

1 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF DOUGLAS

105

3 * * *

4 IN THE MATTER OF APPLICATIONS
28799, 28800, 28801, and 28802, FILED
5 BY CARSON CITY FOR THE WATERS OF
6 AN UNDERGROUND SOURCE IN CARSON
VALLEY, DOUGLAS COUNTY, NEVADA,

No. 6984

7 Appellant,

8 v.

9 ROLAND D. WESTERGARD, STATE
ENGINEER OF THE STATE OF NEVADA,

10 Respondent.

11 _____
12 FINDINGS OF FACT CONCLUSIONS OF LAW AND AMENDED RULING

13 INTRODUCTION

14 Respondent, ROLAND D. WESTERGARD, issued Ruling
15 No. 2061 on May 19, 1975, wherein he denied the four above-
16 numbered applications. The Ruling was timely appealed by
17 Carson City on June 16, 1975. Respondent ROLAND D. WESTERGARD,
18 by and through his Special Deputy Attorney General, EARL M.
19 HILL, filed an Answer to said Appeal on July 3, 1975.

20 On August 20, 1975, Respondent and Appellant, by
21 and through their respective attorneys, entered into a
22 Stipulation wherein Respondent would file an Amended Ruling
23 setting forth with particularly the reasons why said
24 applications were denied. The Order Remanding Appeal was
25 entered August 26, 1975.

26 These Findings of Fact, Conclusions of Law and
27 Amended Ruling are intended to be considered together with
28 Ruling 2061. A copy of Said Ruling is attached hereto as
29 Exhibit "A".

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1 River in that the water sought to be developed from the
2 Ground Water Basin would create a cone of depression of the
3 water table which would encompass the bed of the Carson
4 River, and thereby diminish the surface flow of the river
5 downstream from the cone of depression.¹¹ This finding is
6 expressly limited to the peculiar facts and circumstances of
7 these Applications and is not to be extended, by implication
8 or otherwise, to other situations.

9 IX

10 Should Application 28799, 28800, 28801 and 28802
11 be granted, and should subsequent development of ground
12 water pursuant thereto detrimentally affect prior ground
13 water rights, or surface rights as set forth in U.S.A. v.
14 Alpine Land and Reservoir Co., supra, the State Engineer is
15 required by law to order withdrawals be restricted to conform
16 to priority rights.¹² The effect is to curtail or prohibit
17 pumping of the four wells, the investment loss of more than
18 FIVE MILLION DOLLARS (\$5,000,000.00) being borne by the
19 citizens of Carson City.¹³

20
21 CONCLUSIONS OF LAW

22 1. The State Engineer has jurisdiction of the
23 parties and the subject matter of this action.¹⁴

24 2. The State Engineer is prohibited by law from
25 granting a permit where:

26 (A) There is no unappropriated water at the proposed
27 source, or

28 (B) The proposed use conflicts with existing rights,
29 or

30 (C) The proposed use threatens to prove detrimental to
31 the public welfare.¹⁵

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1 IV

2 After due notice to all parties by letter dated
3 April 8, 1975, a hearing of the Applications and the protests
4 thereto was held by the State Engineer on Monday, April 28,
5 1975, in the Douglas County Courtroom, Minden, Nevada.
6 Extensive evidence, testimony and arguments were presented
7 at that hearing.⁴

8 V

9 The Carson River stream system is presently in
10 litigation in the case captioned "United States of America
11 v. Alpine Land and Reservoir Company, et al.," Civil No.
12 D-183, presently pending before the United States District
13 Court for the District of Nevada.⁵

14 VI

15 There are approximately 27,000 acre feet of potential
16 annual recharge to the Carson Valley Ground Water Basin.⁶
17 The area of the Carson Valley Water Basin, or drainage area
18 is approximately 283,000 acres⁷; and the withdrawal of that
19 quantity applied for and requested by Appellant within less
20 than .12367 percent⁸ of the Water Basin would create a
21 substantial depression of the water table within a close
22 proximity to the proposed wells; and would thereby adversely
23 affect all ground water rights within the Basin,⁹ and
24 particularly those in close proximity to the proposed Points
25 of Diversion.

26 VII

27 The points of diversion under the subject Applications
28 are in close proximity to the natural channel and bed of the
29 Carson River, as it flows through Carson Valley.¹⁰

30 VIII

31 The granting of Applications 28799, 28800, 28801
32 and 28802 would have an effect on the waters of the Carson

1 FINDINGS OF FACT

2 I

3 Applicant CARSON CITY is a political subdivision
4 of the State of Nevada, duly authorized by law to submit
5 Applications to Appropriate the public waters of the State
6 of Nevada.

7 II

8 Applications 28799, 28800, 28801 and 28802 were
9 filed on October 11, 1974, by Carson City to appropriate
10 waters of an underground source. The amount of water applied
11 for under each application is 6.0 cfs and the proposed use
12 of the water is for municipal purposes. The proposed location
13 of the four wells under the applications is known as the
14 Bosc Ranch in Carson Valley, Douglas County, Nevada. The
15 proposed place of use of the water encompasses an area in
16 Douglas County north of the proposed well site, as well as
17 the general urban area of Carson City. The area owned or
18 controlled by the Applicant, containing the proposed points
19 of diversion, comprises 350 acres.¹ The consumptive duty of
20 water for agricultural purposes in the Carson Valley Ground
21 Water Basin varies from approximately 2.1 to 2.75 acre feet
22 per acre.²

23 III

24 Protests to all four of the applications were duly
25 filed as required by law by Gardnerville Town Water Company;
26 Douglas County; Andre and Carol Aldax, Settlemyer Ranches,
27 Inc.; Carson Water Subconservancy District; Herbert P. Witt;
28 Town of Minden; Minden-Gardnerville Sanitation District; the
29 U. S. Department of the Interior, ~~on behalf of its agencies.~~
30 In addition, Application 28799 was protested by Susan and
31 Martin Johnson; and Application 28801 was protested by James
32 Rolph, III.³

FOOTNOTES

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- 1 Public records
- 2 Applicant's Exhibit D, Page 40; Applicant's Exhibit C,
3 Page 13
- 4 Public records located within State Engineer's
5 office
- 6 Public records located within State Engineer's office
- 7 Public records located within State Engineer's office
- 8 Applicant's Exhibit C, Pages 8 and 18; Reporter's
9 transcript of proceedings on the hearing of testimony
10 and evidence on the applications before Roland D.
11 Westergard, State Engineer (hereinafter referred to as
12 transcript), Page 151, line 1
- 13 Applicant's Exhibit C, Page 10
- 14 $\frac{350 \text{ acres}}{283,000 \text{ acres}} \times 100 = .12367\%$
- 15 Applicant's Exhibit C, p. 26, p. 27, p. 30, transcript,
16 p. 38, line 20; p. 39, line 3; p. 40, line 10, lines
17 15 through 24; p. 50, line 3 through 26; all of p. 52;
18 p. 53, lines 25 and 26; p. 60, line 4; p. 63, lines 15
19 through 17; p. 82, line 21; p. 172, line 9, line 21; p.
20 183, line 13, p. 195, line 11
- 21 Public records located within State Engineer's office
22 and Applicant's Exhibit H
- 23 Transcript, p. 54, lines 25 and 26; p. 69, lines 9
24 through 24; p. 76, lines 15 through 17; p. 78, lines 5
25 through 8; p. 80, lines 13 through 17; p. 128, lines 6
26 through 18; p. 198, line 18; Protestant Department of
27 the Interior, Exhibit 2; Transcript, p. 241, line 1; p.
28 245, line 2; p. 258, lines 11 through 20; p. 259, lines
29 21 through 25

- 1 12 NRS 534.110, subsections 3 and 6
2 13 Transcript, p. 101, line 15
3 14 NRS 533.025 and 533.030, subsection 1
4 15 NRS 533.370, subsection 4
5 16 Same as footnote 9
6 17 Same as footnote 9
7 18 Loss of total investment of wells, treatment facilities,
8 and transmission facilities to citizens of Carson City
9 should the State Engineer require curtailment or stoppage
10 of pumping pursuant to NRS 534.110, subsection 6
11 19 Same as footnote 11
12 20 Same as footnote 18

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