

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

IN THE MATTER OF CANCELLED PERMIT )  
34821, LOCATED IN THE DIXIE CREEK-) )  
TENMILE CREEK AREA, ELKO COUNTY, )  
NEVADA. )

RULING

# 3904

GENERAL

I.

Permit 34821 was approved on July 16, 1979, for 2.6 c.f.s. from an underground source for irrigation and domestic purposes. The point of diversion is located in the NW1/4 of the SE1/4 of Section 16, T.33N., R.56E., M.D.B.&M. The place of use is within portions of Sections 3, 4, 9, 10, 15 and 16, all within T.33N., R.56E., M.D.B.&M. The current owners of record are Joe M. Legarza and Phyllis A. Legarza.<sup>1</sup>

II.

The proof of completion of work was timely filed on October 19, 1979. The proof of beneficial use and cultural map were originally due on October 16, 1981. Extensions of Time have been granted until October 16, 1990.<sup>1</sup> On November 30, 1990, the State Engineer received another request for extension of time.<sup>2</sup> In a letter dated October 17, 1991, the State Engineer denied the request for extension of time and cancelled Permit 34821.<sup>3</sup> The State Engineer found that the owner has not shown good cause to grant an extension of time and that the owner has not proceeded in good faith and with reasonable diligence as provided under NRS 533.395(1). Mr. Legarza was given 60 days from the date of the October 17, 1991, letter, to petition for a hearing of the matter

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<sup>1</sup> File No. 34821, official records in the office of the State Engineer.

<sup>2</sup> Exhibit 7, Public Administrative Hearing before the State Engineer, March 25, 1992.

<sup>3</sup> Exhibit 4, Public Administrative Hearing before the State Engineer, March 25, 1992.

of cancelled Permit 34821. On October 25, 1991, the State Engineer received a petition, filed on behalf of Mr. Legarza requesting a hearing in the matter of cancelled Permit 34821.<sup>4</sup>

III.

On March 25, 1992, a hearing was held at the Elko Branch Office of the State Engineer, in Elko, Nevada, to consider cancelled Permit 34821.<sup>5</sup>

FINDINGS OF FACT

I.

Mr. Legarza testified that it is his intention to place this water granted under Permit 34821 to beneficial use.<sup>6</sup> The problems that he has had in the past have been related to a bankruptcy.<sup>7</sup> Mr. Legarza further testified that he is now ready to use the well and put the water to beneficial use during the 1992 irrigation season. Mr. McQueary of the Farmers Home Administration confirmed that Mr. Legarza's property was tied up in the bankruptcy proceedings.<sup>8</sup> Mr. McQueary also stated that reinstatement of these water rights is very important to the overall value of Mr. Legarza's assets, and that Mr. McQueary requested the State Engineer to reinstate Permit 34821.

The State Engineer finds that there is good cause shown by the permittee to rescind the cancellation of Permit 34821. The priority date must be changed to the date that the petition for this hearing was received by the State Engineer's office,<sup>9</sup> that

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4 Exhibit 3, Public Administrative Hearing before the State Engineer, March 25, 1992.

5 Exhibit 1, Public Administrative Hearing before the State Engineer, March 25, 1992.

6 Transcript p. 12, Public Administrative Hearing before the State Engineer, March 25, 1992.

7 Transcript pp. 9-10, Public Administrative Hearing before the State Engineer, March 25, 1992.

8 Transcript pp. 10-11, Public Administrative Hearing before the State Engineer, March 25, 1992.

9 NRS 533.395(3).

date being October 25, 1991.<sup>4</sup> The place of use of Permit 34821 is land that has Humboldt River Decreed Rights appurtenant to it. Permit 34821 is, therefore, supplemental to those surface water rights. The proof of beneficial use and the cultural map can be filed at any time. The State Engineer finds that a totalizing meter installed on the pump discharge is required to comply with the terms of Permit 34821.<sup>1</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>10</sup>

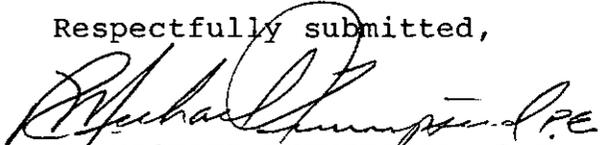
II.

The State Engineer concludes that there is good cause shown by the permittee, for failing to put the water to beneficial use and therefore, Permit 38421 should be reinstated.

RULING

Permit 34821 is hereby reinstated, with the priority date being changed to October 25, 1991. The proof of beneficial use including totalizing meter readings for one irrigation season, and the cultural map will be due 90 days from the date of this ruling, and no further extensions will be granted.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 9th day of  
October, 1992.

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<sup>10</sup> NRS Chapter 533.