

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

IN THE MATTER OF THE REVIEW OF)
CANCELLED REVOCABLE PERMIT 62903,)
FILED WITHIN THE LAS VEGAS VALLEY)
HYDROGRAPHIC BASIN (212), CLARK)
COUNTY, NEVADA.)

RULING

#5217

GENERAL

I.

Application 62903 was filed on March 10, 1997, by Phillip J. Piazza to change the point of diversion of 0.0062 cubic feet per second of the underground water previously appropriated under Permit 57537. The proposed manner and place of use is for quasi-municipal purposes within the N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 5, T.19S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 5.¹

FINDINGS OF FACT

I.

Permit 62903 was filed to correct a situation, which occurred as a result of a realignment of a section line, by the Bureau of Land Management. This adjustment placed the well site appurtenant to Permit 57537 to a new map location, which was removed from the prior location by more than 300 feet. This shift in location necessitated the filing of a change Application 62903, which was eventually approved transferring the water right established under Permit 57537 to its correct location.¹ The State Engineer finds that only the point of diversion was affected by the approval of Permit 62903, and that the place of use and the manner of use are identical to those granted under Permit 57537.

¹ File Number 62903, official records within the Office of the State Engineer.

II.

The place of use granted under Permit 62903 consists of four residential parcels, which can be identified by their Clark County Assessor's number. The information found below lists the current owners of record as identified by the Clark County Assessor's office.²

<u>Parcel Number</u>	<u>Owner</u>
125-05-605-001	Kim Houser
125-05-605-002	Ali Leyla
125-05-605-003	Washington Mutual
125-05-605-004	Jeannie M. Flynn

These parties represent the water users who appropriate underground water on a temporary basis from the community well constructed under revocable Permit 62903. If ownership of these lots and their associated water rights has passed from the original permittee to the parties listed above, the State Engineer finds that this transfer of title must be brought to the attention of the Office of the State Engineer through the submittal of a Report of Conveyance and its supporting documents. In addition, the State Engineer finds that Phillip J. Piazza remains the current owner of record of Permit 62903 in the Office of the State Engineer.¹

III.

Prior to the cancellation of Permit 62903, the Office of the State Engineer received completed Request for Notice and Change of Address forms from Jeanette Cobb and Gilbert Amaral requesting that their respective names be added to the mailing list created for Application 62903. A similar request was also received from John W. Thomson. By telephone conversation, which occurred on April

² Clark County Nevada Assessor's Parcel Database, December 31, 2002.

18, 2001, documented by a note placed within the subject permit file, Jeannette Cobb requested that her name be removed from the service list.¹ The State Engineer finds that at the time of its cancellation, the mailing list under Permit 62903 was limited to Phillip L. Piazza, his agent, Gilbert Amaral and John W. Thompson.

IV.

Permit 62903 was issued as a revocable water right permit under the provisions established under NRS 534.120. At the time of its approval, the permittee was required to sign an affidavit, which stated that he fully understood the conditions and obligations assigned to a revocable permit holder. The current policies of the Office of the State Engineer require a similar affidavit, which is the Temporary Well Use Notice and Affidavit to be completed and submitted to the Office of the State Engineer as a condition for reinstatement of a cancelled quasi-municipal revocable permit. This affidavit must be submitted for each separate parcel of land contained within the permitted place of use.¹ The State Engineer finds that before a revocable permit can be approved or returned to active status an affidavit acknowledging its conditions and limitations must be filed with the Office of the State Engineer.

V.

Permit 62903 was approved by the State Engineer on August 11, 1997. By letter dated August 11, 1997, the permittee was advised of the conditions and limitations, which controlled the temporary use of water under this revocable permit. Included within this letter was a statement that the permittee was responsible for notifying the Office of the State Engineer of any address changes.¹ The State Engineer finds that these obligations also apply to any successor in interest who acquires title to all or a portion of Permit 62903.

VI.

Every water right permit is issued under a set of terms, which must be followed, by the permittee and any successor in interest. Permit 62903 was issued with the condition that the Proof of Beneficial Use was due on or before February 19, 1998. Under the provisions found within NRS 533.380, additional time to file this proof can be requested through the filing of an Application for Extension of Time. In the case of Permit 62903, annual extensions of time have been requested and approved on an annual basis, extending the Proof of Beneficial Use deadline to February 19, 2002. The permittee and the three other parties included on the mailing list were noticed by certified mail dated February 20, 2002, that the required Proof of Beneficial Use had not been filed in accordance with the terms established under Permit 62903. The permittee was given 30 days in which to file the required proof or an application for extension of time. Signed receipts were returned by all noticed parties, signifying that the final notice had been received. No response to this final call for the Proof of Beneficial Use was received in the Office of the State Engineer, which resulted in the cancellation of Permit 62903 on April 15, 2002.¹ Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may within 60 days of the cancellation of the permit file a written petition with the State Engineer requesting a review of the cancellation at a public hearing.

A petition for review of the cancellation of Permit 62903 was received on April 23, 2002, under the signature of Gilbert Amaral. The timely filing of this petition allowed the Office of the State Engineer to schedule a public hearing in this matter for September 18, 2002, to be held in the State Engineer's Southern Nevada Branch Office in Las Vegas. A representative of the Office of the State Engineer was present at the time and place set forth in the hearing notice. The summary of hearing made by the presiding

hearing officer, indicates that Marc Biggins and Nancy Allf were in attendance to provide evidence and testimony to support a rescission of the cancellation. A decision to reinstate cancelled Permit 62903 was made during this hearing, with the reinstatement dependent upon the timely submittal of an Application Requesting an Extension of Time and the Temporary Well Use Notice and Affidavit.¹ The State Engineer finds that the reinstatement of cancelled Permit 62903 is dependent upon the timely submittal of an Application for Extension of Time, which can be applied to all the subject parcels, and a Temporary Well Use Notice and Affidavit for each of the four parcels comprising the permitted place of use.

VII.

During the September 18, 2002, cancellation hearing, Marc Biggins and Nancy Allf were instructed to complete the Temporary Well Use Notice and Affidavit and return the document to the State Engineer's Las Vegas branch office. Due to the fact that blank affidavit forms had not been sent with the hearing notices, all parties were allowed additional time to submit the completed forms. Subsequently, on December 4, 2002, Temporary Well Use Notices and Affidavits were timely received from Kim Houser (APN Number 125-05-605-001, Washington Mutual (APN Number 125-05-605-003) and Jeannie M. Flynn (APN 125-05-605-004). These affidavits were accompanied by an Application for Extension of Time, which satisfied the conditions for reinstatement set forth during the September 18, 2002 hearing, for that portion of Permit 63902 associated with these three parcels.¹ Also included in this submittal were three separate Request for Notice forms, filed by each of the aforementioned parcel owners. The State Engineer finds that the criteria for a rescission of the cancellation of Permit 62903 has been met by the respective owner's of APN 125-05-605-001, 165-05-605-003 and 125-05-605-004 and that these portions of cancelled Permit 62903 were reinstated on December 4, 2002.

VIII.

The temporary right to appropriate underground water for quasi-municipal use under Permit 62903 was reinstated for three of the four parcels representing its place of use. This rescission of the State Engineer's cancellation was accomplished through the timely submittal of an Application for Extension of Time and the Temporary Well Use Notices and Affidavits. While the filing of the Application for Extension of Time can be applied to all four parcels, the Temporary Well Use Notice and Affidavit is parcel specific, requiring a separate affidavit for each parcel. The extent to which the owner of the fourth parcel was aware of this fact is unknown. There is no written reference to Leyla Ali, in the permit file maintained under Permit 62903, prior to the cancellation and the subsequent hearing. The State Engineer's cancellation and noticing procedure does not require contact with outside agencies to determine the ownership of parcels within the cancelled permits described place of use. This information must be provided by the owner through a simple procedure. Any information regarding the ownership of the fourth parcel cited within this ruling was obtained after the time period for filing the temporary well use affidavit had expired. The State Engineer finds, based upon ownership information that was available at the time that all recognized parties were properly noticed of the need to submit the Temporary Well Use Notice and Affidavit.

IX.

A separate effort to advise Leyla Ali of the conditions for reinstatement, was made by the law firm which represented Marc Biggins, who was the owner of a nearby parcel. A courtesy letter from this firm, addressed to Leyla Ali, carried a warning that a failure to file the temporary well use affidavit in a timely manner would result in the cancellation of the water right serving the parcel. This letter was preceded by two similar letters, none of which prompted the owner of APN 125-05-605-002 to file the well

use affidavit. The State Engineer finds that this independent attempt to advise the owner of the remaining parcel of the need to timely file the temporary well use affidavit failed to generate the submittal of this document.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

Permit 62903 provides quasi-municipal to four parcels which appropriate water from a common community well. After the cancellation of Permit 62903 had occurred and a petition for reinstatement received, a public hearing in the matter of the review of the cancellation was scheduled. Notice of this hearing was sent to the permittee and to several parties who had expressed an interest in matters concerning the subject permit. This notice advised the parties of the time and place of the hearing and provided them a listing of the documents which they should be prepared to submit during this hearing. This list included the Temporary Well Use Notice and Affidavit, which under the provisions of NRS 534.125, must be completed and returned to the Office of the State Engineer. A separate affidavit is required for each parcel contained within the permitted place of use. The submittal of the affidavits and the proof which is due or a request for an extension of time is required for the cancelled permit to be considered for reinstatement. These requirements were applied to Permit 62903 and were met to the extent that an Application for Extension of Time was received accompanied by Temporary Well Use Notices and Affidavits from three of the four parcel owners, which have previously been identified. The State Engineer concludes that the reinstatement of that portion of

³ NRS chapters 533 and 534.

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Permit 62903 servicing APN 125-05-605-002, without the submittal of its Temporary Well Use Notice and Affidavit would violate Assembly Bill 408 and would threaten to prove detrimental to the public interest.

RULING

The cancellation of that portion of Permit 62903 appurtenant to Clark County Assessor's parcel number 165-05-605-002 is hereby affirmed.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/MDB/jm

Dated this 12th day of
February, 2003.