

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

IN THE MATTER OF PERMIT 2979 FILED)
TO APPROPRIATE THE PUBLIC WATERS)
OF PARKER SPRING, WITHIN THE)
STEPTOE VALLEY HYDROGRAPHIC BASIN)
(179), WHITE PINE COUNTY, NEVADA.)

RULING
#5874

GENERAL

I.

Application 2979 was filed on May 18, 1914, by George D. Maddalena to appropriate 1.0 cubic foot per second of water from Parker Spring. The proposed manner and place of use is for irrigation and domestic purposes within 160 acres of land located within the NE $\frac{1}{4}$ of Section 1, T.24N., R.63E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T.24N., R.63E., M.D.B.&M.¹

FINDINGS OF FACT

I.

The State Engineer's permitting process begins with the filing of a water right application and concludes with the issuance of a Certificate of Appropriation. A letter acknowledging the approval of Permit 2979 was sent to George D. Maddalena on January 20, 1916. The permittee was also advised that if the various proofs and map thereunder were not filed in this office prior to the dates set for such filings, as required by law, the permit would be subject to cancelation.¹

The proofs that are referenced in this letter are the Proof of Labor, Proof of Completion of Work and the Proof of Beneficial Use. The map cited in the State Engineer's letter, would be the formal cultural map, which depicts the irrigated acreage and the crop type. Within three years of acquiring his permit, the

¹ File No. 2979, official records in the Office of the State Engineer.

permittee had filed all of these proofs signifying that the works of diversion had been finished and the water put to use in the manner set forth in Permit 2979.

What was absent from the submittal, was the formal cultural map that supports the Proof of Beneficial Use. By letter dated May 5, 1925, the permittee's agent was advised that:

Our records show that Permit No. 2979, Geo. D. Maddalena, Parker Spring, has been completed except for the filing of a cultural map showing the land irrigated in connection with the proof of beneficial use...

The State Engineer suggested that:

...this cultural map be prepared at an early date from a survey on the ground made by a State Water Right Surveyor, after which the permit can be taken up with the view of issuing a certificate thereunder.¹

This letter marks the beginning of a thirty year period of silence regarding Permit 2979, which ended on April 27, 1955, when a letter was received by the Office of the State Engineer. The purpose of this letter was to request information from the records of the State Engineer that would allow title to be assigned from Maddalena to the Oxford Investment Company. No reference to the missing cultural map was made in this letter nor a subsequent letter sent the next day to the State Engineer's office. A letter addressing the cultural map problem was finally received on June 14, 1960. F.W. Millard's letter advised the State Engineer that a cultural map would be timely prepared under Permit 2979, once he had received a copy of its Proof of Beneficial Use. A copy of the proof was sent to Millard, with the hope that the cultural map would be forthcoming. Several additional requests for the cultural map were made over the next five years, none of which generated a response from the mail recipients. No further communications were received from Millard, and no further progress was made in obtaining the required cultural map. A final attempt was made on November 3, 1971, to notify the original permittee at his address of record of the need to file the map. Included

within the letter, was a warning that the failure to submit the map within 30 days would result in appropriate action being taken by the State Engineer. A response in the form on an unclaimed registered letter was received, with the envelope stamped, "Unclaimed" and "Decede (Deceased)" by the United States Postal Service.¹

On July 2, 1979, A.C. Wood inquired by letter if Permit 2979 could be completed with the filing of the cultural map. A subsequent reply advised A.C. Wood that a cultural map would be accepted for certification if three problems associated with Permit 2979 were resolved. Two of these centered on title issues, with the third inquiring as to the history of water use that had occurred within the property since the filing of the Proof of Beneficial Use. A review of the correspondence filed under Permit 2979, indicates that this letter was never answered and that a cultural map was never submitted.¹ The State Engineer finds that the cultural map problem was identified by a previous State Engineer in 1925 and since this time neither the original permittee nor his successors in interest have attempted to resolve the issue.

II.

With few exceptions, the State Engineer requires a cultural map in support of a Proof of Beneficial Use filed for irrigation purposes. By combining the information portrayed on the map with that stated on the Proof of Beneficial Use form, a complete understanding of the degree of beneficial use that the permittee has achieved can be formed. The State Engineer finds that without the cultural map, a certificate of appropriation cannot be issued under Permit 2979.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²

II.

The original permittee was advised when his permit was approved that it would be necessary to submit a cultural map in support of Permit 2979. He was also cautioned that Permit 2979 would be canceled if this requirement was not met in a timely manner. Despite several requests from the Office of the State Engineer, a cultural map has never been received. Under these circumstances, the State Engineer concludes that Permit 2979 qualifies for cancellation.

RULING

Permit 2979 is hereby canceled due to the permittee's failure to comply with the terms and conditions issued with the permit.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MB/jm

Dated this 30th day of
June, 2008.

² NRS chapters 533 and 534.