

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

IN THE MATTER OF CANCELLED PERMIT )  
32129 FILED TO APPROPRIATE THE PUBLIC )  
WATERS FROM AN UNDERGROUND SOURCE )  
WITHIN THE GABBS VALLEY GROUNDWATER )  
BASIN (122), MINERAL COUNTY, NEVADA. )

RULING

# 4745

GENERAL

I.

Application 32129 was filed on June 20, 1977, by H. H. Holloway to appropriate the underground waters of the Gabbs Valley Groundwater Basin, Mineral County, Nevada. Permit 32129 was approved on July 16, 1979, for 5.4 cubic feet per second (cfs), for the irrigation of 320 acres at a duty of 4.0 acre-feet per acre and for domestic purposes within the N½ of Section 16, T.12N., R.33E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of said Section 16. Permit 32129 was assigned in the records of the State Engineer to Kinkead Mining and Construction, Inc.<sup>1</sup>

FINDINGS OF FACT

I.

Under Permit 32129, Proof of Beneficial Use and Cultural map were last due to be filed in the office of the State Engineer on or before February 16, 1998. The office of the State Engineer sent to the permittee a final certified notice on February 20, 1998, requesting that the required Proof of Beneficial Use or an application for an extension time be filed within thirty days or the Permit would be cancelled. On April 9, 1998, an application

<sup>1</sup> File No. 32129, official records in the office of the State Engineer.

for an extension of time was received in the office of the State Engineer. The final notice dated February 20, 1998, indicated that the permittee had thirty days in which to file the Proof of Beneficial Use or file a request for an extension of time, wherein the date for filing either was Monday, March 23, 1998. As the date for filing either document had passed the State Engineer had no alternative but to cancel the permit. The State Engineer finds that on April 14, 1998, Permit 32129 was cancelled for failure to comply with the permit terms.

## II.

The Nevada Revised Statutes allow for the holder of a cancelled permit to petition the State Engineer for a review of the cancellation within 60 days of the cancellation.<sup>2</sup> A Petition for Review of the cancelled permit was timely received in the office of the State Engineer. On January 14, 1999, the State Engineer issued a notice by certified mail of a public administrative hearing scheduled for review of the cancellation. The permittee's return receipt was received in the office of the State Engineer on January 19, 1999. However, due to a possible mailing error the notice of hearing was resent by certified mail on February 5, 1999. By February 16, 1999, all the return receipts had been received in the office of the State Engineer.<sup>1</sup> The State Engineer finds that the permittee was duly notified of the time and place of the hearing. The State Engineer further finds that no one appeared at the time and place scheduled for the hearing.

---

<sup>2</sup> NRS § 533.395.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action.<sup>3</sup>

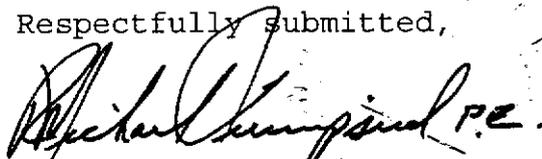
II.

NRS § 533.410 provides that the State Engineer shall cancel a permit if the permittee fails to timely file Proof of Beneficial Use. The State Engineer concludes that the permittee did not respond to the requests by the State Engineer to comply with the Proof of Beneficial Use filing requirements or appear at the time and place scheduled for the review of the cancellation; therefore, no evidence or testimony was presented which would support the State Engineer modifying or rescinding the cancellation.

RULING

The cancellation of Permit 32129 is hereby affirmed.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/RKM/cl

Dated this 29th day of

June, 1999.

<sup>3</sup> NRS Chapters 533 and 534.