

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

IN THE MATTER OF CANCELLED PERMIT)
54986 FILED TO APPROPRIATE THE)
PUBLIC WATERS FROM AN UNDERGROUND)
SOURCE WITHIN THE LAS VEGAS)
ARTESIAN GROUNDWATER BASIN (212),)
CLARK COUNTY, NEVADA.)

RULING
4581

GENERAL

I.

Permit 54986 was granted on November 28, 1990, to appropriate 0.006 cubic foot per second, not to exceed 1.095 million gallons annually of water from the Las Vegas Artesian Groundwater Basin for quasi-municipal purposes on three lots of a minor three lot subdivision within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 32, T.19S., R.60E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ said Section 32.¹

II.

Under the terms of Permit 54986, the permittee was to file in the office of the State Engineer on or before December 28, 1995, Proof of Beneficial Use of the waters.¹

FINDINGS OF FACT

I.

On December 29, 1995, the State Engineer sent by certified mail to the permittees of record Michael and Debra Stephens, and to their agent of record, a Notice that they had failed to comply with the terms of their permit in that Proof of Beneficial Use of the water had not been filed in accordance with the permit terms.¹ The permittees were given 30 days in which to file the required documentation. The certified mailing to the Stephens was sent to the address of record on file in the office of the State Engineer.¹ The certified mailing to the Stephens was returned by the United States Postal Service marked "1st, 2nd notice and return".¹ On

¹ File No. 54986, official records in the office of the State Engineer.

March 18, 1996, the Notice was resent to the Stephens by regular mail; however, that letter was also returned by the United States Postal Service marked "Attempted Not Known".¹ The State Engineer finds an endorsed receipt for the certified mailing to the agent of record was received in the office of the State Engineer on January 4, 1996. The State Engineer finds that no documentation was filed in response to the notice of non-compliance with the permit terms.

II.

Permit 54986 was cancelled on May 3, 1996, for failure to comply with the permit terms for filing Proof of Beneficial Use.¹ The State Engineer finds that notice of said cancellation was sent by certified mail to the permittees at the address of record in the office of the State Engineer and to the agent of record.¹ The State Engineer further finds that the certified notice to the permittees was again returned by the United States Postal Service and that an endorsed receipt was received in the office of the State Engineer from the agent of record on May 8, 1996. The notice of cancellation stated that the permittees may under the provisions of NRS § 533.395(2) within 60 days from the date of the cancellation file a petition for review of the cancellation at a public hearing.

III.

On June 10, 1997, Michael Stephens filed a Petition for Review of Canceled Permit.¹ The State Engineer finds that the petition was not timely filed as it was 11 months past the statutory time allowed for filing a petition.

IV.

The State Engineer finds that on August 4, 1997, a notice of hearing was sent in error to the permittees. The State Engineer mistakenly thought the petition stated 1996 when in fact it was filed in 1997.

V.

Since an administrative hearing had been noticed, the State Engineer's hearing officer allowed the permittees to provide testimony which indicated that most of the water under the permit has not been put to beneficial use. The permittees stated that they have not had the monetary funds to develop the property and use the water, that only one house has been built on one of the $\frac{1}{2}$ acre lots, and nothing has been built on the other $\frac{1}{2}$ acre lot or the one acre lot.² The State Engineer finds that the hearing officer should not have conducted a hearing as no petition for review had been timely filed; therefore, there was no basis for a hearing.

V.

The permittees informed the hearing officer that they had moved from the address of record on file in the office of the State Engineer in approximately 1993; however, no notification of a change of address was filed in the office of the State Engineer until the filing of the petition for review of the cancellation. The State Engineer finds it is the responsibility of the permittees to keep this office informed of their current mailing address.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.³

II.

Permit 54986 was cancelled for failure to comply with the permit terms, the permittees and their agent were properly notified and no petition for review of said cancellation was timely filed in the office of the State Engineer. Nevada Revised Statute § 533.410

² Transcript, public administrative hearing before the State Engineer, September 3, 1997, before a representative of the office of the State Engineer.

³ NRS Chapters 533 and 534.

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requires that the State Engineer shall cancel a permit if the permittee fails to timely file Proof of Beneficial Use of the waters. The State Engineer concludes that the permittees did not timely file Proof of Beneficial Use of the waters, that the Petition for Review of Canceled Permit was not timely filed, and there is no statutory authority by which he can rescind the cancellation of Permit 54986.

RULING

The cancellation of Permit 54986 is hereby affirmed.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/RAC/ab

Dated this 13th day of
November, 1997.