

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

IN THE MATTER OF CANCELLED PERMIT)
52359, FILED TO APPROPRIATE)
THE PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE DODGE FLAT)
HYDROGRAPHIC BASIN (082), WASHOE)
COUNTY, NEVADA.)

RULING

5012

GENERAL

I.

Application 52359 was filed on August 1, 1988, by Joseph Rudy Rissone to appropriate 1.0 cubic feet per second of underground water for the irrigation of 80.37 acres of land located within the N $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.21N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located with the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 24.¹

FINDINGS OF FACT

I.

Permit 52359 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 January 30, 1993. Additionally, the State Engineer assigned January 30, 1996 as the deadline for placing the water granted under Permit 52359 to its intended beneficial use. Under the provisions of NRS 533.380, the holder of a water right permit may request additional time to file the Proof of Completion of Work or Proof of Beneficial use. This request is made through the submittal to the office of the State Engineer of Applications for Extension of Time. The State Engineer may, for good cause shown, approve the extension of time request and extend the proof filing date for a period of typically no more than one year. Applications for Extensions of Time to file the Proof of Completion of Work have been submitted by the applicant

¹ File Number 52359, official records in the office of the State Engineer.

and approved by the office of the State Engineer on an annual basis since 1993 with the most recent extension of time granted until January 30, 2000. Applications for Extension of Time to file the required Proof of Beneficial Use have also been submitted annually since 1996 with approvals extending the due date to January 30, 2000.¹ The State Engineer finds that more than eleven years have passed since Permit 52359 was filed and that during this period, the applicant has failed to develop the water right to a degree where the Proof of Completion and the Proof of Beneficial Use can be submitted.

II.

The State Engineer extended the deadline for filing the required Proof of Completion and Proof of Beneficial Use to January 30, 2000. This most recent deadline passed without the necessary proofs or extension requests being filed by the applicant or his designated agent. Accordingly, on February 16, 2000, the State Engineer noticed the permittee and his agent by certified mail that the deadline for filing the required Proof of Completion of Work and Proof of Beneficial Use had expired. The permittee and his agent were then allowed thirty days from the date of the letter to submit the required proofs or an application for extension of time with the caution that a failure to do so would result in the cancellation of Permit 52359. 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 February 16, 2000, 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 Engineer¹. The failure to submit either the subject proofs or requests for extension of time left the State Engineer no alternative but to cancel Permit 52359 on May 11, 2000. The State Engineer finds that Permit 52359 was cancelled in

accordance with the provisions of the Nevada Revised Statutes and the policies of the office of the State Engineer.

III.

On May 11, 2000 the State Engineer cancelled Permit 52359 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 52359 signed by Joseph R. Rissone was timely received in the office of the State Engineer on June 8, 2000. Information contained within the petition indicated that the permittee was to be contacted at a new address in Beaverton, Oregon. The petition was also accompanied by a check in the amount of \$100.00, which Mr. Rissone indicated was to satisfy the cost of filing an application for extension of time.¹ The State Engineer finds that the timely filing of the written petition allows the cancellation of Permit 52359 to be reviewed at a public administrative hearing. The State Engineer further finds that the \$100.00 submitted with the petition was not accepted and was returned to the permittee.

IV.

An administrative hearing in the matter of the review of the cancellation was scheduled for July 21, 2000, to be held before a representative of the office of the State Engineer in Carson City, Nevada. A notice of the hearing, stating the specific time and location of the hearing was sent by certified mail to the permittee and his agent at their respective addresses of record, one being the Beaverton, Oregon address. Properly endorsed receipts for the certified mailings were returned to the office of the State Engineer.¹ The State Engineer finds the permittee and his agent were properly noticed of the time and location of the

administrative hearing scheduled for the review of cancelled Permit 52359.

V.

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.² The State Engineer finds that the July 21, 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 52359.

VI.

A representative of the office of the State Engineer was present at the time and place of the hearing set forth in the June 23, 2000, hearing notice received by the subject parties. The record of this hearing indicates that neither the permittee, nor his agent 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.¹ The State Engineer finds that the permittee 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 52359.

² NRS § 533.395(2).

CONCLUSIONS

I.

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

II.

Permit 52359 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 52359 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 52359 must be affirmed.

RULING

The State Engineer's cancellation of Permit 52359 is hereby affirmed.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

Dated this 12th day of
April, 2001.

HR/MDB/d1

³ NRS chapters 533 and 534.