

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

IN THE MATTER OF PERMITS 41841, 41842,))
41848 AND 41849 FILED TO APPROPRIATE))
THE PUBLIC WATERS FROM AN UNDERGROUND))
SOURCE WITHIN THE BIG SMOKY VALLEY))
(NORTHERN PART) GROUND WATER BASIN IN))
LANDER COUNTY, NEVADA.))

RULING

3818

GENERAL

I.

Permit 41841¹ was issued on March 12, 1985, to Charlotte Peck to appropriate 5.4 c.f.s. of water from an underground source to irrigate 320 acres of land within the S1/2 Section 23, T.18N., R.45E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 23, T.18N., R.45E., M.D.B.&M.¹

Permit 41842¹ was issued on March 12, 1985 to Russell Peck to appropriate 5.4 c.f.s. of water from an underground source to irrigate 320 acres of land within the N1/2 Section 23, T.18N., R.45E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NW1/4 Section 23, T.18N., R.45E., M.D.B.&M.¹

Permit 41848¹ was issued on April 9, 1985 to George R. Cripe to appropriate 5.4 c.f.s. of water from an underground source to irrigate 320 acres of land within the N1/2 Section 21, T.18N., R.45E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 21, T.18N., R.45E., M.D.B.&M.¹

Permit 41849¹ was issued on April 9, 1985 to Eliane Andreë Cripe to appropriate 5.4 c.f.s. of water from an underground source to irrigate 320 acres of land within the S1/2 Section 21, T.18N., R.45E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 21, T.18N., R.45E., M.D.B.&M.¹

¹ Public record in the office of the State Engineer.

Application for Extension of Time for filing proof of completion and proof of beneficial use was timely filed on May 14, 1991 for Permits 41841, 41842, 41848 and 41849 for reasons as follows:¹

That due to court action or problems incidental to the project making continuance of work under the permit impractical, a one year extension is requested. The permit holder is informed that the land in question is involved in lawsuit filed against the Department of Interior by the National Wildlife Federation. An injunction in this matter has been entered according to the BLM published in the Federal Register on February 18, 1986. (Vol. 51, page 5809) This has added uncertainty to the project. Permit holder has under the circumstances proceeded with diligence, and based upon the facts and circumstances of this matter has established good cause for granting the extension of time requested.

Accordingly. . . I have been unable to comply with the provisions of said permit.

October 7, 1989.

As of this date, October, 7, 1989, I have received no further information from the Bureau of Land Management concerning whether this lawsuit has been resolved, settled or dismissed. I have filed an appeal for denial of extension of time by the BLM.

October 31, 1990.

On or about October 17, 1990, I received a letter from the Interior Board of Land Appeals affirming the denial of extension of time by the BLM. The letter stated that the District Court dismissed the National Wildlife Federation suit for lack of standing, that the District Court decision was reversed on appeal, but that recently (no date given) it was affirmed by the Supreme Court. This is the first communication I have had from the BLM concerning the law suit since June 25, 1986 and this only incidental in their affirmation of denial of extension of time.

I do not plan to let the matter rest here. It was unreasonable of the BLM not to grant an extension of time under the circumstances and uncertainties connected with the situation. I plan to contest this action and/or bring suit against the BLM. May 1, 1991.

In addition to the above actions, we are also currently working with our representatives in Congress to see if legislation is necessary to clarify this situation.

Accordingly. . . I have been unable to comply with the provisions of said permit at this time.

FINDINGS OF FACT

I.

Records and information available to the State Engineer indicate that Permits 41841, 41842, 41848 and 41849 were filed in support of Desert Land Entry applications.²

II.

By letter dated June 5, 1991, the United States Department of Interior, Bureau of Land Management, notified the State Engineer that the following Desert Land Entry Applications have been closed and the case files are dead.²

<u>BLM</u> <u>ENTRY NO.</u>	<u>NAME</u>	<u>LAND DESCRIPTION</u>
N-30782	Edwin Hargitt	T.18N., R.45E., Sec. 21, N1/2
N-30784	Elaine A. Cripe	T.18N., R.45E., Sec. 21, S1/2
N-30795	Russell N. Peck, Jr.	T.18N., R.45E., Sec. 23, N1/2
N-30796	Charlotte Peck	T.18N., R.45E., Sec. 23, S1/2

² Public record in the office of the State Engineer filed under Permits 41841, 41842, 48148 and 41849.

III.

The State Engineer finds that the permittees under Permits 41841, 41842, 41848 and 41849 do not own or control the land described under the place of use of the permits.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.³

II.

Permits 41841, 41842, 41848 and 41849 were filed in support of Desert Land Entries. The Desert Land Entry applications described under II of Findings have been closed on the records of the Bureau of Land Management, therefore, the permittees do not own or control the land described under the place of use of the permits and cannot demonstrate the ability to place the water to beneficial use.

III.

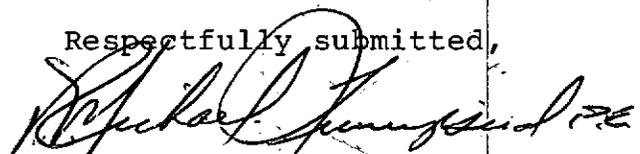
To maintain permits to appropriate the public water for irrigation on lands the permittee does not own or control or where the permittee cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

³ NRS Chapters 533 and 534.

RULING

Permits 41841, 41842, 41848 and 41849 are herewith cancelled and the applications for and extension of time to place the water to beneficial use under permits 41841, 41842, 41848 and 41849 are hereby denied on the grounds that to maintain permits for irrigation purposes on lands that the permittee does not own or control and cannot demonstrate the ability to place the water to beneficial use, would not be in the public interest and welfare.

Respectfully submitted,


E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SW/pm

Dated this 25th day of
July 1991.