

IN THE MATTER OF THE REINSTATEMENT)
OF CANCELLED PERMIT 31163 ISSUED)
FOR THE APPROPRIATION OF WATER)
FROM AN UNDERGROUND SOURCE IN)
GRASS VALLEY, PERSHING COUNTY,)
NEVADA)

RULING

FINDINGS OF FACT

I

Permit 31163 was issued on October 5, 1977, in the name of Donnell J. and Andree Richards to change the point of diversion and place of use of a portion of the water previously appropriated under Permit 27177. Permit 31163 was issued in the amount of 2.6247 c.f.s. from an underground source located within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 30, T.34N., R38E., M.D.B. & M. for the irrigation of a total of 210.65 acres located within the SW $\frac{1}{4}$ of said Section 30 and portions of the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 25, T.34N., R.37E., M.D.B. & M.

II

The statutorily required Proof of Commencement of Work and Proof of Completion of Work were filed in the office of the State Engineer on September 1, 1978. By the submission of several applications for extension of time, the deadline for the filing of Proof of Beneficial Use and cultural map of March 3, 1978 under the terms of the original permit, was extended to September 3, 1980. In accordance with the provisions of NRS 533.410, permit holder Donnell J. and Andree Richards was sent a certified notice dated September 3, 1980, advising that the permit was in poor standing and that a thirty (30) day grace period was allowed from the date of that notice for the filing of the required Proof of Beneficial Use and cultural map. A certified notice was also sent to Robert N. Caldwell who had acted as agent for the permit holder throughout the life of the permit. A certified copy of the notice was also sent to Mr. Norm Orcutt based upon evidence contained within the file that the permit had been conveyed to other parties represented by Mr. Orcutt. Properly signed receipts for the notice of September 3, 1980, were returned to the office of the State Engineer. The required Proof of Beneficial Use and cultural map were not received by the Division of Water Resources within the thirty (30) day grace period allowed, and Permit 31163 was subsequently cancelled on October 9, 1980 for failure to comply with the provisions of the permit.

III

Subsequent to the cancellation of Permit 31163, documents had been submitted to the Division of Water Resources which establish a continuous chain of title for the permit from original permit holder Donnell J. and

Andree Richards to Theodore C. and Nancy Sue Dillingham. Said documents make of record the conveyance of permit to the Dillinghams on May 22, 1980. The deeds were filed in the office of the State Engineer on October 16, 1980, which was subsequent to cancellation of Permit 31163.

IV

Although documents necessary for recording the assignment of Permit 31163 were not submitted to the office of the State Engineer prior to its cancellation, Timothy F. Holt, who was an employee of the Division at the time of cancellation, has confirmed that he was given verbal notice by James W. Sanders of Western Farm Management Company that the permit had in fact been conveyed to Theodore and Nancy Sue Dillingham, that Western Farm Management Company had been directed to act as agent for the Dillinghams in the matters of the permit, and that such verbal notice had been given prior to the State Engineer's final notice dated September 3, 1980. However, no record of the Sanders' verbal notice to Timothy F. Holt was placed in the file under Permit 31163.

V

Application 35395 was filed in the office of the State Engineer on May 8, 1978, in the name of Marvin E. Klassen, John C. Wood and Norman Orcutt to change the point of diversion and place of use of a portion of Permit 31163. Application 35395, which seeks to change 0.28 c.f.s. of the 2.6247 c.f.s. allowed under Permit 31163, became ready for action by the State Engineer on January 26, 1979. No further action has been taken on Application 35395 as of the date of this Ruling.

CONCLUSIONS

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

II

It is the policy of the State Engineer's office to send a certified copy of the notice required under NRS 533.410 to all parties who have given evidence of interest in any permit, whether as agent or owner, even though all documents necessary to record an assignment in the office of the State Engineer have not yet been submitted. In accordance with this policy, Western Farm Management Company should have also received a certified copy of the notice dated September 3, 1980, since verbal confirmation of that company's status as agent for subsequent assignee Dillingham had been given.

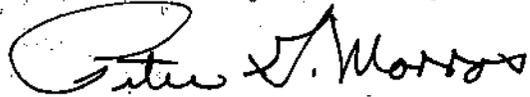
III

In the case of the expiration of a deadline for filing the Proof of Beneficial Use under any permit where an application to change the point of diversion, manner of use and/or place of use of a portion of that permit is ready for action, it is the policy of the State Engineer's office that Proof of Beneficial Use will be required under the base permit for only that portion which would not be changed by the pending application. In the case of Permit 31163, therefore, upon the reinstatement of the permit to a valid status, Proof of Beneficial Use would become due for only that portion not to be changed by pending Application 35395.

RULING

The cancellation of Permit 31163 is herewith rescinded on the basis that proper notice required under MRS 533.410 was not given to Western Farm Management Company although verbal notice had been given by that company that the permit had been assigned to Theodore C. and Nancy Sue Dillingham and that Western Farm Management Company was authorized to act as agent for the assignee. It will be required that a Proof of Beneficial Use and supporting cultural map, as required under the original terms of the permit, be submitted to the State Engineer's office for that portion unaffected by pending Application 35395, and it will further be required that said Proof and map be submitted to the State Engineer's office within thirty (30) days of the date of this Ruling. In the event the required Proof of Beneficial Use and cultural map are not received within thirty (30) days of the date of this Ruling, Permit 31163 will be subject to cancellation for failure to comply with the requirements of the permit.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM-BAR-js

Dated this 23rd day of
July, 1981