

IN THE OFFICE OF STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF THE CANCELLATION)
OF PERMIT 57075 FILED TO)
APPROPRIATE THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE FROM WITHIN THE)
LAS VEGAS ARTESIAN GROUNDWATER)
BASIN (212), CLARK COUNTY, NEVADA.)

RULING

4733

GENERAL

I.

Application 57075 was filed on January 9, 1992, by Michael Anderson to appropriate 0.1 cubic foot per second of underground water for quasi-municipal purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 12, T.19S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 12. Information contained within the remarks section of the application indicates that it was filed to provide water for two houses.¹

II.

Permit 57075 was approved on April 29, 1992, and under the terms of the permit the Proof of Beneficial Use was due to be filed in the office of the State Engineer on or before May 29, 1997.¹

FINDINGS OF FACT

I.

The permittee was noticed by certified mail dated May 30, 1997, and August 5, 1997, that the required Proof of Beneficial Use had not been filed in accordance with the terms established under Permit 57075. The permittee was given 30 days in which to

¹ File No. 57075, official records in the office of the State Engineer.

file the required Proof of Beneficial Use or an application for extension of time. The certified notices were returned to the office of the State Engineer with the envelope stamped "Unclaimed" and "Attempted, Not Known" and "Return to Sender, No Such Number" by the U.S. Postal Service.

An identical notice was sent to the permittee by regular mail on September 3, 1997. No response to any of these final notices was received in the office of the State Engineer. The State Engineer finds that the permittee's failure to submit the Proof of Beneficial Use as required under the terms of Permit 57075, resulted in the cancellation of Permit 57075 on February 18, 1998.

II.

Under the provisions of NRS § 533.395(2), the holder of a cancelled permit may within 60 days of the cancellation of the permit file a written petition within the State Engineer requesting a review of the cancellation at a public hearing.² A petition for review of the cancellation of Permit 57075 was received from the permittee on March 4, 1998, and a public hearing in this matter was scheduled for May 13, 1998, to be held in the State Engineer's Southern Nevada Branch Office in Las Vegas. A certified notice was sent to the permittee and his agent at the addresses provided to this office informing them of the time and place of the hearing. Contained within this notice was a warning that a failure to appear at the hearing may result in an affirmation of the cancellation of Permit 57075. The hearing notice addressed to the permittee was returned to the State Engineer's office within the notation "Unclaimed" stamped on the envelope by the U.S. Postal Service. A properly endorsed receipt

² NRS § 533.395(2).

for the certified mailing to the applicant's agent was received in the State Engineer's office. A representative of the office of the State Engineer was present at the time and place set for the hearing, however, no appearance was made by either the permittee or his agent.¹ The State Engineer finds that the permittee was provided an opportunity to provide additional information to support a modification or recession of the State Engineer's cancellation of Permit 57075, but has failed to do so and without this information the cancellation must be affirmed.

III.

A second certified notice was sent to the permittee and his agent on February 10, 1999, informing both parties that a second public hearing in the matter of the review of cancelled Permit 57075 was scheduled for March 24, 1999, in Las Vegas. Again the permittee was cautioned that a failure to appear at the hearing may result in an affirmation of the cancellation. The certified notice to the permittee was returned to the State Engineer's office with a forwarding address attached by the U.S. Postal Service. Accordingly, a third certified notice of hearing was sent to the address indicated on the forwarding label with a receipt for this certified notice returned endorsed with the signature of V. Anderson.¹ The State Engineer finds that the permittee has been properly noticed of the time and place of the March 24, 1999, public hearing and forewarned that his failure to appear at the hearing may result in an affirmation of the cancellation.

IV.

A second hearing in the review of cancelled Permit 57075 was held at 10:40 a.m. on March 24, 1999, in Las Vegas, Nevada. A representative of the office of the State Engineer was present at

the allotted time and place to receive evidence and testimony to support a modification or rescission of the cancellation of the permit, however, no appearance was made by the permittee or his agent.¹ The State Engineer finds that the permittee has failed to provide any additional information which would support a reconsideration of the cancellation of Permit 57075, therefore, the State Engineer's cancellation must be affirmed.

CONCLUSIONS

I.

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

II.

Permit 57075 was cancelled by the State Engineer due to the permittee's failure to comply within the terms of the permit. A petition for review of this cancellation was received by the office of the State Engineer and a public hearing was scheduled to allow the permittee an opportunity to present additional information which would support a modification or rescission of the cancellation. The permittee was properly noticed of the time and place of two separate hearings which were scheduled for this matter with the understanding that his failure to attend may result in an affirmation of the cancellation. On both occasions the permittee failed to attend or submit any explanation for his absence. The State Engineer concludes that no additional evidence or testimony was provided to support a modification or rescission of the cancellation of Permit 57075, therefore, the cancellation is affirmed.

³ NRS Chapters 533 and 534.

RULING

The cancellation of Permit 57075 is hereby affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Michael Turnipseed, P.E.", written in a cursive style.

R. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/cl

Dated this 20th day of
May, 1999.