

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

IN THE MATTER OF CANCELLED PERMIT)
47153 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF CUMMINS SPRING)
WITHIN THE PILOT CREEK VALLEY)
GROUNDWATER BASIN (191), ELKO COUNTY,)
NEVADA.)

RULING

4647

GENERAL

I.

Application 47153 was filed on August 11, 1983, by Pilot Valley Properties, Inc., to appropriate the water of Cummins Spring located within the Pilot Valley Groundwater Basin, Elko County, Nevada. Permit 47153 was approved on July 2, 1990, for 1.0 cubic feet per second (cfs), for the irrigation of 100 acres of land which is located within the W $\frac{1}{2}$ NW $\frac{1}{4}$ and the N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 10, T.35N., R.69E., M.D.B.& M. and for domestic purposes. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, T.36N., R.69E., M.D.B.&M.¹

FINDINGS OF FACT

I.

On January 6, 1994, ownership of Permit 47153 was assigned from Pilot Valley Properties, Inc., to Roger S. and Lucinda S. Schweitzer, who represent the current owners of record in the office of the State Engineer. Additional information contained within the permit file indicates that Bill Oldham may have obtained an interest in Permit 47153, and his signature appears on several of the applications for extensions of time filed under Permit 47153.¹

By notice dated August 5, 1996, the office of the State Engineer informed the permittees, and Bill Oldham, that the Proof of Completion of Work, the Proof of Beneficial Use and the cultural map that was due on or before August 2, 1996, had not been filed as

¹ File No. 47153, official records in the office of the State Engineer.

required under the provisions of Permit 47153. The parties were further informed that the failure to timely file either the required proofs and map or an affidavit requesting an extension of time within 30 days from the date of the notice would result in a cancellation of Permit 47153. An application for extension of time to file the required proofs and a supporting cultural map was submitted by the permittees on September 9, 1996, which was five days past the deadline mandated by the August 5, 1996, final notice.¹ The State Engineer finds that the application for extension of time to file the Proof of Completion, the Proof of Beneficial Use and the supporting cultural map was not filed in a timely manner and that the law required that Permit 47153 be cancelled.

II.

Permit 47153 was subsequently cancelled by the office of the State Engineer on October 17, 1996, for failure to comply with the terms of the permit, more specifically, that the application for extension of time to file the required proofs and map was not timely filed.¹ Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may within 60 days after the cancellation of the permit file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public hearing. The State Engineer finds in circumstances where the required proof or extension of time is filed after the deadline, the late filing is substituted for the written petition, and the permittees were so informed in the State Engineer's cancellation letter of October 17, 1996.

III.

On April 30, 1998, the State Engineer noticed the permittees, and Bill Oldham, by certified mail of a hearing scheduled for the review of the cancellation of Permit 47153. Included within the body of the hearing notice was a statement cautioning the parties that a failure to appear at the hearing may result in an

affirmation of the State Engineer's cancellation. Properly endorsed receipts for the certified notices were received in the office of the State Engineer under the permittees' signature. A representative of the State Engineer was present at the designated time and place set forth in the April 30, 1998, hearing notice, but was unable to proceed with the hearing due to the permittees' failure to appear. To this date, no explanation for the permittees' absence from the June 3, 1998, hearing has ever been submitted to the office of the State Engineer.¹ The State Engineer finds that the parties of interest have failed to attend the public hearing which were scheduled for the review of the cancellation of Permit 47153.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The permittees were noticed by the office of the State Engineer that a failure to appear at the time and place scheduled for the public hearing in the matter of the review of the cancellation of Permit 47153 may result in an affirmation of the cancellation. Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may file a written petition requesting a review of the cancellation at a public hearing. At the hearing, the permittee is allowed the opportunity to submit evidence, which the State Engineer may in receiving and considering, affirm, modify, or rescind the cancellation. The State Engineer properly noticed the permittees of the hearing in the matter of the review of cancelled Permit 47153, which they have failed to attend or offer any reason for their absence. The State Engineer concludes that the parties have forsaken their opportunity to present

² NRS § Chapter 533.

Ruling
Page 4

additional evidence to the State Engineer in support of a modification or rescission of the cancellation of Permit 47153; therefore, the State Engineer must affirm the cancellation of Permit 47153.

RULING

The cancellation of Permit 47153 is affirmed.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 22nd day of
July, 1998.