

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 35856)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF AN UNDERGROUND SOURCE IN)
LOWER MOAPA VALLEY, CLARK COUNTY,)
NEVADA.)

RULING

GENERAL

Application 35856 was filed on September 8, 1978, by Tom Spear to appropriate 0.20 c.f.s. of water from an underground source for irrigation purposes on 10 acres of land within the SW1/4 SE1/4 Section 26, T.15S., R.67E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 26, T.15S., R.67E., M.D.B.&M.¹

The application was approved on October 20, 1982, subject to certain conditions one of which was that the Proof of Completion of Work be filed on or before November 20, 1983.¹

FINDINGS OF FACT

I.

On November 21, 1983, a final notice was sent to Tom Spear, by certified mail, with a copy to his agent, also by certified mail, advising him that the required Proof of Completion of Work had not been received by the State Engineer and allowed 30 days for filing said proof or a request for an extension of time. The letter to Mr. Spear was returned by the post office marked "unclaimed" and mailed again by regular mail. Nothing was filed under Permit 35856 within the time period allowed.¹

II.

On January 5, 1984, a certified letter was sent to Mr. Spear, with a copy to his agent, advising him that the permit had been cancelled and further advising him that NRS 533.395 provides him an opportunity to petition the State Engineer for a review of the cancellation within 60 days of the date of the cancellation.¹

III.

On January 16, 1984, a letter was received from Mr. Spear requesting a review of the cancellation of Permit 35856.¹

IV.

On March 21, 1984, a letter was sent to Mr. Spear advising him of the time and place for the hearing. Mr. Spear called and requested that the hearing be rescheduled at a later date.¹

¹ Public record in the office of the State Engineer.

v.

On September 6, 1984, a notice was sent to Mr. Spear at the address of record advising him of the new date and time set for the hearing. The letter was returned by the post office marked "Moved Left No Address". No further communication has been received from Mr. Spear by this office concerning cancelled Permit 35856.¹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and subject matter of this action and determination pursuant to NRS 533.325.

II.

In reviewing cancellations, the State Engineer is required to receive evidence and take testimony as to the applicant's good faith and due diligence toward placing the water to beneficial use. Upon reviewing and considering the evidence, the State Engineer may affirm, modify or rescind the cancellation.²

RULING

The cancellation of Permit 35856 is hereby affirmed on the grounds that no evidence or testimony was presented as to why the terms and conditions of the permit have not been met nor was there any demonstration of due diligence to place the water to beneficial use.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/CT/bl

Dated this 17th day of
December, 1985.

² NRS 533.395.