

IN THE MATTER OF CANCELLED PERMIT 25729)
IN THE NAME OF TOPAZ MUTUAL COMPANY,)
INC. FOR UNDERGROUND WATERS IN ANTELOPE)
VALLEY, DOUGLAS COUNTY, NEVADA)

R U L I N G

GENERAL

Application 25729 was filed on July 24, 1970 by the Topaz Mutual Company, Inc. to appropriate 5.0 c.f.s. of water from an underground source for quasi-municipal (subdivision) and domestic purposes.

The point of diversion is described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.10N., R.22E., M.D.B.& M. The place of use is described as the E $\frac{1}{2}$ SE $\frac{1}{4}$ Section 5, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 8; Section 9; NW $\frac{1}{4}$, NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ and all that portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ lying north of State Route 3 in Section 16; NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ and portions of the N $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ lying north of State Route 3 in Section 15; portions of N $\frac{1}{2}$ NW $\frac{1}{4}$ lying north of State Route 3 in Section 14, T.10N., R.22E., M.D.B.& M.

A permit was granted under Application 25729 on January 26, 1971 for 5.0 c.f.s. of water for quasi-municipal (subdivision) and domestic purposes. The terms of the permit set the times for filing of the Proof of Commencement of Work, the Proof of Completion of Work and the Proof of Beneficial Use. The record shows that the Proof of Commencement was filed on September 27, 1971 and the Proof of Completion of Work was filed on September 10, 1971. The time for filing the Proof of Beneficial Use was extended after proper application for extension of time to August 26, 1981. On August 26, 1981 certified notice was forwarded to Topaz Mutual Company, Inc. at 1490 Albrite Road, Wellington, Nevada 89444 notifying the permittee that the provisions of Permit 25729 required that the Proof of Beneficial Use be filed on or before August 26, 1981. The notice further provided that unless the legally required Proof of Beneficial Use was received and filed with the State Engineer within 30 days of the final certified notice, the permit would be cancelled. A copy of this certified notice was also forwarded to the agent of the permittee, Richard W. Arden.

The records of the State Engineer's office indicate that neither Proof of Beneficial Use under Permit 25729 nor an application for an extension of time was submitted to the State Engineer's office in conformance with the certified notice of August 26, 1981. Consequently, as required under NRS 533.410, Permit 25729 was cancelled for failure to file the Proof of Beneficial Use and no further proceedings were had thereunder.

On October 15, 1981, Richard W. Arden, agent for the permittee Topaz Mutual Company, Inc., petitioned the State Engineer for a review of the cancellation of Permit 25729 and requested an administrative hearing before the State Engineer in conformance with NRS 533.395. The written petition for review is on file and on record in the State Engineer's office under Permit 25729 and is made a part of this Ruling by reference.

In conformance with NRS 533.395, the State Engineer conducted a hearing at 201 South Fall Street, Carson City, Nevada on November 10, 1981 for the purpose of receiving testimony and evidence concerning the cancellation of

Permit 25729. The transcript of that hearing is a matter of record in the office of the State Engineer and is made a part of this Ruling by reference.

CONCLUSIONS

1. The State Engineer has jurisdiction in this matter as provided under NRS 533.395.
2. A petition for review of the cancellation of Permit 25729 was properly and timely submitted by the agent for Topaz Mutual Company, Inc. as required under NRS 533.395.
3. The State Engineer has reviewed the testimony and evidence submitted at the public hearing held on Tuesday, November 10, 1981, as required under NRS 533.395.
4. The State Engineer determined that there was good cause to rescind the cancellation of Permit 25729.

RULING

The cancellation of Permit 25729 is hereby rescinded and the permittee, Topaz Mutual Company, Inc., is granted 30 days from the date of this Ruling in which to submit the Proof of Beneficial Use or Application for Extension of Time under Permit 25729. The date of priority of appropriation under Permit 25729 is vacated and replaced by the date of the filing of the written petition requesting review of the cancellation. The date of priority of appropriation under Permit 25729 is now October 15, 1981.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/dh

Dated this 20th day

of November, 1981.