

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA
O R D E R

1 0 8 4

DJ Ranch Jersey Valley
Jerry and Deborah Kelly
P. O. Box 849, Dixie Valley No. 2
Winnemucca, NV 89445
Certified Mail No. P 139 029 552

Whereas, the waters of McCoy Spring were appropriated under Permit 4373 and later certificated under Certificate No. 645. Certificate 645 was issued to Florence McCoy and later assigned to Jesusa Saval ($\frac{1}{2}$ interest) and Josephine, Dolores and (Juanita) Marian Saval ($\frac{1}{2}$ interest) for irrigation purposes from Salt Marsh Valley Hot Springs (McCoy Spring) for 1.9385 c.f.s. or 697.86 acre-feet per season to irrigate 193.85 acres of land located within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ Section 29, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ Section 32, and the E $\frac{1}{2}$ NE $\frac{1}{4}$ Section 31, all located within T.26N., R.39E., M.D.B.&M. The date of priority is December 27, 1915.

The point of diversion is described as being located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.26N., R.39E., M.D.B.&M.

Proof of Appropriation 04740 was filed on December 16, 1988, by Jerry and Deborah Kelly claiming a vested right from McCoy Spring for irrigation and stockwatering purposes within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.26N., R.39E., M.D.B.&M. The priority date claimed is 1887 for the irrigation of three acres located within the same parcel as the point of diversion.

Whereas, NRS 533.460 states "The unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it."

Whereas, NRS 533.090 states "Upon written petition to the state engineer, signed by one or more water users of any stream or stream system, requesting the determination of the relative rights of the various claimants to the waters thereof, the state engineer shall, if upon investigation he finds the facts and conditions justify it, enter an order granting the petition and shall make proper arrangements to proceed with such determination."

"The state engineer shall, in the absence of such a petition requesting a determination of relative rights, enter an order for the determination of the relative rights to the use of water of any stream selected by him, commencing on the streams in the order of their importance for irrigation. As soon as practicable after the order is made and entered, the state engineer shall proceed with such determination as provided in this chapter."

Whereas, NRS 535.090 states "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."

Whereas, "Any person who violates any of the provisions of this section", NRS 535.090, "is guilty of a misdemeanor."

Whereas, during the field investigation conducted on November 23, 1993, by this office and the testimony in the form of affidavits from parties with personal knowledge of McCoy Spring it was determined that an illegal diversion

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and waste of water from said spring located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, T.26N., R.39E., M.D.B.&M. is occurring as a result of the berm constructed by Jerry Kelly to obstruct the natural flow. The construction of the berm is interfering with rights held by the Joe Saval Company from McCoy Spring under Permit 4373, Certificate 645. Final disposition of Proof 04740 will have to be determined through the adjudication process described under NRS Chapter 533 in order to make a final determination of its' validity.

Whereas, the hereinabove described activity is in direct violation of the heretofore referenced NRS Chapter 533 and specifically NRS 533.090, NRS 533.460 and NRS 535.090.

NOW THEREFORE YOU ARE HEREBY ORDERED, to Cease and Desist all diversion of water of any sort and return all water to the natural channel historically utilized under Permit 4373, Certificate 645.

Failure to cease diversion of water and returning said water to the natural channel will result in the appropriate judicial action.


R. Michael Turnipseed, P.E.
State Engineer

Dated at Carson City, Nevada,

this 21st day of December, 1993

cc: Joe Saval Company
Larry Reynolds, Esq.