

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

1135

ORDER

Thomas and Candyce Wipfli
P. O. Box 97
Wellington, Nevada 89444
Certified Mail P 251 335 556

WHEREAS, the records of the Lyon County Assessor's Office show that Thomas & Candyce Wipfli are the owners of the parcel of land described by Lyon County Assessor as Parcel No. 10-191-08, consisting of 40 acres of land within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.11N., R.23E., M.D.B.& M., in Smith Valley.

WHEREAS, Nevada Revised Statutes (NRS) 533.030 section 1 states, "Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter AND NOT OTHERWISE." (Emphasis added).

WHEREAS, NRS 535.010 states, "Any person proposing to construct a dam in this state shall, before beginning construction, obtain from the state engineer a permit to appropriate, store and use the water to be impounded by or diverted by the dam."

WHEREAS, NRS 535.090 states,

"1. 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.

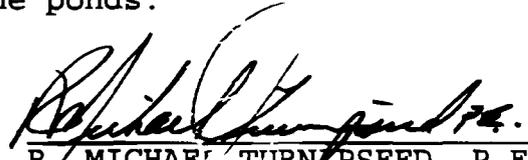
"2. Any person who violates any of the provisions of this section is guilty of a misdemeanor."

WHEREAS, during a field investigation conducted on July 10, 1997, by this office it was determined that two ponds had been constructed at the mouth of Burbank Canyon in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 9, T.11N., R.23E., M.D.B.& M., and that the stream flow from Burbank Canyon was affected between the inlet of the upper pond and the outlet of the lower pond.

WHEREAS, a search of the records of the State Engineer found only two applications had been filed and approved as permits for water from Burbank Canyon, and that one of the permits, Permit 5628, had been cancelled. On record and having standing is Certificate 322, granted for Permit 1711, with a priority date of June 8, 1910, for 0.173 cfs of water from Burbank Canyon for irrigation of 17.3 acres within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 4 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 10.

WHEREAS, a search of the records of the State Engineer found no application on file for appropriation for beneficial use of water from Burbank Canyon for the two ponds.

NOW, THEREFORE, YOU ARE HEREBY ORDERED to cease and desist interference with water from Burbank Canyon, and, within 90 (ninety) days of the date of this Order, remove the two ponds and restore the water flow from Burbank Canyon to the stream course existing before construction of the ponds.



R. MICHAEL TURNPSEED, P.E.
State Engineer

Dated at Carson City, Nevada this
6th Day of AUGUST, 1997.