

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

IN THE MATTER OF CANCELLED PERMIT 27558,))
ISSUED TO APPROPRIATE THE UNDERGROUND))
WATERS OF THE MASON VALLEY GROUNDWATER))
BASIN (108), LYON COUNTY, NEVADA.))

RULING

4215

GENERAL

I.

Application 27558 was filed on June 20, 1973, by Financial Investments Corporation, to appropriate 1.0 cubic feet per second (cfs) of water from an underground source, for quasi-municipal and domestic purposes to serve 381 trailer units, to be used in conjunction with Permit 26717.^{1,2} Permit 27558 was approved on November 9, 1973, for 1.0 cfs for quasi-municipal and domestic purposes within the N $\frac{1}{2}$ SW $\frac{1}{4}$ Section 8, T.13N., R.26E., M.D.B.&M. The point of diversion is located within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 8.¹ On November 16, 1979, Permit 27558 was assigned to Nick and Shirley Nadel.¹

II.

The proof of completion of work was timely filed on July 8, 1975. The proof of beneficial use was first due on June 9, 1978. Seven extensions of time were granted until September 6, 1985.³ On September 9, 1985, a certified notice was sent to Nick and Shirley Nadel, in which the permittees were informed that Permit 27558 was in poor standing and would be cancelled if appropriate documents were not filed within 30 days. The permittees failed to file the proof of beneficial use or an application for extension of time. Therefore, on November 7, 1985, Permit 27558 was cancelled for failure to comply with the terms of the permit.⁴

¹ File No. 27558, official records in the Office of the State Engineer.

² Permit 26717 was cancelled on September 22, 1978, for failure to comply with the terms of the permit.

³ NRS 533.380 and NRS 533.400.

⁴ NRS 533.410.

III.

On December 2, 1985, the permittee filed a written petition with the State Engineer, to review the cancellation of Permit 27558 at a public hearing.¹ A hearing was scheduled for January 21, 1986. However, Mr. Nick Nadel requested and later was granted a continuance, due to the death of his wife, Shirley Nadel.¹

No action on cancelled Permit 27558 occurred until May 3, 1995, when a request to convene the hearing was filed by Mr. Barry Nadel, the son of the permittee.¹

On June 19, 1995, a hearing was held to review the cancellation of Permit 27558. The hearing officer for the State Engineer took administrative notice of File No. 27558 and all records in the office of the State Engineer.⁵

FINDINGS OF FACT

I.

Permit 27558 was approved on November 9, 1973, and was cancelled on November 7, 1985. At the time the application was originally filed, the applicants estimated that the time required to construct the works of diversion would be three years.¹ They completed construction of the well and timely filed the proof of completion of work on September 1, 1976.

Completing the construction of the well is only the first step in a long process to place the water to beneficial use. Next, lots must be created in accordance with NRS 278A, then houses must be built on the lots and a water distribution system must be constructed, then people must move into the houses and use the water beneficially. The applicants estimated that the time required to place the water to beneficial use would be five years.¹ In the twelve years between 1973 and 1985 when Permit 27558 was active, only the first step of constructing the well had been completed.

The permittees made some attempt to advance the process of placing the water to beneficial use under Permit 27558. In 1979, the Lyon County Commission granted a change in zoning for the

⁵ Transcript p. 16, Public Administrative Hearing before the State Engineer, June 19, 1995.

permittees' property from five-acre lots to one-acre lots.³ The permittees planned to create 60 one-acre residential lots, a four-acre commercial lot, and two one-acre lots held for waterworks development.⁶ However, the permittees failed to implement their plan. The subdivision process was not started and no lots were ever created. There is no evidence on the record that any effort, beyond the 1979 zoning change, was made to further the process.

The State Engineer finds that no effort toward placing the water under Permit 27558 to beneficial use, was made between the years 1979 and 1985. The State Engineer further finds that the permittees did not proceed in good faith and with reasonable diligence to complete the steps necessary to place the water to beneficial use under Permit 27558.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this action.⁷

II.

If the holder of a permit fails, before the date set for filing, to file with the State Engineer proof of beneficial use, the State Engineer shall advise the holder of the permit, by certified mail, that the permit is held for cancellation. If the holder, within 30 days after the mailing of this notice, fails to file the required document or an application for extension of time, the State Engineer shall cancel the permit.⁸

III.

If any permit is cancelled, the holder of the permit may, within 60 days of the cancellation, file a written petition with the State Engineer, requesting a review of the cancellation at a

⁶ Exhibit No. 6, Public Administrative Hearing before the State Engineer, June 19, 1995.

⁷ NRS 533 and 534.

⁸ NRS 533.410.

public hearing. The State Engineer may, after receiving and considering evidence, affirm, modify, or rescind the cancellation.⁹

IV.

If, in the judgement of the State Engineer, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the application, the State Engineer shall cancel the permit.¹⁰

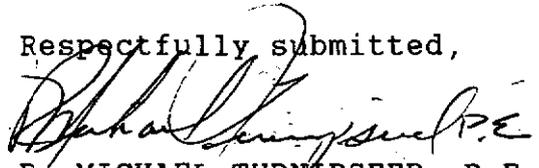
V.

At the hearing on June 19, 1995, the permittee was given the opportunity to provide evidence and testimony related to the efforts to place the water to beneficial use under Permit 27558. The evidence shows that all effort ceased in 1979 after the property in question was zoned for one-acre lots. The subdivision process set forth in NRS 278A was not started and the one-acre lots were never created. The permittees did not proceed in good faith and with reasonable diligence to perfect the appropriation of water under Permit 27558. The State Engineer concludes that the cancellation of Permit 27558 should be affirmed.

RULING

The cancellation of Permit 27558 is hereby affirmed on the grounds that the permittees were not proceeding in good faith and with reasonable diligence to place the water to a beneficial use.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 14th day of
September, 1995.

⁹ NRS 533.395(2).

¹⁰ NRS 533.395(1).