

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

IN THE MATTER OF CANCELLED PERMIT)
56616 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE LAS VEGAS VALLEY)
ARTESIAN GROUNDWATER BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING

4903

GENERAL

I.

Application 56616 was filed on August 2, 1991, by William G. Gerrish to appropriate 0.006 cubic feet per second of underground water for quasi-municipal purposes within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 19, 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 19. Information contained within the remarks section of the application indicates that the water requested under Application 56616 was intended to service a four-lot subdivision.¹

II.

The State Engineer issued Permit 56616 on February 26, 1992. On February 16, 1996, title to Permit 56616 was assigned to William H. Wendland in the records of the office of the State Engineer.¹

FINDINGS OF FACT

I.

Permit 56616 was approved by the State Engineer with the condition that the Proof of Beneficial Use must be filed in the office of the State Engineer on or before March 26, 1997. On April 16, 1997, the permittee requested an extension of time to file the required Proof of Beneficial Use. The State Engineer granted this request

¹ File No. 56616, official records in the office of the State Engineer.

for additional time, and extended the filing deadline to March 26, 1998. On March 27, 1998, William H. Wendland and his agent were notified by certified mail at their respective addresses of record that the Proof of Beneficial Use under Permit 56616 had not been submitted to the office of the State Engineer. The permittee and his agent were allowed thirty days from the date of this letter to submit the required Proof of Beneficial Use or an application for extension of time. Endorsed receipts for the certified mailings were received from the permittee and permittee's agent. Upon the expiration of the thirty day filing period, it was determined that the permittee has failed to file the required Proof of Beneficial Use or an application requesting an extension of time in the office of the State Engineer.¹ The State Engineer finds that the permittee has failed to comply with the permit terms issued under Permit 56616 and that Permit 56616 must be cancelled.

II.

On February 18, 1999, the State Engineer cancelled Permit 56616 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. In those instances where a permit has been cancelled due to a late filing of the required proof of extension of time, it is the policy of the office of the State Engineer to accept the late proof or extension request in lieu of the petition. The State Engineer finds that the cancellation of Permit 56616 can be reviewed at a public administrative hearing.

III.

An administrative hearing in the matter of the review of the cancellation was scheduled for July 7, 1999, 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 and his agent 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. 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 56616.

IV.

The holder of a cancelled water right, may at the hearing to review a cancellation, 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 8, 1999, 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 56616.

V.

A representative of the office of the State Engineer was present at the time and place of the hearing set forth in the June 14, 1999, hearing notice received by the permittee and his agent. The record of this hearing indicates that neither the permittee or his agent were present at the hearing. A request was received from the permittee's agent immediately after the hearing

² NRS § 533.395(2).

to withhold any action in this matter to a later date. Accordingly, by certified notice dated October 14, 1999, the permittee and his agent were informed of a second hearing scheduled for November 18, 1999, in the State Engineer's Southern Nevada Branch Office in Las Vegas. Once again, the hearing notice contained a caution that a failure on the permittee's part to appear at the correct time and location of the hearing may result in the affirmation of the cancellation of Permit 56616. Properly endorsed receipts for the certified mailings were received in the office of the State Engineer. A hearing officer was present at the time and place described in the October 14, 1999, hearing notice to receive testimony and evidence on the permittee's behalf. However, the record of the hearing indicates that the permittee and his agent again failed to appear at the hearing. A two-week period was allowed from the date of the hearing for the permittee or his agent to contact the office of the State Engineer to explain their failure to attend the hearing. This time period expired without any communication from the permittee or his agent regarding this matter.¹ The State Engineer finds that the permittee has failed on two separate occasions to attend the public hearings scheduled for the review of his cancelled permit and has not submitted any additional information to support a rescission of the cancellation of Permit 56616.

CONCLUSIONS

I.

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

II.

Permit 56616 was cancelled due to the permittee's failure to comply with the terms of the permit. In accordance with NRS § 533.395(2), a written petition was timely submitted to the office

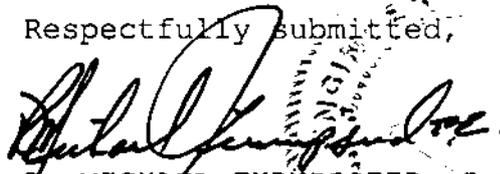
³ NRS chapters 533 and 534.

of the State Engineer, requesting a review of the cancellation at a public hearing. The purpose of this hearing was to allow the permittee an opportunity to present additional information regarding the permit and its cancellation to 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 has not provided any additional information to support a rescission of the cancellation, therefore, the cancellation of Permit 56616 must be affirmed.

RULING

The State Engineer's cancellation of Permit 56616 is hereby affirmed.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.

State Engineer

RMT/MDB/dl

Dated this 31st day of
March, 2000.