 30-day notice was forwarded by certified mail on February 20, 1968 to the owner of record with a copy to a new agent. The notice to the owner of record was returned unclaimed, but the new agent timely filed both the Proofs of Commencement and Completion of Work

on March 21, 1968. The Proof of Beneficial Use with cultural map was due on or before November 5, 1968 and was extended to November 5, 1970 upon application each year for two years. No record of a 30-day notice required by statute was sent to the owner of record prior to cancellation on February 26, 1971. Cancelled Permit 23457 stands in the name of the Nevada Farms, Inc., as the owner of record.

By letter dated October 29, 1970, James C. Perkins, Office Engineer, advised agent John V. Caselli that the Proof of Beneficial Use was due on November 5, 1970 under Permit 23457. Receipt No. 84613 dated November 4, 1970 was made to John V. Caselli in the amount of \$1.00 cash for filing the Proof of Beneficial Use under Permit 23457 (Van F. Flicker). An inter-office memo was sent to the Las Vegas Branch office on November 16, 1970, and stated that copies of the Proof of Beneficial Use and supporting map were enclosed and requested a field investigation of the proof. A second inter-office memo to the Las Vegas Branch office dated December 2, 1970 requested a field investigation and stated copies of the Proof of Beneficial Use and cultural map under Permit 23457 were enclosed.

The original Proof of Beneficial Use deposition and the cultural map under Permit 23457 could not be found in the Division of Water Resources after a thorough search. The Las Vegas Branch office had a copy of a Proof of Beneficial Use marked Permit 23457 in the name of Van F. Flicker for the beneficial use of water on 320 acres within the S1/2 of Section 25, T.3S., R.54E., M.D.M. Application 23457 and supporting map describe the place of use as the W1/2 of Section 31, T.3S., R.55E., M.D.M.

The report of informal field investigation by the Las Vegas Branch office dated December 9, 1970 of Permit 23457 indicated Van F. Flicker as the owner of record and stated no culture was evident. By letter of February 17, 1971, the State Engineer's office advised J. V. Caselli that there were some problems involved with Permits 23446 and 23457 in the names of Van F. Flicker and Johnny R. Vineyard.

The visitor registration book is signed by V. Caselli on February 26, 1971. The record indicates that on February 26, 1971, Receipt No. 84613 was marked for excess remittance to John V. Caselli of the \$1.00 fee paid for filing the Proof of Beneficial Use under Permit 23457; Permit 23457 was cancelled on February 26, 1971, and Application 25979 was filed for Oscar V. Bennett, Jr., by J. V. Caselli as agent. 2/

### III

Application 25977 was filed on February 26, 1971 by Johnny R. Vineyard to appropriate 4.70 c.f.s. of water from an underground source for irrigation and domestic purposes. The point of diversion is described as within the NW1/4 SW1/4 Section 31, T.3S., R.55E., M.D.M. The place of use is described as 280 acres within the W1/2 Section 31, T.3S., R.55E., M.D.M. Permit 25977 was granted on June 9, 1972 for 4.7 c.f.s. for irrigation and domestic purposes. The Proof of Commencement of Work was due on or before January 9, 1973. Upon application, one extension of time was granted to January 9, 1974. The 30-day notice required by statute was sent by

certified mail on January 9, 1974 to D. C. Day as agent noticing that the Proof of Commencement of Work, Proof of Completion of Work and well log was due within 30 days of the date of the notice. Permit 25977 was cancelled on February 11, 1974 for failure to comply with the terms of the permit. 3/

IV

Application 25979 was filed in the name of Oscar V. Bennett, Jr., on February 26, 1971, to appropriate 5.4 c.f.s. of water from an underground source for irrigation and domestic purposes. The point of diversion is described as within the SW1/4 SW1/4 of Section 29, T.3S., R.55E., M.D.M. The place of use is described as 320 acres within the W1/2 of the said Section 29. Permit 25979 was granted on July 24, 1972 for 5.4 c.f.s. for irrigation and domestic purposes. The Proof of Commencement of Work was due on or before February 24, 1973. Upon application, one extension of time was granted to February 24, 1974 for filing the Proof of Commencement of Work. The 30 day notice required by statute was sent by certified mail on February 25, 1974 to the owner of record with a copy to John V. Caselli noticing that the Proof of Commencement of Work was due. A second 30 day notice was sent by certified mail on April 5, 1974 to D. C. Day as agent that the Proof of Commencement of Work was due within 30 days of the date of the notice. Permit 25979 was cancelled on May 8, 1974 for failure to comply with the provisions of the permit. 4/

V

By letter dated November 8, 1979 Nevada Farms, Inc., requested an administrative hearing in the matter of cancelled Permits 21177, 23457, 19591 and 25979. 5/

VI

A hearing was held before the State Engineer, after proper notice, in the matter of cancelled Permits 21177, 23457 and 25979 on January 8, 1980 in Carson City, Nevada. 6/

Testimony by Brian Randall, Office Engineer, for the Division of Water Resources traced the chronological steps in the statutory procedure leading to the cancellation of Permits 21177, 23457 and 25979. Mr. Randall was questioned by counsel for Nevada Farms, Inc., for clarification of the record. Questioning centered on the whereabouts of the original Proof of Beneficial Use deposition for Permit 23457 and for which Receipt No. 84613 was issued on November 4, 1970, and the original cultural map of which a print of each was sent to the Las Vegas Branch office for a field investigation. Mr. Randall stated that there was no record of either the original Proof of Beneficial Use deposition or the original cultural map being received or being returned to John Caselli. The only record available is a copy from the Las Vegas Branch office of a Proof of Beneficial Use deposition with the correct permit number 23457, but the wrong owner of record (Van F. Flicker) and the wrong description of land (S1/2 Section 25, T.3S., R.54E.) upon which water was said to have been placed to a beneficial use.

Further, Mr. Randall was questioned about possible reliance by Mr. Caselli upon the information given in the Division of Water Resources' letter dated October 29, 1970 regarding the owner of record and the land

description of Permit 23457. Also, Mr. Randall was questioned about reliance by D. C. Day to verbal instruction from the Division of Water Resources to file affidavits of cultivation of various parcels of land under various permits.

In addition, Mr. Randall was questioned regarding the statute requiring the State Engineer to send a notice by registered or certified mail to the owner of record that an affidavit is due thirty (30) days prior to the cancellation of a permit.

Mr. Randall was also questioned about the failure to file administrative documents prior to the cancellation of Permits 25977 and 25979 when Applications 25977 and 25979 both stated in answer to questions 9, 10 and 11 that the well was completed and beneficial use was completed.

Testimony presented by Mrs. John V. Caselli in behalf of Nevada Farms, Inc., extended to Mr. Caselli's professional habits of maintaining office copies of all work and that the originals or the copies of either the Proof of Beneficial Use deposition or the cultural map under Permit 23457 could not be found in his office.

Nevada Farms, Inc., submitted a sworn statement of D. C. Day dated March 21, 1978 of reliance on verbal information from the Las Vegas Branch office of the Division of Water Resources to secure affidavits to verify that beneficial use had been made under various permits. 7/

Nevada Farms, Inc., submitted a petition to rescind the cancellation of cancelled Permits 21177, 23457 and 25979 on the grounds of substantial compliance with the requirements of establishing the beneficial use of water. 8/

#### CONCLUSIONS

##### I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 9/

##### II

Testimony presented in behalf of the State Engineer's office reviewed the good faith and due diligence requirements of Chapter 533 of the Nevada Revised Statutes. Permits 21177, 23457, 25977 and 25979 were cancelled on December 2, 1970, February 26, 1971, February 11, 1974 and on May 8, 1974, respectively, and no appeals to those cancellations were filed within 30 days of the cancellation.

III

The whereabouts of the original Proof of Beneficial Use deposition and cultural map under cancelled Permit 23457 cannot be determined or accounted for from the record. The files are public records and as such are available to the public. Circumstances would indicate and the personal habits of the engineer tend to confirm that these documents were returned personally on the occasion of an office visit.

IV

The claim of reliance on the information contained in the Division of Water Resources' letter of October 29, 1970 is not valid because the same letter contains the correct information. It would appear that where there is conflicting information in the same letter, the permittee's agent has a responsibility to review the matter further to resolve the conflict.

V

Clerical mistakes were made by the State Engineer's office and as a result the file under cancelled Permit 23457 is incomplete. 10/

VI

The timely filing of administrative documents are required by the good faith and due diligence clauses of the statutes and by time limits set by the endorsement at the time the permit was granted. No appeal was made by the permittee to the good faith and due diligence times set when the permit was granted. 11/

VII

A statement made in answer to a question on an application does not contain sufficient information to determine compliance with the good faith and due diligence statute. Statutes require an affidavit that the works of a diversion were commenced and completed and that water was placed to a beneficial use. 12/

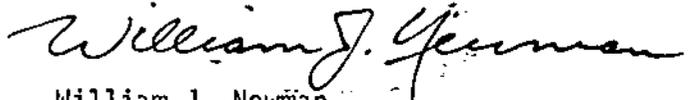
VIII

The sworn statement and affidavits of cultivation submitted are not sufficient evidence of themselves without the submission of a Proof of Beneficial Use deposition and a cultural map. 13/

RULING

The cancellation of Permit 23457 is herewith rescinded on the grounds that clerical mistakes were made by the State Engineer and the file under Permit 23457 is incomplete. The Proof of Beneficial Use and cultural map under Permit 23457 must be filed within six (6) months of this date with no further extension of time. The cancellation of Permits 21177, 25977 and 25979 are not rescinded on the grounds that affidavits of good faith and due diligence were not timely filed as required by statute.

Respectfully submitted,



William J. Newman  
State Engineer

WJN/bc

Dated this 9th day

of APRIL, 1980.

### FOOTNOTES

1. Public record available in the office of the State Engineer.
2. Public record available in the office of the State Engineer.
3. Public record available in the office of the State Engineer.
4. Public record available in the office of the State Engineer.
5. State Exhibit No. 2. Transcript of January 8, 1980 hearing is a public record available in the office of the State Engineer.
6. Transcript of January 8, 1980 hearing is a public record available in the office of the State Engineer.
7. Petitioner's Exhibit No. 2. Transcript of January 8, 1980 hearing is a public record available in the office of the State Engineer.
8. Petitioner's Exhibit No. 3. Transcript of January 8, 1980 hearing is a public record available in the office of the State Engineer.
9. NRS 533.035, 533.380, 533.390 and 533.410.
10. Public record available in the office of the State Engineer.
11. NRS 533.380 and 533.395.
12. NRS 533.390 and 533.400.
13. NRS 533.400 and 533.405.