

IN THE MATTER OF THE REINSTATEMENT)
OF APPLICATION 40758 TO CHANGE THE)
POINT OF DIVERSION OF WATER HERETOFORE)
APPROPRIATED IN RAILROAD VALLEY, NYE)
COUNTY, NEVADA)

RULING

173B

FINDINGS OF FACT

I

Application 40758 was filed on February 27, 1980 in the name of William Morgan Lynn to change the point of diversion of a portion of the water heretofore appropriated under Permit 27491. The proposed point of diversion is from an underground source located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, T.9N., R.57E., M.D.B. & M. The existing point of diversion is an underground source located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 12. The proposed and existing place of use is 320 acres located within the S $\frac{1}{2}$ NE $\frac{1}{4}$ Section 11, NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 12, T.9N., R.57E., M.D.B. & M.

In accordance with the provisions of NRS 533.355, the application was returned to the applicant for correction by a certified notice dated August 21, 1980. Said notice specified that an amended application and a supporting map prepared by a licensed Water Right Surveyor must be filed in the office of the State Engineer on or before October 20, 1980.

II

Permit 27491 was issued on October 18, 1973, in the name of William Morgan Lynn or Jeffrey Allen Lynn to appropriate water from an underground source for the irrigation of the same place of use as Application 40758. On September 25, 1980, a cultural map in support of the Proof of Beneficial Use under Permit 27491 was submitted to the State Engineer's office. Said map was also intended to support pending Application 40758 as evidenced by the following statement on the map: "Revised 9/19/80 - added tie to new well under Permit No. 40758." The map was subsequently returned to Water Right Surveyor Philip Hulse under cover of a certified letter dated October 16, 1980, for an additional correction to be made to the map in order that it could be used to support Application 40758. A thirty (30) day period from the date of that letter was allowed for resubmission of a corrected map. The corrected map was resubmitted to the State Engineer's office on October 30, 1980.

III

Under Permit 27491, the Proof of Beneficial Use had been withdrawn by William Morgan Lynn. A member of the State Engineer's office did not recognize that the map in support of that proof was also to be used

to support new Application 40758. The map was returned to Water Right Surveyor Philip Hulse under cover of a letter dated November 12, 1980, when it was discovered that the Proof of Beneficial Use under 27491 had been withdrawn.

Application 40758 was subsequently canceled on December 23, 1980, on the belief that a corrected supporting map had not been resubmitted within the thirty (30) day period following the letter of October 16, 1980, not realizing that during that interim period the map had actually been resubmitted but had been returned to Philip Hulse on November 12, 1980 for the reason described above.

Subsequent to cancellation of Application 40758, a total of \$25.00 was refunded to applicant Lynn on January 8, 1981 as is directed by: NRS 533.435.

IV

Applicant Lynn has requested a reinstatement of the application on the basis that the map to support the application was, in fact, timely filed in its correct form. The \$25.00 publication fee has also been resubmitted by the applicant and the supporting map has been resubmitted by Water Right Surveyor Philip Hulse.

CONCLUSIONS

I

The State Engineer has jurisdiction in this matter under the provisions of NRS 533.325 through 533.360, inclusive.

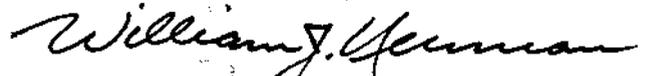
II

A map to support pending Application 40758 was filed within the time limitations imposed by the Division of Water Resources. The map was subsequently returned to the Water Right Surveyor due to an oversight on the part of a representative of the Division. The application was canceled on December 23, 1980, on the belief that a corrected map had not been resubmitted within the 30-day grace period allowed by certified letter dated October 16, 1980.

RULING

The cancellation of Application 40758 is herewith rescinded and the application is reinstated to a valid and active status. The application will be processed toward publication in accordance with provisions of NRS 533.360.

Respectfully submitted,



William J. Newman
State Engineer

Dated this 13th day
of March, 1981

WJN?BAR/js