

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF CANCELLED PERMIT 58264)
FILED TO CHANGE THE POINT OF DIVERSION)
AND PLACE OF USE OF THE UNDERGROUND)
WATERS OF CLOVER VALLEY GROUNDWATER)
BASIN (204), LINCOLN COUNTY, NEVADA.)

RULING

4288

4288

GENERAL

I.

Application 48972 was filed on April 8, 1985, by Bertand Vivian Howard and Eugene and Ruth Barry, to appropriate 0.25 cubic feet per second (cfs), not to exceed 181.0 acre-feet annually, of water from Clover Valley Groundwater Basin for irrigation purposes for use within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.4S., R.70E., M.D.B.&M.¹ The point of diversion is described as being located within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.4S., R.70E., M.D.B.&M. A permit was granted under Application 48972 on February 3, 1986.¹

II.

Application 58264 was filed on October 23, 1992, by Gerald L. Holt and Misha B. Holt, to change the point of diversion and place of use of 0.25 cfs of water heretofore appropriated under Permit 48972. A permit under Application 58264 was granted on April 19, 1994, for 0.25 cfs, not to exceed 181.0 acre-feet annually, and not to exceed 5.0 acre-feet per acre of land irrigated from any and all sources. The point of diversion under Application 58264 is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.4S., R.70E., M.D.B.&M.²

¹ File No. 48972, official records of the Office of the State Engineer.

² File No. 58264, official records of the Office of the State Engineer.

FINDINGS OF FACT

I.

On October 20, 1995, the applicants and their agent were notified by certified mail that proof of beneficial use under Permit 58264 had been due on October 19, 1995. The notice instructed the applicants to file the required proof or an application for extension of time within 30 days or the permit would be cancelled. The State Engineer finds that on November 17, 1995, Frank C. Hulse, agent for the permittees, mistakenly filed in the Office of the State Engineer, Proof of Application of Water to Beneficial Use under abrogated Permit 48972, the base right that supported the change application, instead of under Permit 58264, the active water right. On November 22, 1995, the State Engineer returned the Proof of Beneficial Use filed to the permittees' agent stating that the Proof of Beneficial Use was not applicable to Permit 48972, as that permit had been abrogated by change Application 58264.

II.

On January 5, 1996, Permit 58264 was cancelled by the State Engineer for failure to comply with the terms of the permit which required the filing of the proof of beneficial use on or before October 19, 1995. The State Engineer finds that after Permit 58264 was cancelled, it was determined that the agent had mistakenly filed the proof of beneficial use on abrogated Permit 48972 when he should have filed it on Permit 58264 as the final notice requested.

III.

The State Engineer finds that but for the agent's error in indicating the appropriate permit number, proof of beneficial use under Permit 58264 would have been timely filed.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.³

II.

The State Engineer concludes that Permit 58264 was cancelled based solely on the permittees' agent's error in identifying the proper permit number and that the cancellation should be voided.

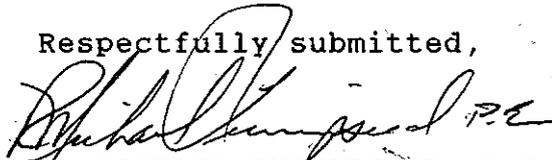
III.

The State Engineer concludes that due to the error the provisions for rescinding the cancellation of a permit found under NRS 533.395(2) do not apply.

RULING

The cancellation of Permit 58264 is hereby voided, with no loss in priority.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MN/ab

Dated this 25th day of
January, 1996.

³ NRS 533 and 534.