

IN THE MATTER OF APPLICATION 25663)
FILED BY DUNCAN AND MICHIELS TO CHANGE)
THE POINT OF DIVERSION OF THE PUBLIC)
WATERS OF NEVADA HERETOFORE APPRO-)
PRIATED FROM AN UNDERGROUND SOURCE)
UNDER PERMIT 21581 IN PERSHING COUNTY)

R U L I N G

GENERAL:

129 Application 25663 was filed on June 15, 1970, by Duncan and Michiels for permission to change the point of diversion of the public waters of the State of Nevada heretofore appropriated from an underground source under Permit 21581. The proposed point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 4, T. 30 N., MDB&M; the existing point of diversion is within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of the said Section 4. The proposed point of diversion describes the location of the well as actually drilled. Application 25663 was accompanied by an ozalid print of a map prepared by J. R. Caldwell, showing the proposed and existing points of diversion.

The Proof of Commencement of Work and Proof of Completion of Work have been filed under Permit 21581. On March 13, 1970, Mr. J. R. Caldwell submitted a Proof of Beneficial Use and supporting cultural map as required by the terms of Permit 21581. Since the actual point of diversion is within a different 40-acre subdivision than that granted under Permit 21581, Mr. Caldwell withdrew the proof and map submitted, and submitted an application for extension of time of one year in which to comply with the terms of the permit. The purpose stated was to possibly develop additional acreage and to allow time to process an application to change the point of diversion. The extension of time was approved, and the proof of beneficial use and map are due under Permit 21581 on February 22, 1971.

Application 25663 was processed for publication by the Office Engineering Section of the Division of Water Resources on June 30, 1970. Since the application was not accompanied by a supporting map (original linen) it was routed to the Office Services Section to be returned for correction, with the notation, "needs supporting map".

On July 28, 1970, the Amended Application was returned to Mr. Lane Duncan, signor of the original application for Duncan and Michiels, via certified mail. The letter of instructions which accompanied the amended application states:

"A supporting map will be required which is prepared by a licensed State Water Right Surveyor in support of the above application.

Items 5 and 7 must conform with the supporting map."

In the period between June 30, 1970, when processed by the Office Engineering Section, and July 28, 1970, when returned for correction, a map in support of Application 25563 was submitted by J. R. Caldwell, a licensed State Water Right Surveyor. It was received on July 16, 1970.

In addition, the map was accompanied by a memorandum from Mr. Caldwell asking if an application to change had been filed. The memorandum was answered on July 17, 1970, by Wyatt J. Owens, informing Mr. Caldwell that the application had been filed on June 15, 1970.

The original application conforms in all respects to the supporting map, and is in proper form to permit publication.

The amended application was not returned within the statutory period required by law, and accordingly was cancelled on September 29, 1970, in accordance with NRS 533.355.

The record shows that an opportunity existed to publish Application 25663 between July 16, 1970 and July 28, 1970, and that this opportunity to publish the application was over-looked; and therefore, Application 25663 should not have been returned for correction.

RULING

The cancellation of Application 25663 is hereby rescinded, and processing of Application 25663 will continue without loss of priority, upon payment of the \$15.00 publication fee refunded to the applicant when Application 25663 was cancelled.

Respectfully submitted,


Roland D. Westergard
State Engineer

Dated this 7th day of
December, 1970.

RDW:JCP:sb