

IN THE MATTER OF THE REINSTATEMENT )  
OF CANCELLED PERMIT 31137 IN FISH )  
LAKE VALLEY, ESMERALDA COUNTY, )  
NEVADA )

RULING

FINDINGS OF FACT

I

Permit 31137 was issued on July 17, 1978, in the name of Lawrence T. Atkinson for the appropriation of 1.0 c.f.s. of water from an underground source located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 9, T.1S., R.35E., M.D.B. & M., to be used for mining, milling and domestic purposes within that same 40-acre legal subdivision.

II

The terms of Permit 31137 required that Proof of Commencement of Work be filed on or before February 17, 1979, that Proof of Completion of Work be filed on or before February 17, 1980, and that Proof of Beneficial Use be filed on or before February 17, 1982. Accordingly, Proof of Commencement of Work was timely filed on March 15, 1979, by Donald W. Haley acting as agent for permit holder Lawrence to Atkinson.

III

The deadline of February 17, 1980, for the filing of Proof of Completion of Work expired with no proof having been submitted. Therefore, in accordance with the provisions of NRS 533.390, certified notice dated February 19, 1980, was mailed to agent Donald W. Haley whereby a 30-day statutory grace period was allowed for the filing of either the required proof and well log or an Application for Extension of Time. A properly endorsed receipt for that notice was returned to the office of the State Engineer indicating delivery on February 25, 1980. On March 20, 1980, which was within the 30-day grace period, a letter was received from Donald W. Haley which accompanied a copy of the well log but which did not include a formal Proof of Completion form and did not describe the completion of the well with pump and motor.

IV

Permit 31137 was cancelled on March 24, 1980 for failure to comply with the provisions of the permit.

V

No final notice of poor standing of the permit, as required under NRS 533.390, was mailed to Lawrence T. Atkinson. Said statute specifically requires notice to the permit holder.

VI

Subsequent to cancellation of Permit 31137, on April 16, 1980, a properly completed Proof of Completion of Work and filing fee were received by the Las Vegas Branch Office of the Division of Water Resources which described completion of the well under Permit 31137, including its being equipped with a pump and motor, all of which was done prior to January 30, 1980.

CONCLUSIONS

I

The State Engineer has jurisdiction in this matter under the provisions of NRS 533.325 through 533.390.

II

Although certified final notice required under NRS 533.390 was mailed to agent Donald W. Haley, formal notice was not sent to permit holder Lawrence T. Atkinson. Instructions had never been received from Atkinson that correspondence and notices regarding Permit 31137 were to be directed to agent Haley to the exclusion of himself (Atkinson).

III

The required well log under Permit 31137 was timely received under cover of Donald Haley's letter received March 20, 1980. The required Proof of Completion of Work with filing fee have been received by the State Engineer's office. albeit subsequent to cancellation of the permit.

RULING

The cancellation of Permit 31137 is hereby rescinded on the grounds that the permit holder was not given proper notice of the poor standing of the permit as required under NRS 533.390. The permit is hereby reinstated to an active and valid status. The Proof of Completion of Work and well log already submitted will be accepted as fulfillment of the requirement of the permit. The original permitted deadline of February 17, 1982, for filing of Proof of Beneficial Use will remain in effect.

Respectfully submitted,

*William J. Newman*

William J. Newman, P.E.  
State Engineer

WJN/BAR/js

Dated this 6th day of  
November, 1980