

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

IN THE MATTER OF THE REINSTATEMENT )  
OF CANCELLED PERMIT 44285 FILED TO )  
CHANGE THE POINT OF DIVERSION AND )  
PLACE OF USE OF THE WATERS OF AN )  
UNDERGROUND SOURCE HERETOFORE )  
APPROPRIATED UNDER PERMIT 31268, )  
IN THE CARSON DESERT, CHURCHILL )  
COUNTY, NEVADA. )

RULING

# 3808

GENERAL

I.

Application 44285 was filed on August 12, 1981, by Clarence H. Niebuhr requesting permission to change the point of diversion and the place of use of the waters of an underground source, heretofore appropriated under Permit 31268 for irrigation and domestic purposes within the E1/2, Section 1, T.18N., R.26E., M.D.B.&M. The existing point of diversion under Permit 31268 was located within the SE1/4 NW1/4, Section 34, T.18N., R.28E., M.D.B.&M.<sup>1</sup> The proposed point of diversion under Application 44285 is described as being within the NE1/4 NE1/4, Section 1, T.18N., R.26E., M.D.B.&M.<sup>2</sup> The existing place of use under Permit 31268 was for the irrigation of 240 acres in the SE1/4 NW1/4, NE1/4 SW1/4, S1/2 NE1/4, N1/2 SE1/4 and S1/2 SE1/4, Section 34, T.18N., R.28E., M.D.B.&M.<sup>1</sup> The proposed place of use under Application 44285 was for the irrigation of 240 acres within the E1/2 Section 1, T.18N., R.26E., M.D.B.&M.<sup>2</sup>

II.

Permit 44285 was issued on November 12, 1982, for 4.0 c.f.s. (cubic feet per second) for the irrigation of the 240 acres as mentioned above.<sup>2</sup>

<sup>1</sup> See State Engineer's file under Permit 31268.

<sup>2</sup> See State Engineer's file under Permit 44285.

III.

Permit 47594 was issued on July 6, 1984, to change a portion of the point of diversion and place of use of Permit 44285. The amount changed by Permit 47594 was 1.57 c.f.s. and 480 acre feet annually for the irrigation of 120 acres. The remaining portion of water right remaining under 44285 was 2.43 c.f.s. and 480 acre feet for the irrigation of 120 acres as shown on the supporting map under Permit 47594.<sup>3</sup>

FINDINGS OF FACT

I.

The State Engineer finds that the place of use under the original Permit 31268 is represented by 240 acres within the SE1/4 NW1/4, NE1/4 SW1/4, S1/2 NE1/4, N1/2 SE1/4 and S1/2 SE1/4, Section 34, T.18N., R.28E., M.D.B.&M.<sup>4</sup>

II.

Permit 44285 has been granted three extensions of time to file the required Proof of Beneficial Use and Cultural Map and four extensions of time to file the required Proof of Completion of Work, with December 1, 1987 being the most recent due date.<sup>5</sup>

---

<sup>3</sup> See State Engineer's file under Permit 47594.

<sup>4</sup> See State Engineer's file under Permit 31268.

<sup>5</sup> See State Engineer's file under Permit 44285.

III.

Upon approval of the last extensions of time, the permittee was advised by letter dated January 20, 1987, that no further extensions would be granted except for good cause shown as provided under NRS 533.390 and 533.400.<sup>5</sup>

IV.

The latest application for extension of time to file the required proofs and map was received at the State Engineer's Office on January 6, 1988. The application explained that due to, "recent foreclosure and change of ownership of the property the new owner Connecticut General Life Insurance Company is unable to file the proof of Beneficial Use under this permit." Wherefore permittee requested an extension of time for one year for filing the Proof of Completion of Work and Proof of Beneficial Use.<sup>5</sup>

V.

The application for extension of time to file the Proof of Completion of Work was denied by the State Engineer on February 22, 1988 with the provision that the Proof of Completion of Work under Permit 44285 must be submitted to the State Engineer within thirty (30) days of the date of the notice of denial. The permittee was further advised that failure to comply would result in the cancellation of the permit.<sup>5</sup>

VI.

Permit 44285 was cancelled on March 25, 1988 for failure of the permittee to submit the required Proof of Completion, Proof of

Beneficial Use and Cultural Map, as set forth under Chapter 533 of the Nevada Revised Statutes.<sup>5</sup>

VII.

Consequently, a written petition from the permittee requesting a hearing to review the cancellation action was timely received by the State Engineer on March 30, 1988.<sup>5</sup>

VIII.

After proper notice had been given to all parties of standing, an administrative hearing in the matter of the cancellation of Permit 44285 was held before representatives of the State Engineer in Carson City, on May 20, 1988.<sup>5</sup>

IX.

Clarence H. Niebuhr, appearing on his own behalf offered testimony to support his contention that an eighty (80) acre portion of cancelled Permit 44285 located within the E1/2, Section 1, T.18N., R.26E., M.D.B.&M. had been mistakenly transferred from the S1/2 NW1/4, Section 29, T.18N., R.26E., M.B.D.&M. Mr. Niebuhr further testified that the water right appurtenant to the S1/2 NW1/4, Section 29, T.18N., R.26E., location had been put to beneficial use. The witness indicated that it was his intention to return the eighty acre portion of Permit 44285 in question back to the S1/2 NW1/4, Section 29, T.18N., R.26E., upon its reinstatement by the State Engineer.<sup>6</sup>

---

<sup>6</sup> Transcript of hearing held May 20, 1988, in the matter of Permit 44285 hereinafter referred to as Transcript. See Pages 17-21 and 27-31.

CONCLUSIONS

I.

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

II.

The State Engineer finds that no water has been placed to beneficial use under either Permits 31268 or 44285.

III.

The State Engineer finds that no well was drilled under Permits 31268 or 44285.

IV.

Based upon a review of the records of the State Engineer's Office and the testimony received at the May 20, 1988 hearing, the State Engineer has determined that Permit 31268 and Permit 44285 have at no time been appurtenant to the eighty (80) acres claimed to have been put to beneficial use within the S1/2 NW1/4, Section 29, T.18N., R.26E., M.D.B.&M.

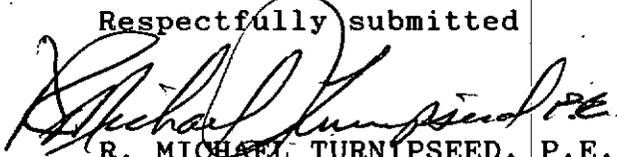
RULING

The cancellation of Permit 44285 is hereby upheld for the failure to comply with the terms of the permits and for failure to

Ruling  
Page No. 6

file the Proof of Completion of Work, the Proof of Beneficial Use and Cultural Map as set forth in NRS 533.

Respectfully submitted



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MB/bk

Dated this 13th day of  
June, 1991.