

IN THE MATTER OF PERMIT 31055 FOR)  
THE APPROPRIATION OF GROUND WATER)  
FROM AN UNDERGROUND SOURCE, BIG )  
SMOKY VALLEY, NYE COUNTY, NEVADA )

R U L I N G

FINDINGS OF FACT

I

Application 31055 was filed on January 31, 1977, in the name of Ivan E. Nanney for the appropriation of 5.4 c.f.s. of water from an underground source located within the NW1/4 SW1/4 Section 27, T.7N., R.40E., M.D.B.&M., for irrigation and domestic purposes. The place of use is described as the SE1/4 of Section 28 and the NE1/4 of Section 33, T.7N., R.40E., M.D.B.&M. A permit was issued under Application 31055 on June 21, 1978, in the amount of 5.4 c.f.s. of water not to exceed an annual duty of 4.0 acre-feet per acre. The terms of the permit specifically required that the proof of commencement of work be filed on or before January 21, 1979; the proof of completion of work be filed on or before January 21, 1980, and the proof of beneficial use with supporting cultural map be filed on or before January 21, 1983.

II

On January 11, 1979, the proof of commencement of work was submitted and filed under Permit 31055; on February 7, 1980, an application for an extension of time was submitted for extending the time for the filing of the proof of completion of work to January 21, 1981. The application for the extension of time was filed and the extension was granted.

III

On May 6, 1980, instruments of transfer were submitted with filing fees transferring the ownership of Permit 31055 from Ivan E. Nanney to Edna Properties, a Partnership.

IV

On January 21, 1981, Robert R. Eddy, representative of Edna Properties, appeared in the office of the State Engineer and was assisted by Mr. Tim Holt, a staff engineer of the Division of Water Resources, in preparing a proof of completion of work to be filed under Permit 31055. Mr. Eddy apparently lacked some required information as to type and size of the pump installed in the well under Permit 31055. In Mr. Eddy's discussions with staff engineer, Tim Holt, it was decided that Mr. Eddy would take the proof of completion with him to the well site to obtain the necessary information and submit the proof of completion of work under Permit 31055 for filing when the necessary information on the type and size of the pump had been entered on the proof of completion. Since the proof of completion could not be filed, a certified notice was forwarded to Edna Properties, c/o Robert Eddy, P. O. Box 1364, Salt Lake City, Utah 84116, on January 21, 1981, advising

the permittee that the proof of completion of work was due within 30 days of the date of this final certified notice. This provided a grace period of 30 days from January 21, 1981 for the filing of the proof of completion of work. The return receipt, to the certified notice, indicated that Mr. Robert Eddy received the notice on February 3, 1981.

V

The terms of the permit and the certified notice clearly set out the times for submitting all proofs required under the permit and it is the responsibility of the permittee to comply with the terms and conditions of the permit. The certified notice, forwarded to the permittee, under Permit 31055 clearly set forth the time for submittal and filing of the proof of completion of work.

VI

On March 2, 1981, Permit 31055 was cancelled because of failure of the applicant to comply with the provisions of the permit, namely, failure of the applicant to submit the proof of completion of work as required under the terms of the permit and the certified notice of January 21, 1981.

VII

On April 1, 1981, the permittee under Permit 31055, Edna Properties, by and through its agent, Robert R. Eddy, filed a notice of appeal to the cancellation of Permit 31055 in the District Court of the Fifth Judicial District of the State of Nevada in and for the County of Nye.

VIII

In reviewing the file under Permit 31055, it appears that there was some misunderstanding by the permittee in his conversations with Mr. Tim Holt, staff engineer at the Division of Water Resources, on January 21, 1981, concerning the submittal of the proof of completion of work. All indications and evidence are that the permittee, Edna Properties, has proceeded with due diligence to construct and complete the well authorized under Permit 31055, and that it was the intention of the permittee to timely file the proof of completion of work under the permit.

IX

The proof of completion of work was received by the office of the Division of Water Resources under Permit 31055 on February 25, 1981. The deadline for the filing of the completion of work under Permit 31055, as established by the certified final notice and the terms and conditions of the permit, was February 20, 1981. Because the deadline of February 20, 1981 expired before the proof of completion of work was received, it became mandatory under the statute that Permit 31055 be cancelled for failure to comply with the terms and conditions of the permit.

X

The permittee, through its agent Mr. Robert R. Eddy, was notified on March 2, 1981, by certified mail, of the cancellation of Permit 31055. A copy of the letter of notification under the signature of Brian A. Randall, Office Engineer, is a matter of record under Permit 31055.

XI

Mr. Robert R. Eddy submitted a statement to the State Engineer on March 24, 1981 summarizing the events that led to the cancellation of Permit 31055. This statement is filed as a matter of record under Permit 31055.

CONCLUSIONS

I

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

II

The permittee attempted to file the proof of completion of work as required under the terms of the permit in the office of the State Engineer on January 21, 1981, but lacked the necessary information to complete the proof of completion of work. The permittee, through conversations with a staff engineer at the Division of Water Resources, apparently had some misunderstanding as to the time limits required for the filing of the proof of completion of work.

III

The proof of completion of work was submitted in a completed and acceptable form on February 25, 1981, but because of the deadline of February 20, 1981, as established by the terms of the permit and the certified notice of January 21, 1981, Permit 31055 was cancelled on the records of the office of the Division of Water Resources.

IV

All evidence and indications are that the permittee under Permit 31055 was proceeding with due diligence to complete and equip the well as required by the terms of the Permit 31055.

V

It is the responsibility of the permittee to meet the terms and conditions of the permit.

RULING

Good cause appearing, therefor the cancellation of Permit 31055 is herewith rescinded. The proof of completion of work under Permit 31055 is due and must be filed in the office of the State Engineer within 30 days of the date of this ruling. The time for the filing of the proof of beneficial use under Permit 31055 will remain as January 21, 1983, as provided under the original terms and conditions of Permit 31055.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/bc

Dated this 8th day of  
APRIL, 1982.