

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

IN THE MATTER OF PERMIT 7253),
FILED TO APPROPRIATE THE PUBLIC),
WATERS OF A SURFACE WATER SOURCE),
WITHIN THE PLEASANT VALLEY),
HYDROGRAPHIC BASIN (88), WASHOE),
COUNTY, NEVADA.)

RULING

#5353

GENERAL

I.

Application 7253 was filed on November 21, 1924, by I.D. Smith to appropriate 5 cubic feet per second (cfs) of water from the waters developed by means of a drain ditch excavation in the Pleasant Valley Hydrographic Basin, Washoe County, Nevada, for irrigation, stockwatering and domestic purposes within the E $\frac{1}{4}$ of Section 7, the W $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 8, and Section 4, all in T.17N., R.20E., M.D.B.& M. The proposed point of diversion was described as being drain ditch heads within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7 extending through the SE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M.¹

II.

A permit was issued under the application in 1925, and Proof of Beneficial Use of the waters authorized for diversion under Permit 7253 was filed on March 17, 1929.¹

FINDINGS OF FACT

I.

The Proof of Beneficial Use filed indicated that 0.78 cfs was used to irrigated 78.27 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, T.17N., R.20E., M.D.B.&M. The Proof of Beneficial Use indicated in the remarks section that the permittee thought it was doubtful that the State Engineer had any jurisdiction over the water for the reason that it "is not from any natural source but is developed entirely on applicant's lands

¹ File No. 7253, official records of the Office of the State Engineer.

by means of a cut or drain ditch constructed with a dragline dredge...The applicant desires, however, the benefit of the State Engineer's law if the same is applicable but by this development it is not intended to reduce the amount of water granted in the decree of U.S. vs. Orr Water Ditch Company, et al. The developed water is exclusive and in addition to the amount there granted.¹ The State Engineer finds no certificate was ever issued by the State Engineer pursuant to the Proof of Beneficial Use.

II.

The right to use the waters of the Truckee River and its tributaries was determined in the Final Decree issued by the Federal District Court in U.S. v. Orr Water Ditch Co., In Equity A-3 (D.Nev. 1944) ("Orr Ditch Decree"). Claims 651a, 652 and 653 in the name of L.D. Smith in the Orr Ditch Decree adjudicated water rights to the same lands identified in the Proof of Beneficial Use filed under Permit 7253. The right to the use of drain waters was also adjudicated pursuant to the Orr Ditch Decree, but no drains rights were awarded to L.D. Smith. The State Engineer finds L.D. Smith's right to the use of the waters of the Truckee River and its tributaries was established by the Orr Ditch Decree. Therefore, the State Engineer finds that no certificate was issued under Permit 7253, because the limit and extent of L.D. Smith's water rights for the lands identified were determined by the Orr Ditch Decree. The State Engineer finds no reason justifies the existence of Permit 7253 since the water rights of L.D. Smith to the lands in question were adjudicated under the Orr Ditch Decree; therefore, Permit 7253 should be cancelled.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the subject matter of this action and determination.²

¹ NRS chapters 533 and 534.

II.

The State Engineer concludes that since the limit and extent of L.D. Smith's water rights for the lands described in the Proof of Beneficial Use filed under Permit 7253 were determined by the Orr Ditch Decree, no reason justifies the existence of Permit 7253; therefore, Permit 7253 is declared null and void.

RULING

Permit 7253 is hereby declared null and void.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SCT/jm

Dated this 6th day of
May, 2004.