

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

IN THE MATTER OF APPLICATION 51856)
FILED TO CHANGE THE MANNER AND PLACE)
OF USE OF CLAIM NO. 250 AND A PORTION)
OF CLAIM NO'S. 249 AND 817 OF THE)
CARSON RIVER DECREE, DOUGLAS COUNTY)
AND CARSON CITY, NEVADA.)

RULING

GENERAL

I.

Application 51856 was filed on February 22, 1988 by Theodore H. Stokes to change the manner and place of use of 240 acre feet of water as evidenced by Claim No. 250 and a portion of Claim No. 249 of the Carson River Decree¹; also being changed are 175 of the decreed 200 acre feet of storage as evidenced by Claim No. 817 of the Carson River Decree. The Applicant seeks to change the water from irrigation (Claim No's. 249 and 250) and from storage (Claim No. 817, Ambrosetti Pond) to Quasi-Municipal use. The Applicant also wishes to change the place of use from the lands described in the Carson River Decree in Douglas County, to the area served by the Carson City Water Department in Carson City as described in Application 51856.²

The Applicant requests permission to withdraw Claim No's. 249 and 250 from consideration in the matter of Application 51856.³

II.

Application 51856 was advertised for the statutory period and was timely protested by Douglas County⁴ on the grounds that the land on the existing place of use is sub-irrigated and cannot

1 United States of American vs. Alpine Land and Reservoir Co., Civil No. D-183 BRT. Final Decree, October 28, 1980.

2 Records in the Office of the State Engineer and State of Nevada Exhibit No's. 2, 2A, and 2B, November 15, 1989, hearing.

3 Records in the office of the State Engineer and State of Nevada Exhibit No. 4, November 15, 1989, hearing.

4 Records in the office of the State Engineer and State of Nevada Exhibit No. 3, November 15, 1989, hearing.

be physically "dried up". Therefore approving this application will result in a net depletion of the flow in the Carson River and a injury to downstream water rights.

III.

The Truckee-Carson Irrigation District did not file a protest to Application 51856, however it notified the State Engineer that it did intend to participate and support the Douglas County Protest.^{5, 6}

IV.

Information became available to the State Engineer regarding legal ownership of Claim No's. 249, 250 and 817.⁷

V.

A public administrative hearing in the matter of Application 51856 was held before the State Engineer on November 15, 1989, after proper notice was given to all parties involved.⁸

FINDINGS OF FACT

I.

The Applicant requests that the State Engineer authorize the withdrawal of Carson River Decree Claim No's. 249 and 250 from consideration in the matter of Application 51856. The Applicant supports this request with testimony at the Hearing and with a Post Hearing Brief⁹ submitted at the request of the State Engineer. The Applicant proposes to transfer the major portion of the storage right in Carson River Decree Claim No. 817 to

⁵ Letter dated February 17, 1989 in File 51856 in the Office of the State Engineer.

⁶ Letter dated November 14, 1989 in File 51856 in the Office of the State Engineer.

⁷ Letter dated January 10, 1990 from James N. Kosinski, in File 51856 in the Office of the State Engineer.

⁸ State of Nevada Exhibit No. 1, November 15, 1989, hearing.

⁹ Filed by Robert L. Crowell, Esq., in File 51656 in the Office of the State Engineer.

Carson City where the water right would be used only in conjunction with other Carson River decreed rights. This would allow the applicant to divert the full consumptive use of 2.5 acre feet per acre during periods of Carson River Regulation by supplementing the direct flow rights up to an annual maximum of 175 acre feet. The Applicant postulated that the Carson River Decree did not intend for storage rights to be tied to the place of use of surface rights. Rather, the Applicant contended that the Carson River Decree allows the management of storage waters to provide for their most efficient use.

The Protestant, Douglas County, provided testimony at the Hearing and in a Post Hearing Brief¹⁰ to support its position that the Applicant's request to withdraw that portion of Application 51856 concerned with Carson River Decree Claim No's. 249 and 250 should be denied.

The State Engineer finds that the rights under Claim No's. 249 and 250 are described in the Decree as being "by flooding and by storage from Williams Slough Channel." The Carson River Decree does not contain similar language with respect to any of the other adjudicated claims, particularly those supplemented by other upstream storage. The State Engineer finds that this is evidence that the intent of the Decree is that Claim No's. 249, 250 and 817 should be read together. Additionally, all water must pass through the Ambrosetti Reservoir to be delivered to the decreed lands on the north side of the Carson River. Therefore, the State Engineer finds that it is physically impossible to irrigate all decreed lands under Claim No's. 249 and 250 without the use of the Ambrosetti Reservoir.

The State Engineer finds that it takes both direct flow and storage to deliver the total annual duty of water for Claim No's. 249 and 250. If the storage under Claim No. 817 were separated from Claim No's. 249 and 250, and later, an application to change Claim No's. 249 and 250 at 2.5 acre feet per acre were filed, a

¹⁰ Filed by Brent T. Kolvet in File 51856 in the Office of the State Engineer.

potential for "double dipping" the river would exist. The State Engineer finds that this is not the intent of the Carson River Decree.

II.

The State Engineer considered other evidence in the matter of Application 51856. The Carson River usually goes on regulation on or about July 15 and all priorities later than 1860 are cut off. The priorities for Claim No's. 249, 250 and 817 are 1882, 1894, and 1882, respectively. Using a well known empirical method for computing consumptive use yields the fact that at least 45% of the consumptive use occurs after July 15.

The State Engineer finds that this is further evidence that Claims 249, 250 for direct flow and Claim 817 for storage are required to deliver the full duty of water to the decreed lands.

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter.¹¹

II.

The State Engineer is prohibited from approving an application to change the manner and place of use if the application:

1. Conflicts with existing rights on the source, or
2. Is detrimental to the public interest.¹²

III.

Testimony and evidence have been provided which show that in the Carson River Decree, most reservoirs are not appurtenant to any particular parcel of land. However, language in the Carson River Decree indicates that the Ambrosetti Reservoir is the one exception. Therefore, Application 51856 could be approved consistent with the intent of the Carson River Decree provided that Claim No's. 249, 250 and 817 are all changed together.

¹¹ NRS Chapter 533 and 534.

¹² NRS Chapter 533.370 (3).

IV.

Application 51856 shall be approved for the consumptive use of 2.5 acre feet per acre, amounting to 240 acre feet per year and 175 acre feet of storage from Ambrosetti Reservoir to supplement the water changed from Claim No's. 249 and 250.

V.

The information submitted to the State Engineer regarding legal ownership of Claim No's. 249, 250 and 817 casts some doubt as to applicant's ownership of the entire amount of water described in said claims.

RULING

The protest to Application 51856 is hereby overruled and Application 51856 changing Carson River Decree Claim No's. 249, 250 and 817 is hereby approved subject to payment of the statutory fees and resolution of the ownership of said claims. This ruling makes no attempt to adjudicate the ownership of said claims.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JP/pm

Dated this 10th day of

 May , 1990.