

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

IN THE MATTER OF THE PETITION TO )  
REVIEW CANCELLED PERMIT 77012 )  
CONCERNING THE UNDERGROUND )  
WATERS OF THE PAHRUMP VALLEY )  
HYDROGRAPHIC BASIN (162), NYE )  
COUNTY, NEVADA. )

**RULING**  
**#6288**

**GENERAL**

**I.**

Application 77012 was filed on May 5, 2008, by Rosemarie Ricks to change the manner and place of use of water previously appropriated under Permit 62674. The point of diversion is described on the application as being located within the SE¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M. The place of use is described on the application as being located within the SE¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M. The existing place of use is described as being located within the SE¼ NW¼ of Section 34, T.19S., R.53E., M.D.B.&M. The proposed manner of use is for commercial and domestic use, and the existing manner of use is for irrigation and domestic use. The amount of water to be changed by Application 77012 is 0.10 cubic feet per second (cfs) not to exceed 6.5 acre-feet annually (afa). Under Section 15 in the “remarks” section of the Application, the Applicant stated in part that “this permit will provide commercial water rights to an existing business complex.” Permit 77012 was approved on October 30, 2008, for an amount not to exceed 0.10 cfs or 6.5 afa. After its approval, the permit was later assigned to Rockingham Capital, LLC (Rockingham or Petitioner).<sup>1</sup>

**II.**

Permit 77012 was cancelled on November 20, 2012, for Rockingham’s failure to submit the proof of beneficial use. Rockingham timely filed a written petition for review of the cancellation and an administrative hearing was held on May 6, 2014, to receive evidence and testimony in support of the petition.<sup>2</sup>

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<sup>1</sup> File No. 77012, official records in the Office of the State Engineer.

<sup>2</sup> Transcripts and exhibits, Public Administrative Hearing before the State Engineer, May 6, 2014, official records of the Office of the State Engineer. Hereinafter, the exhibits and transcript will be referred to only by the exhibit number or transcript page.

## FINDINGS OF FACT

### I.

The State Engineer finds that a hearing was held on May 6, 2014, before the Division of Water Resources in the matter of the Petition for Review of Cancelled Permit No. 77012. Representing Rockingham Capital, LLC was Gregory Rivero, agent for Petitioner. Based upon the evidence, testimony and arguments of the parties, the State Engineer makes the following findings of fact, conclusions of law and ruling.

### II.

The State Engineer finds that the timeline of events is as follows:

The original appropriation of groundwater for irrigation and domestic purposes was issued under Permit 14576, Certificate 5329. Proof of beneficial use was filed for Permit 14576 and Certificate 5329 was issued May 17, 1962.<sup>3</sup> Permit 62674 changed the point of diversion and place of use of a portion of Permit 14576, Certificate 5329, when it was approved on July 12, 2000. Beneficial use was never established under Permit 62674 before application 77012 was filed by Rosemarie Ricks (Ricks) and subsequently approved by the State Engineer to change the manner and place of use of Permit 62674.<sup>4</sup>

Permit 77012 was granted on October 30, 2008. The Permit terms required that Proof of Completion of Work be filed on or before October 30, 2009, and that Proof of Application of Water to Beneficial Use (PBU) be filed on or before October 30, 2010.<sup>5</sup>

The Proof of Completion of Work was filed in the Office of the State Engineer May 18, 2009, for the works already in place under prior permits.<sup>1</sup>

Ricks timely filed an Application for Extension of Time for filing the PBU, stating in Item 7 that she would file the PBU after taking meter readings over the next twelve months.<sup>6</sup> The extension was granted and the due date for filing the PBU was extended to October 30, 2011.<sup>7</sup>

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<sup>3</sup> File No. 14576, official records in the Office of the State Engineer.

<sup>4</sup> File No. 62674, official records in the Office of the State Engineer.

<sup>5</sup> Exhibit No. 3.

<sup>6</sup> Exhibit No. 4.

<sup>7</sup> Exhibit No. 5.

Ricks submitted a PBU on October 11, 2011, but then subsequently filed an Application for Extension of Time on November 7, 2011. A letter from the Office of the State Engineer to Ricks confirmed receipt of the Application for Extension of Time and returned the PBU as being withdrawn.<sup>8,9,10</sup>

Under Item 7 on the Application for Extension of Time, Ricks stated, in part:<sup>11</sup>

The water rights have been converted to Quasi-Municipal after a failed attempt to sell them to the local Pahrump Water Company through the Focus Group Developers based in Las Vegas, NV. We have advertised our willingness to sell the majority of our rights to the local Pahrump Valley Times newspaper, sent letters to the Township of Pahrump, Chamber of Commerce and local Municipal Water Company.... This year, Pahrump municipal water and sewer has been extended to within one block of our property as a result of the new detention center being constructed. This expanded municipal service has been projected to include our property within three years. At that time we would be forced to connect to the municipal service. Thus, making our property upgrades, the proposed on-site commercial well and sewer installations worthless. In the interim, we will continue to advertise the sale of the excess water rights throughout the community and make attempts to deal with the municipal water/sewer companies again. Expansion of our business to utilize the excess water rights is not possible at this time.

On April 18, 2012, Ricks was notified that the State Engineer determined that she was not proceeding in good faith and reasonable diligence toward perfecting the water right and denied the Application for Extension of Time.<sup>12</sup> Rather than cancelling the water right at that time, Ricks was granted until October 30, 2012, to file a PBU for the quantity of water placed to beneficial use based on actual meter readings during the upcoming period or within the previous four years.<sup>13,14</sup>

On July 13, 2012, a Report of Conveyance was filed in the Office of the State Engineer to advise the State Engineer of a transfer of title for Permit 77012 from Ricks to Petitioner,

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<sup>8</sup> Exhibit No. 6.

<sup>9</sup> Exhibit No. 7.

<sup>10</sup> Exhibit No. 8.

<sup>11</sup> Exhibit No. 7.

<sup>12</sup> Exhibit No. 9; *and see* NRS § 533.380(3).

<sup>13</sup> Exhibit No. 9.

<sup>14</sup> Note that the October 30, 2012, due date is the same date had the request for extension of time been approved for one year, the maximum time allowed pursuant to NRS § 533.380.

Rockingham Capital, LLC.<sup>15</sup> In support of the Report of Conveyance, Rockingham submitted a copy of the deed transferring title that was recorded with Nye County on June 28, 2012.<sup>16</sup>

An Application for Extension of Time from the agent for the Petitioner was received in the Office of the State Engineer on October 29, 2012.<sup>17</sup> In a letter dated November 20, 2012, the Petitioner was notified that the Application for Extension of Time could not be accepted for review and that Permit 77012 was cancelled as of November 20, 2012, for failure to file the PBU on or before October 30, 2012.<sup>18</sup>

Rockingham timely petitioned the State Engineer for a hearing to review the cancellation pursuant to NRS § 533.395(2).<sup>19</sup>

### III.

The reasonable diligence requirement requires “the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances.”<sup>20</sup>

At the administrative hearing Mr. Rivero, a licensed water right surveyor representing the Petitioner, testified that Petitioner bought the water right in good faith from Ricks and Petitioner intended to move the water right to serve an RV park, which is in its final stages of county approval.<sup>21</sup> The estimated water requirement for the RV park is 14 afa, and this water right was intended to be for a portion of that requirement.<sup>22</sup>

When asked about his client’s due diligence prior to purchase of the water right, Mr. Rivero was unable to answer because he was hired later to file the Report of Conveyance and Application for Extension of Time.<sup>23</sup> He was also unable to answer whether or not the permit file was reviewed between April 18, 2012, when the letter denying the extension of time was sent and June 28, 2012, when the deed transferring the water right to Petitioner was recorded.<sup>24</sup>

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<sup>15</sup> Exhibit No. 10.

<sup>16</sup> *Id.*

<sup>17</sup> Exhibit No. 11.

<sup>18</sup> Exhibit No. 12.

<sup>19</sup> Exhibit No. 13.

<sup>20</sup> NRS §§ 533.380(6); 533.395(5).

<sup>21</sup> Transcript pp. 7, 8, 10 and 12.

<sup>22</sup> Transcript p. 12.

<sup>23</sup> Transcript pp. 9-11.

<sup>24</sup> Transcript pp. 13.

The Petitioner submitted into evidence the improvement plans for the Bella Vista RV Park which are awaiting the final approval by Nye County.<sup>25,26</sup> Mr. Rivero testified that the RV park will be ready for construction in a few months and that an application to change the existing water right would immediately be filed if the cancellation of this water right was rescinded. From the time the RV park gets built, Petitioner stated he could place the water to beneficial use within one year, since they will need to use the water immediately.<sup>27</sup>

The Application for Extension of Time was denied by the State Engineer since Ricks, the prior owner of Permit 77012, was only seeking to sell the water and not to place it to beneficial use. To ensure and maintain the integrity of the appropriation process, it is essential that the extension of time process not be improperly applied to reserve water resource without beneficial use. The permit was not cancelled immediately, but Ricks was afforded the opportunity to file a Proof of Application of Water to Beneficial Use for water that could be demonstrated to have been beneficially used.<sup>28</sup>

In contrast, Mr. Rivero testified that Rockingham's project that requires the water is in its final stages of approval at the county level, construction will begin in months and beneficial use can be made of the water immediately after construction.<sup>29</sup> In support of this testimony, the final improvement plans were presented at the hearing.<sup>30</sup>

The State Engineer finds that even though it appears the Petitioner failed to perform due diligence in determining the status of Permit 77012 before purchasing the water right, the Petitioner's improvement plans and timely filing of a report of conveyance to update ownership demonstrates good faith to place the water to beneficial use. However, the State Engineer also finds that steady progress from this point forward must be made to develop the water, including the filing of an application to change the point of diversion and place of use to serve the project undergoing final approval.

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<sup>25</sup> Transcript pp. 12-14.

<sup>26</sup> Exhibit No. 16.

<sup>27</sup> Transcript pp. 14-15.

<sup>28</sup> Exhibit No. 9.

<sup>29</sup> Transcript pp. 7-15.

<sup>30</sup> Exhibit No. 16.

**CONCLUSIONS OF LAW**

**I.**

The State Engineer has jurisdiction over this matter pursuant to NRS §§ 533.380 and 533.395.

**II.**

The State Engineer concludes that the cancellation of Permit 77012 may be rescinded with the understanding that the Petitioner will pursue the improvement plan for the Bella Vista RV Park to place the water to beneficial use as described in the testimony and evidence received at the administrative hearing.

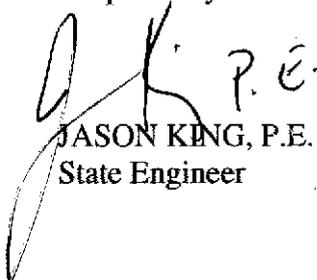
**RULING**

The cancellation of Permit 77012 is rescinded and the permit is hereby reinstated with a priority date of January 16, 2013, as provided under NRS § 533.395(3), subject to the following conditions:

1. Petitioner must file within 30 days of the date of this Ruling, an Application for Extension of Time for filing the Proof of Beneficial Use, with the understanding that no further extensions of time will be granted for filing the proof of beneficial use, except for good cause shown as provided under NRS §§ 533.380 and 533.390.
2. A timeline for placing the water to beneficial use must accompany the Application for Extension of Time, including when the application to change will be filed.

Failure to meet these conditions will result in the State Engineer issuing further rulings to affirm the cancellation.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 14th day of  
August 2014