IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 4222,)
5264, 6124, 6832, 17668, 17669 AND 17670)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF THE CARSON RIVER AND/OR)
ITS TRIBUTARIES IN DOUGLAS AND LYON)
COUNTIES, NEVADA.)

RULING

GENERAL

Application 4222 was filed on November 16, 1916, by L. M. Jacobsen to appropriate 4.0 c.f.s. of water from the East Fork of the Carson River for irrigation and domestic purposes on 200 acres of land within the N1/2 SW1/4 Section 12, E1/2 NE1/4 and NE1/4 SE1/4 Section 11, T.12N., R.20E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 25, T.12N., R.20E., M.D.B.&M.[1]

Application 5264 was filed on September 27, 1918, by V. Quilici, D. Quilici, S. Quilici, A. Quilici and J. Giurlini to appropriate 2.0 c.f.s. of water from the Carson River for irrigation and domestic purposes on 200 acres of land within portions of Section 13, T.16N., R.21E., M.D.B.&M.; and Sections 7 and 8, T.16N., R.22E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 14, T.16N., R.21E., M.D.B.&M.[1]

Application 6124 was filed on May 15, 1920, by Fritz Fricke to appropriate 0.12 c.f.s. of water from the East Fork of the Carson River for irrigation and domestic purposes on 12 acres of land within portions of the NW1/4 SE1/4 and NE1/4 SW1/4 Section 9, T.12N., R.20E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 10, T.12N., R.20E., M.D.B.&M.[1]

Application 6832 was filed on December 8, 1922, by Irrigation District No. 1, Carson Valley Unit, Truckee Carson Project, to appropriate 200.0 c.f.s. of water from the East Fork of the Carson River for irrigation, stockwater and domestic purposes on 15,931.2 acres of land within portions of Carson Valley. The point of diversion is described as being within the NW1/4 SW1/4 Section 25, T.12N., R.20E., M.D.B.&M.[1]

Application 17668 was filed on September 22, 1958, by A. and L. Settlemeyer to appropriate 5.0 c.f.s. of water from waste water (East Fork of the Carson River) for irrigation purposes on 100 acres of land within the N1/2 SW1/4, S1/2 SW1/4 Section 31, T.14N., R.20E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 31, T.14N., R.20E., M.D.B.&M.[1]

Application 17669 was filed on September 22, 1958, by A. and L. Settlemeyer to appropriate 5.0 c.f.s. of water from waste water (East Fork of the Carson River) for irrigation purposes on 70 acres of land within the SE1/4 NE1/4, E1/2 SE1/4 Section 36, T.14N., R.19E., M.D.B.&M.; and a portion of the W1/2 SW1/4 Section 31, T.14N., R.20E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SW1/4 Section 31, T.14N., R.20E., M.D.B.&M.[1]

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[1] Public record in the office of the State Engineer.

Application 17670 was filed on September 22, 1958, by A. and L. Settlemeyer to appropriate 5.0 c.f.s. of water from waste water (East Fork of the Carson River) for irrigation purposes on 90 acres of land within the SE1/4 NE1/4, E1/2 SE1/4 Section 36, T.14N., R.19E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SE1/4 Section 36, T.14N., R.19E., M.D.B.&M.[1]

Application 6832 was timely protested on April 16, 1923, by H. H. Springmeyer Land Development and Livestock Company and F. C. Springmeyer on the following grounds:[1]

> "Protestant is the owner of lands in Douglas County, Nevada, for which it has a vested right to the use of the waters of said East Fork of the Carson River; that the appropriation and use of such waters by applicant would deprive protestant of said waters, would cause great and irreparable injury to its said lands, and would result in continuous and endless trouble, strife and litigation over the right to the use of said waters; and that such appropriation would result in protestant being compelled to pay large sums of money to said applicant for the irrigation of lands upon which it already has full and complete water rights, and so would deprive protestant of property without due process of law.
>
> Protestant's rights to the waters of said East Fork of the Carson River are based upon a decree of a Court of competent jurisdiction, are vested, and such waters have been used by protestant, its grantors and predecessors in interest, freely, uninterruptedly, openly and notoriously and adversely to applicant and to the whole world ever since the year 1858."

FINDINGS OF FACT

I.

The Carson River Decree establishes and determines direct diversion rights for irrigation and other uses upstream from and including the Newlands Project and declares the Carson River and tributaries to be fully appropriated for these purposes.[2]

II.

The historic flow records of the Carson River and tributaries provide substantial evidence that from time to time surplus flows reach the terminus of the system but only after all upstream users are satisfied including those flows subject to capture and storage by Lahontan Reservoir.[1]

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[2] See U.S. v. Alpine Land & Reservoir Company, et al., Civil No. D-183 BRT, Finding of Fact II. Nevada v. United States, 103 S. Ct. 2906 (1984); United States v. Alpine Land & Reservoir Co., Equity No. D-183 BRT (D. Nev. 1980), cert. denied 104 S. Ct. 193 (1983).

III.

Applications 17668, 17669 and 17670 were filed to appropriate waste water. The U.S. District Court recognized this as being the source of water for the various sloughs which have decreed rights as well as water returning to the main stream of the Carson River to make up the rights of others downstream. The Court went to great lengths to describe consumptive use and the fact that return flows, drains and waste water must return to the river at natural topographic confines thereby becoming the river flow to be divided by priority users in the next river segment. However, this is not the case in the lower segments where waste water and drains become so dispersed and cannot return to the natural stream.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.[3]

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:[4]

A. There is no unappropriated 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.

III.

The State Engineer concludes that surplus flows above Lahontan Dam are so intermittent and occur so rarely during the irrigation season, that without storage there is no practical way to put the water to beneficial use.

IV.

The State Engineer finds that, for all practical purposes, the Carson River above Lahontan Dam is fully appropriated during the irrigation season.

V.

The State Engineer concludes that approval of the applications would conflict with existing rights and therefore would be detrimental to the public interest.

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[3] NRS 533.325.

[4] NRS 533.370(3).

RULING

The protest to the granting of Application 6832 is hereby upheld to the extent of conflicting with existing rights and Applications 4222, 5264, 6124, 6832, 17668, 17669 and 17670 are hereby denied on the grounds that the granting thereof would conflict with existing rights and therefore would be detrimental to the public interest, and further on the grounds that the Carson River above Lahontan Dam is fully appropriated for direct diversion during the irrigation season.

Respectfully submitted,

PETER G. MORROS
State Engineer

By _____
ROLAND D. WESTERGARD
Director, Dept. of Conservation
and Natural Resources

PGM/RMT/bl

Dated this 28th day of

October, 1987.