

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

IN THE MATTER OF CANCELLED PERMIT)
37098 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE NEWARK VALLEY)
GROUNDWATER BASIN (154), WHITE)
PINE COUNTY, NEVADA.)

RULING

4590

GENERAL

I.

Application 37098 was filed on March 19, 1979, by Vaughn R. Pierce to appropriate the underground waters of the Newark Valley Groundwater Basin, White Pine County, Nevada. Permit 37098 was approved on June 23, 1994, for 5.4 cubic feet per second (cfs), not to exceed 960 acre feet annually for irrigation and domestic purposes. The place of use is 320 acres of land located within the E $\frac{1}{2}$ of Section 15, T.18N., R.55E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 15.¹

FINDINGS OF FACT

I.

By notice dated July 25, 1996, the office of the State Engineer informed the permittee that the Proof of Completion of Work that was due on or before July 23, 1996, has not been filed as required under the provisions of Permit 37098. The permittee was further informed that the failure to timely file either the required proof or an affidavit requesting an extension of time within 30 days from the date of the notice would result in a cancellation of Permit 37098. An application for extension of time to file the Proof of Completion of Work was submitted by the applicant on August 28, 1996, which was four days past the deadline mandated by the July 25, 1996, final notice. The State Engineer finds that the application for extension of time to file the Proof

¹ File No. 37098, official records in the office of the State Engineer.

of Completion was not filed in a timely manner and that the law required that Permit 37098 must be cancelled.

II.

Permit 37098 was subsequently cancelled by the office of the State Engineer on October 17, 1996, for failure to comply with the terms of the permit, more specifically the application for extension of time to file the Proof of Completion of Work was not timely filed.¹ Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may within 60 days after the cancellation of the permit file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public hearing. The State Engineer finds in circumstances where the required proof or extension of time is filed after the deadline, the late filing is substituted for the written petition.

III.

On July 22, 1997, the State Engineer noticed the permittee by certified mail of a hearing scheduled for the review of the cancellation of Permit 37098. Included within the body of the hearing notice was a statement cautioning the permittee that a failure to appear at the hearing may result in an affirmation of the State Engineer's cancellation. Properly endorsed receipts for the certified notices were received in the office of the State Engineer under the permittee's signature. A representative of the State Engineer was present at the designated time and place set forth in the July 22, 1997, hearing notice but was unable to proceed with the hearing due to the applicant's failure to appear.

After the permittee had been duly noticed by certified mail, a second hearing to review the cancellation was scheduled for October 17, 1997, and receipts for the certified notices were received in the office of the State Engineer. Once again the permittee was cautioned that a failure to appear may result in an affirmation of the cancellation. A representative of the office of

the State Engineer was available to conduct a hearing at the designated time and place and again the permittee failed to make an appearance. To this date, no explanation for the permittee's absence from the August 20, 1997, and the October 17, 1997, hearings has ever been submitted to the office of the State Engineer.¹ The State Engineer finds that the permittee has failed to attend two separate public hearings which were scheduled for the review of the cancellation of Permit 37098.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

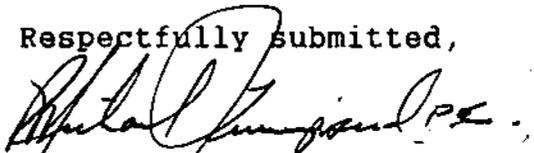
The permittee was noticed by the office of the State Engineer on two separate occasions that a failure to appear at the time and place scheduled for the public hearings in the matter of the review of the cancellation of Permit 37098 may result in an affirmation of the cancellation. Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may file a written petition requesting a review of the cancellation at a public hearing. At the hearing the permittee is allowed the opportunity to submit evidence, which the State Engineer may in receiving and considering, affirm, modify or rescind the cancellation. The State Engineer has noticed the permittee of two separate hearings in the matter of the review of cancelled Permit 37098, both of which the permittee has failed to attend or offer any reason for his absence. The State Engineer concludes that the permittee has forsaken the opportunity to present additional evidence to the State Engineer in support of a modification or rescission of the cancellation of Permit 37098, therefore, the State Engineer must affirm the cancellation of Permit 37098.

² NRS Chapters 533 and 534.

RULING

The cancellation of Permit 37098 is affirmed.

Respectfully submitted,


B. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/ab

Dated this 16th day of
December, 1997.