

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

IN THE MATTER OF CANCELLED PERMIT 45241 )  
TO APPROPRIATE THE UNDERGROUND WATER OF )  
THE TRUCKEE CANYON SEGMENT GROUNDWATER )  
BASIN AND CANCELLED PERMITS 45245 AND )  
45246 TO CHANGE THE DECREED WATERS OF )  
THE TRUCKEE RIVER, WASHOE COUNTY, )  
NEVADA. )

RULING  
# 4163

GENERAL

I.

Application 45241 was filed on January 18, 1982, by Clyde K. Emery, Jr., to appropriate 1.0 cfs of water from an underground source for quasi-municipal purposes within portions of Sections 8 and 9, T.19N., R.18E., M.D.B.&M., Washoe County, Nevada. The point of diversion is described as being within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 9. Permit 45241 was approved on March 1, 1983, for 1.0 cfs and not to exceed 251.7 AFA, for quasi-municipal purposes to serve 659 single family dwellings and a 25,000 square foot commercial development. Permit 45241 was issued supplemental to surface water Permits 45245 and 45246 and is only to be exercised when surface water is not available.<sup>1</sup>

II.

Application 45245 was filed on January 18, 1982, by Clyde K. Emery, Jr., to change the point of diversion, manner of use and place of use of 2.0 cfs, a portion of waters of the Truckee River, heretofore decreed under Claims 94 and 94A of the Orr Ditch Decree<sup>2</sup> for quasi-municipal purposes. The intended place of use was portions of Sections 8 and 9, T.19N., R.18E., M.D.B.&M., and the point of diversion was located in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 9.

<sup>1</sup> File No. 45241, official records in the Office of the State Engineer.

<sup>2</sup> Final Decree in United States v. Orr Water Ditch Co., In Equity Docket No. A-3 (D. Nevada, 1944).

Permit 45245 was approved on March 1, 1983, for 2.0 cfs and not to exceed 202.7 AFA, as decreed, for quasi-municipal purposes to serve 659 dwelling units and a 25,000 square foot commercial space.<sup>3</sup>

III.

Application 45246 was filed on January 18, 1982, by Clyde K. Emery, Jr., to change the place of use of 2.03 cfs of water heretofore appropriated under Permit 27124 for quasi-municipal purposes. Permit 27124 was approved on May 29, 1973, filed to change the point of diversion, place of use and manner of use of 2.03 cfs, a portion of the waters of the Truckee River, heretofore decreed under Claims 94 and 94A of the Orr Ditch Decree for quasi-municipal purposes. The intended place of use under Application 45246 was portions of Sections 8 and 9, T.19N., R.18E., M.D.B.&M., and the point of diversion was located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 9. Permit 45246 was approved on March 1, 1983, for 2.03 cfs, not to exceed 206 AFA, as decreed, for quasi-municipal purposes to serve 659 dwelling units and a 25,000 square foot commercial space.<sup>4</sup>

IV.

The proof of beneficial use for Permits 45241, 45245 and 45246 was last due on April 1, 1994. A final notice was sent to the permittee on May 6, 1994, stating that the proof of beneficial use or a request for extension of time must be filed within thirty days of the date of the final notice or Permits 45241, 45245 and 45246 would be cancelled. The final notice was received by the Permittee on May 18, 1994. Because thirty days from the date of the final notice, June 5, 1994, fell on a Sunday, the final date for filing the required documents was set at June 6, 1994. At close of business on June 6, 1994, the required documents were not received

---

<sup>3</sup> File No. 45245, official record in the Office of the State Engineer.

<sup>4</sup> File No. 45246, official record in the Office of the State Engineer.

in the State Engineer's Office and on June 21, 1994, Permits 45241, 45245 and 45246 were cancelled.<sup>1,3,4</sup>

V.

On July 11, 1994, the State Engineer received a written petition from the Permittee requesting a review of cancelled Permits 45241, 45245 and 45246. On Tuesday, July 26, 1994, a hearing was scheduled, however, at the request of the Permittee, the hearing was postponed to Thursday, July 28, 1994. The hearing to review the cancellation was held on that date.

FINDINGS OF FACT

I.

In a letter to the Permittee dated January 19, 1994, the State Engineer stated that the Permittee was not proceeding in good faith and with reasonable diligence to perfect Permits 45241, 45245 and 45246, as required in NRS 533.395(1). The State Engineer required the Permittee to submit evidence that demonstrates the progress to complete the project. The Permittee was required to answer specific questions that were listed on the "Work Progress Information Sheet for Water Right Permits 45241, 45245 and 45246".<sup>1,3,4</sup> In the process of preparing the information and documents that answered the questions, the Permittee communicated with a member of the State Engineer's staff. The Permittee testified that he called a staff engineer on June 6, or June 7, 1994, he wasn't sure which, and inquired about the final notice which stated that Permits 45241, 45245 and 45246 would be cancelled.<sup>5</sup> The Staff Engineer was on leave work on June 6, 1994, therefore, the phone conversation occurred on June 7, 1994, one day after the final date for filing the required documents under

---

<sup>5</sup> Transcript of Public Administrative Hearing before the State Engineer, July 28, 1994.

Permits 45241, 45245 and 45246.<sup>6</sup> The State Engineer finds that the Permittee did not respond in a timely manner to the final notice and Permits 45241, 45245 and 45246 were rightfully cancelled.

II.

Permits 45245 and 45246 were issued to change a portion of the decreed waters of the Truckee River under Claim No's. 94 and 94A of the Orr Ditch Decree.<sup>2,3,4</sup> If the cancellation of these permits were rescinded, the original effective date of appropriation of April 10, 1874, would be vacated and replaced by July 11, 1994, the date of filing the written petition to review the cancellation.<sup>7</sup> In a fully appropriated river system such as the Truckee River, a water right with a 1994 priority would very rarely be served. A water right with this limitation is not suitable for quasi-municipal use, where homes and businesses require constant and dependable water service. The State Engineer finds that the reinstatement of Permits 45245 and 45246 and the resultant loss of priority would render these water rights unsuitable for quasi-municipal use. The State Engineer further finds that these water rights would never be put to a continuous beneficial use because they would only rarely be in priority to be served water from the Truckee River.

III.

Permit 45241 was issued to appropriate the underground waters of the Truckee Canyon Segment Groundwater Basin.<sup>1</sup> The distribution of the underground waters in this basin is presently not subject to regulation and, therefore, they represent a reliable source of water for Permit 45241, even with a 1994 priority. The State Engineer finds that the reinstatement of Permit 45241 and the loss

---

<sup>6</sup> In a conversation, the Staff Engineer stated that on June 7, 1994, he discussed the Work Progress Information Sheet with the Permittee. He did not advise the Permittee to ignore the requirements of the certified Final Notice.

<sup>7</sup> When a cancelled permit is rescinded, NRS 533.395, requires that the effective date of appropriation be replaced by the date of filing the written petition with the State Engineer.

of priority would allow this water right to continue to be suitable for quasi-municipal use.

IV.

The Permittee failed to respond to the final notice in a timely manner. The Permittee felt that as long as he was complying with the request for additional information on the Work Progress Information Sheet, the permits would not be cancelled.<sup>5</sup> At the hearing, the Permittee submitted the required additional information. In the Work Progress Information Sheet, the Permittee stated that water is being used to serve 52 existing homes in the subdivision containing 215 lots. Water is also being used for irrigation of common areas and for a 3500 square foot recreation building. The State Engineer finds that progress is being made to place the water to beneficial use. The State Engineer further finds that there is good cause shown by the Permittee to rescind the cancellation of Permit 45241.

V.

Permit 45241 was issued to be supplemental to Permits 45245 and 45246 and was only to be used when the surface water (Truckee River) was not available.<sup>1</sup> Because Permits 45245 and 45246 were cancelled, Permit 45241, after reinstatement, would become the primary water right to serve the subdivision. The State Engineer finds that elevating the status of Permit 45241 from supplemental to primary is acceptable as long as the original primary permits (Permits 45245 and 45246) remain inactive and the waters once appropriated under said permits remain in the Truckee River.

VI.

The Truckee Canyon Segment Groundwater Basin was designated by the State Engineer as a basin in need of additional administration.<sup>8</sup> Accurate records must be kept of the quantity of water removed from the groundwater. The State Engineer finds that

---

<sup>8</sup> State Engineer's Order No. 706, March 1, 1978, as authorized in NRS 533.030.

upon reinstatement of cancelled Permit 45241, the Permittee must submit a quarterly report which details the quantity of water pumped each month under Permit 45241.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter.<sup>9</sup>

II.

If the holder of a Permit from the State Engineer, within thirty days of the date of the final notice, fails to file with the State Engineer the required proof of beneficial use or an application for extension of time, the State Engineer shall cancel the permit.<sup>10</sup>

III.

If a permit is cancelled, the holder of the permit may file a written petition with the State Engineer, requesting a review of the cancellation. The State Engineer may, after receiving and considering evidence regarding the cancelled permit, affirm, modify, or rescind the cancellation.<sup>11</sup>

IV.

If the decision of the State Engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the State Engineer.<sup>12</sup>

V.

When the cancellation of a permit is rescinded and the permit is reinstated to good standing, there is generally a reasonable expectation that the water under the reinstated permit will be put

---

<sup>9</sup> NRS 533 and 534.

<sup>10</sup> NRS 533.410.

<sup>11</sup> NRS 533.395(2).

<sup>12</sup> NRS 533.395(3).

to beneficial use. That is not the case with respect to cancelled Permits 45245 and 45246. Should the cancellation of these permits be rescinded and they be reinstated under the 1994 priority date, they would almost never receive water from the Truckee River. There is no possibility that the water under these permits would ever be put to beneficial use. Therefore, Permits 45245 and 45246 shall remain cancelled.

VI.

If the cancellation of Permit 45241 were rescinded and Permit 45241 were reinstated as the primary water right with a 1994 priority, the Permittee would be able to provide reliable water service to the subdivision. There is a reasonable expectation that the water would be placed to beneficial use. There is good cause shown by the Permittee to rescind the cancellation of Permit 45241. Therefore, Permit 45241 shall be reinstated as the primary permit to serve the subdivision under the condition that Permits 45245 and 45246 remain cancelled and the water under said permits remain in the Truckee River.

VII.

In order to properly manage the groundwater resource in the Truckee Canyon Segment, the State Engineer requires accurate records to be kept regarding the quantity of water removed from the groundwater. Therefore, the permittee should submit a quarterly report within thirty days after the end of the calendar quarter which shows the quantity of water pumped from the ground water under Permit 45421 for each month during that quarter.

RULING

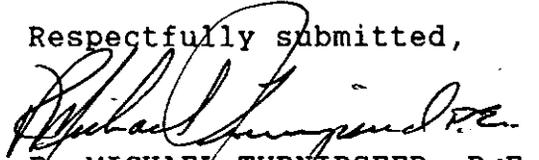
The cancellation of Permit 45241 is hereby rescinded and Permit 45241 is hereby reinstated as the primary permit to serve the place of use, with an effective date of appropriation of July 11, 1994. The Permittee is required to submit a quarterly report, showing the quantity of groundwater pumped during that quarter. The Permittee is granted a period of thirty days from the date of

Ruling  
Page 8

this ruling to file a request for extension of time to file the proof of beneficial use under Permit 45241.

The cancellation of Permits 45245 and 45246 is hereby affirmed and those water rights are forever lost. The water under said permits shall remain in the Truckee River.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 2nd day of  
February, 1995.