

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 43704)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF WHITE RIVER, WHITE PINE)
COUNTY, NEVADA.)

RULING

GENERAL

I.

Application 43704 was filed on May 11, 1981, by Philip J. Carter to appropriate 8.0 c.f.s. of water from White River for Irrigation and Domestic purposes on 480 acres within the $W\frac{1}{2}$; $W\frac{1}{2} E\frac{1}{2}$ of Section 23, T.10N., R.61E., M.D.B.&M. The point of diversion is described as being within the $NW\frac{1}{4} SE\frac{1}{4}$ Section 11, T.10N., R.61E., M.D.B.&M.¹

II.

Application 43704 was timely protested by the Preston Irrigation Company on the following grounds:¹

"Being that White River is an unreliable flow of water, with several filings already on this stream I figure there is no additional water to be filed on."

and by Edith Reid on the following grounds:

"That it would impair and conflict with the value of existing rights; that it would be against public policy to grant said application, and contrary to statute; that the granting of said application would interfere with the customary use of Protestant's existing water rights."

and by Thomas E. Rosevear on the following grounds:

¹ Transcript of the hearing available as public record in the office of the State Engineer.

"There is not sufficient water in White Pine River to handle any new applicants, and that protestor depends solely on said waters for his ranches."

and by Lund Irrigation and Water Company on the following grounds:

"All of the White River waters are appropriated and are now in use"

III.

A hearing before the State Engineer was held in the matter of Application 43704 on February 24, 1982, at 1:00 P.M., in Ely, Nevada.¹

FINDINGS OF FACT

I.

The applicant stated that he seeks only to appropriate waste water and high water that generally occurs in the winter months.²

II.

The State Engineer has previously rejected Application 13479 filed for a similar proposal on the grounds that White River is fully appropriated.³

III.

The White River system was adjudicated in 1922 which resulted in the decreed use of 24.707 c.f.s. of water to be used on 2,986.84 acres during the summer and 4.422 c.f.s. of water to be used on 1,068 acres in the winter.⁴

² See transcript of public administrative hearing pp. 49-80.

³ See Ruling No. 405 signed by the State Engineer October 21, 1960, in file 13479, public record in the office of the State Engineer.

⁴ See final decree In the Matter of the Determination of the Relative Rights in and to the Waters of White River and its Tributaries in White Pine County, Nevada, Seventh Judicial District Court, White Pine County. Public record in the office of the State Engineer.

IV.

In addition to the decreed water rights, the State Engineer has issued permits and certificates for return flows, waste water and excess snow melt. The following is a summary of those permits in the immediate vicinity of the subject application.¹

Permit 2334	Certificate 220	2.0 cfs	200 acres	Jan 1 - July 1
Permit 2384	Certificate 444	3.29 cfs	329 acres	Apr 1 - Sept 1
Permit 11076	Certificate 3351	1.461 cfs	146.1 acres	Jan 1 - Apr 1
Permit 13043	Certificate 4451	2.282 cfs	228.2 acres	Nov 20 - Apr 1
	Certificate 4451-1	9.668 cfs	966.8 acres	Nov 20 - Apr 1

V.

There was no evidence that demonstrates that there has been any new water developed since 1960 when the Court declared White River fully appropriated.⁵

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁶

⁵ See transcript of public hearing, public record in the office of the State Engineer.

⁶ NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:⁷

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

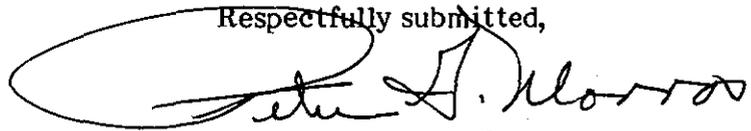
III.

The State Engineer finds that there is no unappropriated water in White River and to approve said application would interfere with existing rights.

RULING

The protests to Application No. 43704 are hereby upheld and said application is denied on the grounds set forth above.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/RMT/bk

Dated this 26th day of
September, 1989.

⁷ NRS Chapter 533.370.