

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

1146

O R D E R

Patrick Laughlin
1928 View Drive
Elko, Nevada 89801
Certified Mail P 444 504 430

WHEREAS, Nevada Revised Statutes (NRS) 533.030 section 1 states, "Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter AND NOT OTHERWISE." (Emphasis added).

WHEREAS, NRS 533.325 states,

Any person who wishes to appropriate any of the public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, shall, before performing any work in connection with such appropriation, change in place of diversion or change in manner or place of use, apply to the state engineer for a permit to do so.

WHEREAS, NRS 535.010 states,

1. Any person proposing to construct a dam in this state shall, before beginning construction, obtain from the state engineer a permit to appropriate, store and use the water to be impounded by or diverted by the dam.

2. Any such person obtaining or possessing such a permit shall:

(a) Before constructing, reconstructing or altering in any way any dam, notify the state engineer thereof; and

(b) Where the dam is or will be 20 feet or more in height, measured from the downstream toe to the crest of the dam, or is less than 20 feet in height and will impound more than 20 acre-feet of water, submit to the state engineer in triplicate plans and specifications thereof for his approval 30 days before construction is to begin.

WHEREAS, NRS 535.090 states,

1. Whenever any appropriator of water has the lawful right of

way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his works or prevent convenient access thereto.

2. Any person who violates any of the provisions of this section is guilty of a misdemeanor."

WHEREAS, all rights to water of the Humboldt River and its tributaries have been determined and decreed in what is known as the Bartlett and Edwards Decrees. Page 244 of said Bartlett Decree states in part:

It is further ordered, adjudged and decreed that each and every water user...is hereby perpetually enjoined and restrained as follows, to wit:

- a) From at any time diverting or using any of the water of the Humboldt stream system and its tributaries herein before mentioned, except to the extent and in the amount and in the manner and at the time or times set by this decree....

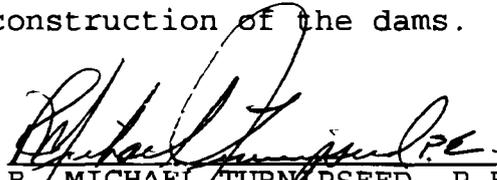
WHEREAS, during a field investigation conducted on May 26, 1998, by this office and the duly appointed and authorized Humboldt River Water Commissioners, it was determined that two ponds had been constructed on a tributary to Adobe Creek in the NW¼ NW¼ and the SW¼ NW¼ Section 14, T.35N., R.54E., M.D.B.&M., and that the stream flow from this tributary was affected between the inlet of the upper pond and the outlet of the lower pond. The first pond has a height of 18 feet and a crest of 185 feet and the second pond has a height of 24 feet and a crest of 205 feet.

WHEREAS, a search of the records of the State Engineer found that the waters of this tributary are part of the Humboldt stream system and its tributaries.

WHEREAS, a search of the records of the State Engineer found no application on file for appropriation for beneficial use of water from the Humboldt stream system and its tributaries for the two ponds in the above listed places.

NOW, THEREFORE, YOU ARE HEREBY ORDERED to cease and desist interference with water from this tributary to Adobe Creek, and within 30 (thirty) days of the date of this Order, remove the two

dams and ponds and restore the water flow from Burbank Canyon to the stream course existing before construction of the dams.


R. MICHAEL TURNIPSEED, P.E.
State Engineer

Dated at Carson City, Nevada this
5th day of June, 1998.