

IN THE MATTER OF THE REINSTATEMENT)
OF PERMIT 36588 FOR THE APPROPRIATION)
OF WATER FROM AN UNDERGROUND SOURCE)
IN WASHOE VALLEY, WASHOE COUNTY,)
NEVADA)

RULING

89
FINDINGS OF FACT

Application 36588 was filed on January 31, 1979, in the name of Tom Kruse by William E. Nork, agent, for the appropriation of 0.02 c.f.s. of water from an underground source located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 32 T.17N., R20E., M.D.B. & M. for commercial and domestic purposes.

A permit was issued under this application on June 25, 1979, in the amount of 0.02 c.f.s. of water, not to exceed an annual duty of 0.52 million gallons. The terms of the permit specifically required that the Proof of Commencement of Work be filed under the permit on or before January 26, 1980.

II

Subsequent to the filing of Application 36588, and prior to the issuance of a permit, Applicant Kruse was given notice by a letter dated February 20, 1979, from the Division of Water Resources that all correspondence and notices from the Division relative to the filing of the application would be forwarded to William E. Nork as agent unless otherwise instructed in writing. No instruction from Applicant Kruse was ever subsequently submitted instructing the Division of Water Resources to discontinue the mailing of correspondence and notices to William E. Nork as agent.

III

In accordance with the provisions of NRS 533.390, a certified notice dated January 28, 1980 was mailed to permit holder Tom Kruse, with a certified copy of that notice being sent to Walter G. Reid, advising that a thirty (30) day grace period was allowed for the filing of the required Proof of Commencement of Work. Properly signed receipts for both notices were returned to the Division of Water Resources.

A Proof of Commencement of Work was received by the State Engineer's office on February 4, 1980 from permit holder Kruse. However, the Proof

did not bear the signature of the Notary Public and was not accompanied by the required \$1.00 filing fee. For that reason, by certified letter dated February 14, 1980, the Proof was returned to the permit holder with instructions that the notarization be properly signed and that the Proof be resubmitted with the \$1.00 filing fee no later than February 27, 1980, which date was thirty (30) days from the final notice dated January 28, 1980.

The Proof of Commencement of Work and filing fee were not subsequently resubmitted to the State Engineer's office, and on March 9, 1981, Permit 36588 was cancelled for failure to comply with the requirements of the permit. By certified letter dated March 17, 1981, Thomas E. Kruse was notified that the permit had been cancelled.

IV

A letter dated March 24, 1981, was received by the Division of Water Resources on March 25, 1981, under signature of David Carlson, Hydrogeologist for William E. Nork, Inc. The letter was submitted to request the reinstatement of cancelled Permit 36588 on the basis that the State Engineer's office had failed to give proper final notice to agent William E. Nork.

V

The terms of Permit 36588 required that Proof of Completion of Work be filed with the Division of Water Resources on or before January 26, 1981. The terms further required that a totalizing meter must be installed and maintained in the discharge pipe line near the point of diversion and accurate measurements must be kept of water placed to beneficial use, and further, that the totalizing meter must be installed before any use of the water begins or before the Proof of Completion of Work is filed.

CONCLUSIONS

I

The State Engineer has jurisdiction in this matter under the provisions of Chapter 533 of NRS.

II

The final notice dated January 28, 1980 from the State Engineer's office under Permit 36588 failed to include William E. Nork as a recipient of said notice, even though the prior agent letter dated February 20, 1979 had stated that agent Nork would receive copies of all correspondence and

notices from the Division relative to the application and subsequent permit.

III

The Proof of Commencement of Work required under the terms of Permit 36588 has never been resubmitted to the Division of Water Resources. Further, the deadline for the filing of Proof of Completion of Work under this permit of January 26, 1981, has elapsed as of the date of this ruling.

IV

The enactment of Assembly Bill No. 27 by the 1981 session of the Nevada Legislature has eliminated the requirement for the filing of Proof of Commencement of Work under any permit issued by the Division of Water Resources. The State Engineer's office has taken a position that upon enactment of AB 27, the requirement for the filing of Proof of Commencement of Work has been eliminated even though a permit may have been issued prior to July 1, 1981 on which date the bill became law. In the case of Permit 36588, therefore, upon reinstatement of the permit to an active status, the requirement for the filing of Proof of Commencement of Work would no longer apply. However, the requirement for the filing of Proof of Completion of Work remains in effect.

RULING

The cancellation of Permit 36588 is hereby rescinded and the permit is reinstated to an active and valid status. No Proof of Commencement of Work will be required to be filed under Permit 36588 in accordance with the provisions of Assembly Bill 27 enacted on July 1, 1981, and in accordance with the policy of the State Engineer's office regarding the application of AB 27 to permits issued prior to the bill's enactment. It will be required that a Proof of Completion of Work and \$10.00 filing fee be submitted to the State Engineer's office within thirty (30) days of the date of this Ruling, and that the Proof of Completion include written confirmation of the compliance with the terms of the original permit that a totalizing meter be installed on the discharge line from the well. The deadline for the filing of Proof of Beneficial Use under this permit remains January 26, 1982 as provided under the terms of the original permit.

In the event the required Proof of Completion of Work, filing fee and well log are not received by the State Engineer's office within thirty (30) days of the date of this Ruling, Permit 36588 will be subject to cancellation for failure to comply with the terms of the permit.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM-BAR-js

Dated this 23rd day of
July, 1981