

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 48298)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF NEVADA CREEK IN ANTELOPE)
VALLEY, DOUGLAS COUNTY, NEVADA.)

RULING

GENERAL

Application 48298 was filed on August 15, 1984, by Topaz Lodge Enterprises to appropriate 0.25 c.f.s. of water from Nevada Creek for commercial purposes within portions of the NW1/4 Section 32 and portions of the SW1/4 Section 29, T.10N., R.22E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 29, T.10N., R.22E., M.D.B.&M.¹

An informal letter of protest was filed on January 22, 1985, by Jim Weishaupt, Manager/Chief Deputy Water Commissioner for the Walker River Irrigation District, which reads in part:²

"Please be informed that the Walker River Irrigation District holds the rights to this stream (Nevada Creek) under Certificate No. 4972. If and when the flow exceeds our existing rights any additional diversions would normally be adverse to Certificate No. 8859 also held by the District. During the non-irrigation period, November 1st thru February 28, any use of Nevada Creek water is adverse to the storage rights in Topaz Reservoir."

In a letter filed on February 8, 1985, George M. Thiel, agent for Topaz Lodge Enterprises, requested the period of use identified in Application 48298 be amended from annual use to November 1st through March 30th of each year so as not to conflict with senior rights (Certificate 4972) held by Walker River Irrigation District. He also notes that Nevada Creek is not specifically named in the Walker River Decree as a source of water for storage rights beyond the period of use specified under Walker River Irrigation District rights. He adds that the filing of and approval of Permit 25148, Certificate 7479, illustrates availability of sufficient rights to supplement existing underground rights held by the applicant.³

¹ Public record in the office of the State Engineer under Application 48298.

² Letter dated January 21, 1985, from the Walker River Irrigation District is a public record filed under Application 48298 in the office of the State Engineer.

³ Letter dated February 8, 1985, from George M. Thiel, P.E., agent for Topaz Lodge Enterprises, is a public record filed under Application 48298 in the office of the State Engineer.

FINDINGS OF FACT

I.

Existing certificated water rights of record for the West Walker River, Nevada Creek and an unnamed stream are as follows:⁴

- (1) Permit 6583, Certificate 4972 was issued to the Walker River Irrigation District to appropriate 1500 acre-feet per year of storage waters from an unnamed stream; the point of diversion being within the NE1/4 NW1/4 Section 32, T.10N., R.22E., M.D.B.&M. The period of use is from April 1st to October 31st of each year.
- (2) Permit 5528, Certificate 8859, was issued to the Walker River Irrigation District to appropriate 491.2 c.f.s. but not to exceed 89,612 acre-feet per season of waters from the West Walker River; the point of diversion being the NW1/4 NW1/4 Section 14, T.9N., R.22E., M.D.B.&M. The period of use is given as May 1st to July 31st of each year.
- (3) Permit 25148, Certificate 7479, was issued to Hugh R. and Mary Madeleine Fletcher to appropriate 0.25 c.f.s. of water from Nevada Creek to irrigate 0.92 acres of land in the NE1/4 NW1/4 Section 32, T.10N., R.22E., M.D.B.&M. The period of use is from January 1st to December 31st of each year.

II.

Nevada Creek originates in the Toiyabe National Forest west of Topaz Lake where it flows east for less than two miles before discharging into Topaz Lake. While it is a perennial stream, the flow reportedly seldom exceeds 0.5 c.f.s.⁵

III.

Section VIII of the findings of fact and conclusions of law of the Walker River Decree states:⁶

⁴ Public record in the office of the State Engineer under Certificates 4972, 8859 and 7479.

⁵ 15 minute U.S. quadrangle map entitled "Topaz Lake, Calif. 1956 (#672); and Report of Informal Field Investigation conducted on April 5, 1971, a public record on file under Permit 25148 in the office of the State Engineer.

⁶ United States of America vs. Walker River Irrigation District, et al., (1936) C-125, District of Nevada, United States District Court.

"Walker River Irrigation District is hereby adjudged to be the owner of the flow and use of flood water of West Walker River and its tributaries for storage in Topaz Reservoir. To the amount of 42,000 acre-feet, such water to be diverted from said river and stored in said reservoir from the 1st of November to the 1st of March of each season irrespective of the rights and priorities hereby adjudged and also the right to divert and store at any time an excess of 42,000 acre-feet up to 57,000 acre-feet where there is in the river a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess, but water shall not be stored in said reservoir so as to deprive the parties hereto including the plaintiff and its assigns of stock water or water for domestic purpose."

IV.

Section XI of the findings of fact and conclusions of law of the Walker River Decree states:⁶

"Each and every party to this suit and theirs and each of their servants, agents and attorneys and all persons claiming by, through or under them and their successors and assigns in and to the water rights and lands herein described by and each of them hereby is forever enjoined and restrained from claiming any rights in or to the waters of Walker River and/or its branches and/or its tributaries except the rights set up and specified in this decree and each of the said parties is hereby enjoined and restrained from taking, diverting or interfering in any way with the waters of the said Walker River or its branches or tributaries so as to in any way or manner interfere with the diversion, enjoyment and use of the waters of any of the other parties to this suit as set forth in this decree having due regard to the relative rights and priorities herein set forth, and each of the said parties is hereby enjoined and restrained from ever taking, diverting, carrying away or otherwise using or claiming any of the water so allotted to them in any manner or at any time so as to in any way interfere with the prior rights of other parties to this suit as the same are herein set forth, or until such parties having prior rights as herein specified have received upon their several lands the waters so adjudicated to them.

CONCLUSIONS

I.

The State Engineer⁷ has jurisdiction of the parties and the subject matter of this action and determination.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:

⁷ NRS 533.325.

- A. There is no appropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public interest.⁸

III.

The information available establishes that the source of water for Application 48298, namely Nevada Creek, is tributary to Topaz Reservoir and the West Walker River system.

IV.

The West Walker River and its tributaries, including the storage at Topaz Reservoir, has been determined to be fully appropriated.

RULING

Application 48298 is hereby denied on the grounds that the Walker River system is fully appropriated and approval of further diversions of its tributaries would conflict with and impair the value of existing rights.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/GC/bl

Dated this 19th day of
March, 1985.

⁸ NRS 533.370, subsection 3.