

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

IN THE MATTER OF APPLICATION 55997 FILED)
TO CHANGE THE MANNER OF USE AND PLACE OF)
USE OF A PORTION OF THE WATERS OF THE)
TRUCKEE AND CARSON RIVERS HERETOFORE)
APPROPRIATED UNDER TRUCKEE RIVER DECREE)
CLAIM NO. 3, IN THE CARSON DESERT)
GROUNDWATER BASIN, CHURCHILL COUNTY,)
NEVADA.)

RULING
3859

GENERAL

I.

Application 55997 was filed by the Nature Conservancy on March 15, 1991, to change the manner of use and the place of use of 1115.3 acre feet of water, a portion of the waters of the Truckee and Carson River heretofore appropriated under Claim No. 3 of Final Decree in the United States v. Orr Water Ditch Co., In Equity, Docket No. A-3 (D. Nevada 1944). The proposed manner and place of use is for the maintenance of wetlands for recreation and wildlife/storage, within Sections 10-16, 20-24, 27-29 and 32-34, all within T.17N., R.29E., M.D.B.&M. This area is commonly known as the Carson Lake Pasture.¹ The existing manner of use is irrigation and the existing place of use is within Truckee Carson Irrigation District Serial Nos. 302, 24 and 24-3, more specifically portions of the SW1/4 Section 25, SE1/4 Section 26, SW1/4 Section 27, SE1/4 Section 28, all within T.18N., R.29E., M.D.B.&M., and NW1/4, SW1/4 Section 3, T.17N., R.29E., M.D.B.&M.²

¹ Applicant's Exhibit No. 10, public administrative hearing before the State Engineer, December 5, 1991.

² State's Exhibit No. 2 and Transcript of public administrative hearing held before the State Engineer on December 5, 1991.

II.

Application 55997 was timely protested by Rambling River Ranches on September 24, 1991, for the following reasons and on the following grounds:³

- A. Magnitude and Scope of the Water Transfer.
- B. Negative Impact to Surrounding Property.
- C. Wildlife Consumptive Use Documentation.
- D. Flood Plain Management.
- E. Economic Impacts to Farmers and Related Businesses.

III.

Rambling River Ranches holds title to 2250.5 acre feet of surface water rights appurtenant to 538.5 acres of land located within portions of Sections 14, 22 and 23, T.19N., R.27E., and portions of Sections 27 and 28, T.19N., R.28E., M.D.B.&M.⁴

IV.

After proper notice⁵ had been given to all parties of standing, an administrative hearing was held before representatives of the State Engineer on December 5, 1991, to provide the protestant and the applicant a full opportunity to present evidence and testimony in support of their respective positions.⁶

³ State's Exhibit No. 3, public administrative hearing before the State Engineer, December 5, 1991.

⁴ Applicant's Exhibit No. 10, public administrative hearing before the State Engineer, December 5, 1991.

⁵ State's Exhibit No. 1, public administrative hearing before the State Engineer, December 5, 1991.

⁶ Transcript, page 5, public administrative hearing before the State Engineer, December 5, 1991.

FINDINGS OF FACT

I.

The protestant contends that changing irrigation water rights to wildlife use on wetland areas will have negative socioeconomic impacts on the Fallon area.⁷ The impacts will allegedly be in the areas of decreased property values, loss of county tax base, cuts in Churchill County budget, loss in revenue to farming related businesses, and increased unemployment. These issues can be considered in the broad category of public interest. However, the protestant failed to prove that approval of Application 55997 would specifically result in negative effects to any of the above mentioned issues. Instead, the testimony and evidence supports the assertion by the applicant that these issues apply to the overall retirement of up to 20,000 acre feet of water rights and the change of the water rights to the wetland areas. This overall process was referred to the Grand Plan.⁸

Before the Nature Conservancy, U.S. Fish and Wildlife Service, and the Nevada Department of Wildlife can go forward with the Grand Plan, a comprehensive planning process must be completed.⁹ During this process, the public will participate and the socioeconomic issues can be addressed. If socioeconomic impacts are identified they must be mitigated or progress on the Grand Plan will stop.¹⁰ Therefore, the State Engineer can make no finding that approval of Application 55997 will have negative

7 State's Exhibit No. 3, public administrative hearing before the State Engineer, December 5, 1991.

8 Transcript, pages 37-42, public administrative hearing before the State Engineer, December 5, 1991.

9 Transcript, pages 132-134, public administrative hearing before the State Engineer, December 5, 1991.

10 Transcript, pages 108-109, public administrative hearing before the State Engineer, December 5, 1991.

socioeconomic impacts on the Fallon community. Instead, the State Engineer finds that the socioeconomic issues raised by the protestant apply to the Grand Plan and will be properly addressed in the required comprehensive planning process.

II.

The protestant questions whether the operation and maintenance fees will be paid if Application 55997 is approved.⁷ The applicant provided testimony which affirms that the operation and maintenance fees have always been paid and will continue to be paid by either the Nature Conservancy,¹¹ initially, or the Nevada Department of Wildlife,¹² after it has taken control of this water right. Therefore, the State Engineer finds that the applicant and its successor fully intend to pay the operation and maintenance fees.

III.

The protestant is concerned about reduced productivity and poor water quality in his wells.⁷ However, his concerns are more related to the previously referred to Grand Plan.¹³ The applicant provided evidence that the approval of Application 55997 will not result in any negative impacts to protestant's wells.¹⁴ Therefore, the State Engineer finds that approval of Application 55997 will not injure the applicant's wells and that groundwater quality and production should properly be addressed in the comprehensive planning process related to the Grand Plan.

¹¹ Transcript, page 135, public administrative hearing before the State Engineer, December 5, 1991.

¹² Transcript, pages 146-147, public administrative hearing before the State Engineer, December 5, 1991.

¹³ Transcript, page 26, public administrative hearing before the State Engineer, December 5, 1991.

¹⁴ Exhibit No. 30, public administrative hearing before the State Engineer, December 5, 1991.

IV.

The ability of the present delivery system to deliver the water efficiently to Carson Lake was questioned by the protestant.⁷ However, the applicant stated that water has been delivered under temporary permits 55992-T, 55993-T and 55994-T in an efficient manner through ditches and canals which have more than sufficient capacity.¹⁵ Given this experience with delivery under the temporary permits, the State Engineer finds that the present delivery system has sufficient capacity to deliver the proposed volume of water with no loss of efficiency.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and subject matter of this action.¹⁶

II.

The State Engineer is prohibited from approving an application to change the place of use if the application:¹⁷

1. If within an irrigation district, adversely affects the cost of water for other holders of water rights in the district or lessens the district's efficiency to deliver water.
2. Conflicts with existing rights on the source, or
3. Threatens to prove detrimental to the public interest.

¹⁵ Transcript, pages 162-166, public administrative hearing before the State Engineer, December 5, 1991.

¹⁶ NRS Chapter 533.325. Also, the Orr Ditch Decree and the Alpine Decree set forth the procedure and the authority in the matter of applications to change the place of use of decreed waters of the Carson and Truckee Rivers.

¹⁷ NRS Chapter 533.370.

III.

Approval of Application 55997 has not been shown to be detrimental to the public interest.

IV.

There is no conflict with existing water rights.

V.

Approval of Application 55997 will not result in increased costs to the other water right holders within the Truckee-Carson Irrigation District, since the applicant has agreed to continue to pay all operation and maintenance fees associated with this change.

VI.

Approval of Application 55997 will not lessen the district's efficiency in the delivery of the water.

RULING

The protest to granting Application 55997 is hereby overruled and Application 55997 will be approved subject to existing rights, payment of the required permit fees, and the permit condition that the operation and maintenance fees will continue to be paid.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 6th day of
January, 1992.