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

FILED
FEB 03 2006
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 73420,

FILED BY UNITED STATES OF AMERICA FISH AND WILDLIFE SERVICES,

ON NOVEMBER 1, 2005, TO APPROPRIATE THE WATERS

OF CARSON RIVER

} PROTEST

Comes now Edwin L. Depaoli and Clarice M. Depaoli as Trustees of the Depaoli O Lazy L Trust
Printed or typed name of protestant

whose post office address is 2800 Farm District Road, Fernley, Nevada 89408
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is Rancher and protests the granting

of Application Number 73420, filed on November 1, 2005

by United States of America Fish and Wildlife Service to change the

waters of Carson River situated in Lyon
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

For the reasons and on the grounds set forth on Exhibit A attached hereto and by this reference incorporated herein.

THEREFORE the Protestant requests that the application be DENIED
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Gordon H. DePaoli
Agent or protestant

Gordon H. DePaoli
Printed or typed name, if agent

Address 6100 Neil Road, Suite 500
Street No. or P.O. Box No.

Reno, Nevada 89511
City, State and Zip Code No.

Subscribed and sworn to before me this 3rd day of February, 2006

Joanne McMaster
Notary Public

JOANNE McMASTER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-3411-2 - Expires May 10, 2009

State of Nevada

County of Washoe

$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

EXHIBIT A
TO PROTEST OF EDWIN L. DEPAOLI AND CLARICE M. DEPAOLI
AS TRUSTEES OF THE DEPAOLI O LAZY L TRUST
TO APPLICATION NOS. 73417, 73418, 73419, 73420, 73421, 73422 AND 73423

Protestants, Edwin L. Depaoli and Clarice M. Depaoli, as Trustees of the Depaoli O Lazy L Trust, protest on the following grounds:

1. The proposed change conflicts with existing rights;

2. The proposed change threatens to prove detrimental to the public interest;

3. On its face, the application cannot be granted because it violates the provisions of N.R.S. § 533.045 in that it proposes to divert water from the Carson River at the Buckland Ditch, and to return the water back to the Carson River at the terminus of the Buckland Ditch, with no beneficial use of the water diverted into the Buckland Ditch at a place of use that is served from the Buckland Ditch;

4. On its face, the application states that water with either an allowed point of diversion at, or a requested change of point of diversion to, the Buckland Ditch in fact will be diverted from the Carson River at a different point of diversion (the map indicates the S Line Canal) without the approval of the State Engineer for the change in point of diversion at the downstream point or points of diversion;

5. The Alpine Decree requires that the historic practices and customs recognized in the Decree be followed. The Alpine Decree, in Finding of Fact IX, divides the Carson River into eight segments. The Alpine Decree, in Finding of Fact X.1(e), provides that it is the historic practice that when the Carson River is on regulation, each segment of the river is treated autonomously. On its face, this application seeks to circumvent that historic practice and custom by establishing a fictional and unlawful point of diversion in Carson River Segment 7(e), not involving any beneficial use of water from that point of diversion, with the actual beneficial use occurring from a point of diversion in Carson River Segment 8;

6. The change proposes to divert relatively small quantities of water at the head of the Buckland Ditch, to then have that water flow through the Buckland Ditch with undetermined losses (which at times can be 100%), return to the Carson River to flow to Lahontan Reservoir with undetermined losses (which at times can be 100%), to then flow through Lahontan Reservoir with undetermined losses, to then flow down the Carson River downstream of Lahontan Reservoir with undetermined losses, and to then be diverted from the Carson River and delivered to its new place of use. The change as proposed cannot be administered and, therefore, will conflict with existing rights and threatens to prove detrimental to the public interest;

7. Because the Remarks section is not clear and could be interpreted as proposing that the water being changed has a point of "non-diversion" at the Buckland Ditch, to then flow down the Carson River, it either violates N.R.S. § 533.045 because it has no beneficial use at that "point of diversion", or it is in violation of N.R.S. § 533.330 because it in effect is an application for two different beneficial purposes, instream flows from the Buckland Ditch to the point where it is diverted for "maintenance of wetlands"; and

8. The water rights proposed to be changed under Application No. 73419 have been abandoned.