

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

IN THE MATTER OF CANCELLED PERMIT )  
62933, FILED TO CHANGE THE PLACE OF )  
USE AND THE POINT OF DIVERSION OF )  
THE PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE PREVIOUSLY APPROPRIATED )  
UNDER PERMIT 52569 WITHIN THE )  
MESQUITE VALLEY HYDROGRAPHIC BASIN )  
(163), CLARK COUNTY, NEVADA.

RULING

# 4934

GENERAL

I.

Application 62933 was filed on March 21, 1997, by Rich Bale to change the place of use and the point of diversion of 0.052 cubic feet per second of underground water previously appropriated under Permit 52569. The manner and proposed place of use is for quasi-municipal purposes within the W $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the NE $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ , all in Section 4, T.25S., R.57E., M.D.B.&M. The existing place of use is described as being located within the E $\frac{1}{2}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$ , all in Section 4, T.25S., R.57E., M.D.B.&M. The existing and proposed points of diversion are described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 4.<sup>1</sup>

II.

Information contained within the original application form indicates that the application was prepared by Fulstone Enterprises, Inc. acting as agent for Rich Bale.<sup>1</sup>

FINDINGS OF FACT

I.

Permit 62933 was approved by the State Engineer with the condition that the Proof of Completion of Work must be filed in the office of the State Engineer on or before June 7, 1999. On

<sup>1</sup> File Number 62933, official records in the office of the State Engineer.

June 14, 1999, the State Engineer noticed the permittee and his agent by certified mail that the deadline for filing the required Proof of Completion of Work had expired. The permittee and his agent were then allowed thirty days from the date of the letter to submit the required Proof of Completion of Work or an application for extension of time with the caution that a failure to do so would result in the cancellation of Permit 62933. Properly endorsed receipts for the certified mailings to the permittee and his agent were returned to the office of the State Engineer. Upon the expiration of the thirty day filing period established by the June 14, 1999, certified notice, it was determined that the permittee had failed to file the required Proof of Completion of Work or an application requesting an extension of time in the office of the State Engineer.<sup>1</sup> The State Engineer finds that the permittee failed to comply with the permit terms issued under Permit 62933 and that Permit 62933 was cancelled accordingly.

**II.**

On September 14, 1999, the State Engineer cancelled Permit 62933 due to the permittee's failure to comply with the terms of the permit. Under the provisions of NRS § 533.395(2), the holder of a cancelled water right permit may within sixty days of the cancellation, submit a written petition to the office of the State Engineer requesting a review of the cancellation. A petition requesting a review of the cancellation of Permit 62933 signed by Charles V. Stevens was timely received in the office of the State Engineer on November 5, 1999. Information contained within the petition indicated that Charles V. Stevens had acquired ownership of Permit 62933. The State Engineer finds that the cancellation of Permit 62933 can be reviewed at a public administrative hearing.

**III.**

An administrative hearing in the matter of the review of the cancellation was scheduled for April 12, 2000, to be held before a representative of the office of the State Engineer in Las Vegas,

Nevada. A notice of the hearing, stating the specific time and location of the hearing was sent by certified mail to the permittee, his agent and Charles V. Stevens at their respective addresses of record. The notice of hearing also cautioned the parties that a failure to appear at the scheduled time and place may result in an affirmation of the cancellation. Signed receipts for the certified mailings were returned to the office of the State Engineer.<sup>1</sup> The State Engineer finds the permittee, his agent and a possible successor in interest were properly noticed of the time and location of the administrative hearing scheduled for the review of cancelled Permit 62933.

IV.

At the hearing scheduled for review of the cancelled permit, the permittee is afforded the opportunity to enter testimony and evidence into the record of the hearing. The State Engineer, after an evaluation of the information contained within this record may modify, rescind or affirm the original cancellation of the permit.<sup>2</sup> The State Engineer finds that the April 12, 2000, public administrative hearing provided the permittee with the opportunity to present additional information to the State Engineer to support a rescission of the cancellation of Permit 62933.

V.

A representative of the office of the State Engineer was present at the time and place of the hearing set forth in the April 12, 2000, hearing notice received by the subject parties. The record of this hearing indicates that neither the permittee, his agent nor Charles V. Stevens were present at the hearing. A two-week period was granted from the date of the hearing for any of the subject parties to contact the office of the State Engineer to explain their failure to attend the hearing. This time period expired without any communications received from the permittee or his agent regarding this matter.<sup>1</sup> The State Engineer finds that

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<sup>2</sup> NRS § 533.395(2).

the permittee has failed to attend the public hearing scheduled for the review of his cancelled permit and has not submitted any additional information to support a rescission of the cancellation of Permit 62933.

CONCLUSIONS

I.

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

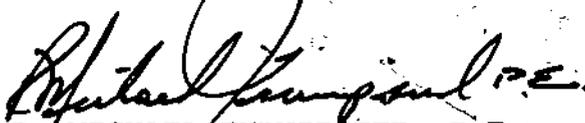
II.

Permit 62933 was cancelled due to the permittee's failure to comply with the terms of the permit. In accordance with NRS § 533.395(2), a hearing in the matter of the review of cancelled Permit 62933 was scheduled. The purpose of a hearing was to allow the permittee an opportunity to present additional information regarding the permit and its cancellation to the office of the State Engineer. Upon consideration of this information, the State Engineer may modify, rescind, or affirm the cancellation. The State Engineer concludes that the permittee did not provide any additional information to support a rescission of the cancellation, therefore, the cancellation of Permit 62933 must be affirmed.

RULING

The State Engineer's cancellation of Permit 62933 is hereby affirmed.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MDB/cl  
Dated this 13th day of  
June, 2000.

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