

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

IN THE MATTER OF APPLICATION 58117 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
4043

GENERAL

I.

Application 58117 was filed by Earl J. and F.M. Jernigan on September 23, 1992, to change the manner of use and place of use of 316.04 acre feet of water, a portion of the waters of the Truckee and Carson Rivers 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 of use is for the maintenance of wetlands for recreation and wildlife/storage, within portions of T.19N., R.30E.; T.19., R.31E.; T.20N., R.31E.; T.20N., R.32E.; T.21N., R.31E.; and T.21N., R.32E., M.D.B.&M. This area is commonly known as the Stillwater National Wildlife Refuge. The existing manner of use is irrigation and the existing place of use is within Truckee Carson Irrigation District Serial No. 793, more specifically portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 23, T.19N., R.30E., M.D.B.&M.¹

II.

Application 58117 was timely protested on December 21, 1992, by Bettie J. Weishaupt on the following grounds:

By ponding the fields it will push the salts over on us, raise our water table, It will be a prime breeding ground for mosquitos and devaluate our property.

Therefore the protestant requests that the application be denied.²

¹ Exhibit No. 2, Public Administrative Hearing before the State Engineer, September 15, 1993.

² Exhibit No. 4, Public Administration Hearing before the State Engineer, September 15, 1993.

III.

Application 58117 was timely protested on January 4, 1993, by Dorothy and Dale Lawrence on the following grounds:

We oppose the transfer of the irrigation water from agricultural use to wet lands on this parcel. If the water is used for duck ponds it will create a mosquito breeding swamp, and also endanger my livestock in the near by fields. If the water is to be sold to the Stillwater Wildlife Refuge, the barren fields will lower all property values in the Stillwater community.

Therefore, the protestant requests that the application be denied.³

IV.

A protest was timely filed on January 4, 1993, by the Truckee-Carson Irrigation District (TCID), but was later withdrawn in a letter dated May 24, 1993.⁴ TCID was concerned about the payment of operation and maintenance fees associated with the water at issue in Application 58117. TCID reached an agreement with the Nature Conservancy, the Applicant's authorized agent, regarding the payment of the fees.⁵

V.

A hearing in the matter of protested Application 58117 was held on September 15, 1993.⁶

FINDINGS OF FACT

I.

Both protestants felt that the water requested to be changed in Application 58117, would be left on the existing place of use and placed in new ponds constructed on the property, thereby

³ Exhibit No. 5, Public Administration Hearing before the State Engineer, September 15, 1993.

⁴ Exhibit No. 3, Public Administration Hearing before the State Engineer, September 15, 1993.

⁵ File No. 58117, official records in the office of the State Engineer.

⁶ Exhibit No. 1, Public Administration Hearing before the State Engineer, September 15, 1993.

creating a nuisance.^{2,3} The applicant clearly states in Application 58117 that he is requesting to change the place of use from the Jernigan property to the Stillwater National Wildlife Refuge.¹ The intent of the applicant to use the water at Stillwater and not on the existing place of use is corroborated by testimony at the hearing.⁷ The State Engineer finds that the two protests were based on a misunderstanding regarding the intent of Application 58117 and that the proposed place of use is the Stillwater National Wildlife Refuge.

II.

The protestants felt that approval of Application 58117 would be detrimental to the public interest in that the property values of properties located near the land being retired from irrigation would decrease.^{2,3} However, a land appraiser experienced in the property value trends in the Fallon area, provided uncontroverted testimony that there has been no negative impact on property values as a result of change applications similar to Application 58117.⁸ He further testified that property values he has analyzed have shown a modest appreciation since 1985.⁹ The specific properties analyzed are not located near the existing place of use, but are in the TCID area. The State Engineer finds that there is no evidence or testimony on the record to suggest that approval of Application 58117 would be detrimental to the public interest by way of decreasing property values.

⁷ Transcript pp. 23 and 59, Public Administration Hearing before the State Engineer, September 15, 1993.

⁸ Transcript pp. 52-55, Public Administration Hearing before the State Engineer, September 15, 1993.

⁹ Transcript pp. 49-51, Public Administration Hearing before the State Engineer, September 15, 1993.

III.

The protestants referred to problems related to the delivery of water to properties located at the end of the ditch system.¹⁰ A representative of the U.S. Fish and Wildlife Service, which manages the Stillwater National Wildlife Refuge, testified the Refuge is at the very end of the system and delivery problems occur to all parties on the end of the system.¹¹ He also testified that the U.S. Fish and Wildlife Service cooperates with TCID in the rotation of the delivery of water so that the water needs of other users are met.¹² The State Engineer finds that the U.S. Fish and Wildlife Service cooperates with other water users in the delivery of water. The State Engineer further finds that there is no evidence or testimony on the record which suggests that the delivery of the water requested under Application 58117 would represent a conflict with existing water rights or a loss of the District's water delivery efficiency.

IV.

TCID reached an agreement with the Nature Conservancy regarding the continued payment of the operation and maintenance fees.^{4,5} The State Engineer finds that approval of Application 58117 will not result in an increased cost for other water users within TCID.

¹⁰ Transcript p. 19, Public Administration Hearing before the State Engineer, September 15, 1993.

¹¹ Transcript p. 37, Public Administration Hearing before the State Engineer, September 15, 1993.

¹² Transcript p. 38, Public Administration Hearing before the State Engineer, September 15, 1993.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and subject matter of this action.¹³

II.

The State Engineer is prohibited from granting an application to change the place of use if the application:¹⁴

1. Is within an irrigation district, and 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.

III.

Approval of Application 58117 has not been shown to be detrimental to the public interest.

IV.

The State Engineer concludes that there is no conflict with existing water rights.

V.

The State Engineer concludes that approval of Application 58117 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.

¹³ NRS Chapter 533.025. 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.

¹⁴ NRS Chapter 533.370.

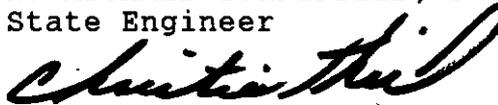
VI.

The State Engineer concludes that approval of Application 58117 will not lessen the district's efficiency in the delivery of the water.

RULING

The protests to granting Application 58117 are hereby overruled and Application 58117 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.

FOR: Respectfully submitted,
R. MICHAEL TURNIPSEED, P.E.
State Engineer



BY: CHRISTINE THIEL, P.E.
Deputy State Engineer

RMT/CT/JCP/pm

Dated this 3rd day of
November, 1993.