

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

IN THE MATTER OF THE REVIEW OF )  
CANCELLED PERMIT 49877 FILED TO )  
APPROPRIATE THE UNDERGROUND WATER )  
OF THE DIXIE CREEK-TENMILE CREEK )  
AREA GROUNDWATER BASIN (048), ELKO )  
COUNTY, NEVADA. )

RULING

# 4648

GENERAL

I.

Application 49877 was filed on May 12, 1986, by Clifford N. Porter to appropriate 0.1 cubic feet per second (cfs) of underground water for industrial and domestic purposes within portions of the NE¼ of Section 14, T.33N., R.56E., M.D.B. & M. The proposed point of diversion is described as being located within the SE¼ NE¼ of said Section 14. The remarks section of the application indicates that the water is to be used for batching concrete loads, washing trucks and watering roads, etc.<sup>1</sup>

FINDINGS OF FACT

I.

Permit 49877 was approved by the State Engineer on December 22, 1986, with the provision that the application of water to a beneficial use would be made on or before December 22, 1989. However, the State Engineer has extended on an annual basis the period of time allowed for filing proof of beneficial use of the water rights granted under Permit 49877 up to January 22, 1996. When the February 20, 1996, Application for Extension of Time was received by the office of the State Engineer it was, upon review, rejected by the State Engineer and returned to the permittee. Subsequently, Permit 49877 was cancelled by the State Engineer on July 23, 1996, on the grounds that the permittee had failed to demonstrate good faith and due diligence towards perfecting said water right permit.<sup>1</sup> The State Engineer finds that the cancellation of Permit 49877 was based solely upon the information

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<sup>1</sup> File No. 49877, official records in the office of the State Engineer.

supplied by the applicant on the annual applications for extensions of time submitted to the office of the State Engineer, and that this information, unsupported by any additional facts failed to meet the due diligence and good faith criteria necessary for the approval of an additional extension of time application.

## II.

Permit 49877 was cancelled by the State Engineer on July 3, 1996, with the provision that a petition requesting a review of the cancellation at an administrative hearing could be filed within sixty days of the date of the cancellation. The purpose of the administrative hearing is to allow the permittee an opportunity to provide additional information relating to the progress which has been made in complying with the terms of the permit. Upon review of this information, the State Engineer may affirm, modify, or rescind the cancellation of the permit.<sup>2</sup> On July 22, 1996, a petition requesting a review of the cancellation was timely filed within the office of the State Engineer. After all parties of interest were duly noticed by certified mail, an administrative hearing was held before a representative of the State Engineer in Elko, Nevada.<sup>3</sup> At this hearing, the permittee provided testimony which gave a more complete history of water use beyond the limited information contained within the past applications for extension of time.

The permittee testified that the sand and gravel operation which represents the project for which the water right permit had been filed was plagued by difficulties beyond his control which resulted in substantial delays in placing the majority of the water

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<sup>2</sup> NRS § 533.395(2).

<sup>3</sup> Transcript, p. 2, public administrative hearing before the State Engineer, dated June 3, 1998.

to a beneficial use.<sup>4</sup> Testimony was also received into the record which indicated that the permittee's associates had purchased the necessary processing equipment to proceed with the sand and gravel operation, and would therefore be able to utilize the water within a reasonably short period of time should the permit be reinstated.<sup>5</sup> The State Engineer finds the permittee has demonstrated good faith and reasonable diligence in perfecting the permit. The State Engineer finds that the permittee has provided a more complete understanding of the adverse conditions which prevented him from complying with the proof of beneficial use requirements, and that sufficient good cause has been demonstrated to consider a rescission of the cancellation.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>6</sup>

##### II.

Under the provisions established under NRS § 533.395(2) the State Engineer may, upon review of additional information and for good cause shown, rescind the cancellation of a water right permit. The State Engineer concludes that there is sufficient information available within the records of the office of the State Engineer to merit a rescission of the cancellation and a reinstatement of Permit 49877.

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<sup>4</sup> Transcript, pp. 5-17, public administrative hearing before the State Engineer, dated June 3, 1998.

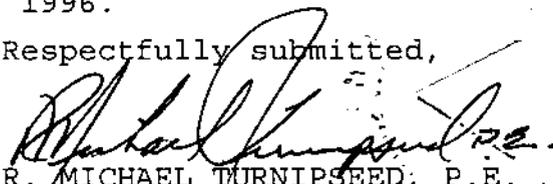
<sup>5</sup> Transcript, pp. 15-16, public administrative hearing before the State Engineer, dated June 3, 1998.

<sup>6</sup> NRS § Chapters 533 and 534.

RULING

The permittee has 30 days from the date of this ruling to file an application for Extension of Time for filing Proof of Beneficial Use of the waters under Permit 49877. If said proof is timely filed along with the statutory filing fees, the cancellation of Permit 49877 will be rescinded and the permit reinstated with a priority date of July 22, 1996.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/cl

Dated this 22nd day of  
July, 1998.