

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

IN THE MATTER OF CANCELLED PERMIT)
55893, FILED TO APPROPRIATE THE)
PUBLIC WATERS OF AN UNDERGROUND)
SOURCE WITHIN THE LAS VEGAS VALLEY)
ARTESIAN HYDROGRAPHIC BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING

4933

GENERAL

I.

Application 55893 was filed on February 27, 1991, by Donald K. and Mildred E. Tait to appropriate 0.07 cubic feet per second of underground water for quasi-municipal purposes within the NE¼, NE¼, NW¼ and SW¼ [sic]¹ of Section 22, T.19S., R.60E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ SW¼ of said Section 22. The remarks section of the application indicates that the water requested under Application 55893 was intended to service two single-family residential lots.²

II.

Information contained within the original application form indicates that the application was prepared by CRS Consulting Engineers, Inc., acting as agent for the Tait's.¹

FINDINGS OF FACT

I.

It has been a long-standing policy within the office of the State Engineer, that it is the water right holder's responsibility to inform said office of any changes that have occurred in the permittee's mailing address. To assist the public in this task, the office of the State Engineer will provide to any party a Request for Notice and Change of Address form. This form when

¹ The map which accompanied Application 55893 shows the place of use to be NE¼ NE¼ NW¼ SW¼ of Section 22, T.19S., R.60E., M.D.B.&M.

² File Number 55893, official records within the office of the State Engineer.

submitted properly contains the permittee's updated mailing address, which is then used to notice the permittee in all official matters relevant to the permit. On July 17, 1998, Donald K. Tait submitted a Request for Notice and Change of Address form to the State Engineer's Southern Nevada Branch office. Based upon the information contained within this form, the address of record associated with the permittee was updated to P.O. Box 36263, Las Vegas, Nevada 89133.¹ The State Engineer finds that although the record contained within Permit 55893 lists several former addresses under the permittees' names, all official correspondence must be mailed to the updated address provided by the permittee on July 17, 1998.

II.

Permit 55893 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 April 30, 1996. After having Permit 55893 cancelled in November 1996 for failure to file the required Proof of Beneficial Use and after obtaining reinstatement of said permit and being granted three year-long extensions of time for filing Proof of Beneficial Use of the waters under Permit 55893, on May 5, 1999, the State Engineer noticed the permittees and their agent by certified mail that the deadline for filing the required Proof of Beneficial Use had expired. The permittees and their agent were then allowed thirty days from the date of this letter to submit the required Proof of Beneficial Use or an application for extension of time with the caution that a failure to do so would result in the cancellation of Permit 55893. The receipt for the certified mailing to the permittees was returned to the office of the State Engineer unsigned with the enveloped stamped, "Return to Sender-Unclaimed" by the United States Postal Service. Due to this fact, a second final notice was sent to the permittees by regular mail on July 22, 1999. Upon the expiration of the thirty-day filing period

established by the July 22, 1999, non-certified notice, it was determined that the permittees had 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 permittees have failed to comply with the permit terms issued under Permit 55893 and that Permit 55893 was cancelled accordingly.

III.

On September 14, 1999, the State Engineer cancelled Permit 55893 due to the permittees' 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. A petition requesting a review of the cancellation of Permit 55893 signed by Donald K. Tait was timely received in the office of the State Engineer on November 5, 1999. The State Engineer finds that the cancellation of Permit 55893 can be reviewed at a public administrative hearing.

IV.

An administrative hearing in the matter of the review of the cancellation was scheduled for April 12, 2000, 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 permittees and their 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. A signed receipt for the certified mailing endorsed by Donald K. Tait was returned to the office of the State Engineer.¹ The State Engineer finds the permittees and their agent were properly noticed of the time and

location of the administrative hearing scheduled for the review of cancelled Permit 55893.

V.

The holder of a cancelled water right may within sixty days of the cancellation file a written petition with the office of the State Engineer requesting a review of the cancellation at a public administrative hearing. At the hearing, the permittee is afforded the opportunity to 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.³ The State Engineer finds that the April 12, 2000, public administrative hearing provided the permittees with the opportunity to present additional information to the State Engineer to support a rescission of the cancellation of Permit 55893.

VI.

A representative of the office of the State Engineer was present at the time and place of the hearing set forth in the March 8, 2000, hearing notice received by the permittees and their agent. The record of this hearing indicates that neither the permittees nor their agent were present at the hearing. A two-week period was granted from the date of the hearing for the permittees or their agent to contact the office of the State Engineer to explain their failure to attend the hearing. This time period expired without any communications received from the permittees or their agent regarding this matter.¹ The State Engineer finds that the permittees have failed to attend the public hearing scheduled for the review of their cancelled permit and have not submitted any additional information to support a rescission of the cancellation of Permit 55893.

² NRS § 533.395(2).

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

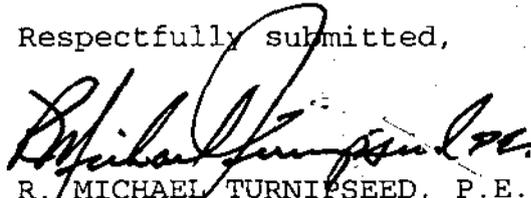
II.

Permit 55893 was cancelled due to the permittee's failure to comply with the terms of the permit. In accordance with NRS § 533.395(2), a hearing in the matter of the review of cancelled Permit 55893 was scheduled. The purpose of a hearing was to allow the permittees an opportunity to present additional information regarding the permit and its cancellation to the office of the State Engineer. Upon consideration of this information, the State Engineer may modify, rescind, or affirm the cancellation. The State Engineer concludes that the permittees have not provided any additional information to support a rescission of the cancellation, therefore, the cancellation of Permit 55893 must be affirmed.

RULING

The State Engineer's cancellation of Permit 55893 is hereby affirmed.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 13th day of
June, 2000.

³ NRS chapters 533 and 534.