

IN THE MATTER OF APPLICATIONS 33869, )  
33870 AND 33871 FILED BY LYNN ARMSTRONG )  
TERRY TO CHANGE WATERS PREVIOUSLY AP- )  
PROPRIATED FROM THE CARSON RIVER AND )  
UNDERGROUND SOURCES LOCATED IN CARSON )  
CITY, NEVADA. )

FINDINGS OF FACT

Application 33869 was filed on September 29, 1977 by Lynn Armstrong Terry to change the point of diversion, manner and place of use of water heretofore appropriated under the proposed Findings of Fact and Decree on the Carson River. The amount of water to be changed is 0.59 c.f.s. not to exceed 212 acre-feet per year. The manner of use is proposed to be changed from irrigation and domestic to municipal. The proposed point of diversion is described as being within the NW1/4 NE1/4 of Section 26, T.15N., R.20E., M.D.B.&M. The proposed place of use is described as being all of Section 4 and the E1/2 of Section 15, T.14N., R.20E., M.D.B.&M.; all of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, the E1/2 of Section 19, all of Sections 20, 21, 22, 23, 28, 29, the E1/2 of Section 30, the E1/2 of Section 31, all of Sections 32 and 33, all in T.15N., R.20E., M.D.B.&M.; the S1/2 of Section 31, the S1/2 of Section 32, all of Section 33 and the W1/2 of Section 34, all in T.16N., R.20E., M.D.B.&M.; all of Section 1, the E1/2 of Section 2, all of Sections 12 and 13, all in T.15N., R.19E., M.D.B.&M.; all of Section 35 and the S1/2 of Section 36 in T.16N., R.19E., M.D.B.&M. The existing place of use is described as 42.25 acres within the NE1/4 SE1/4 of Section 15, T.15N., R.20E., M.D.B.&M., and the portion of the NW1/4 SE1/4, Section 15, T.15N., R.20E., M.D.B.&M. lying easterly of the Mexican Ditch. The existing point of diversion is within the NE1/4 SW1/4 of Section 35, T.15N., R.20E., M.D.B.&M., at the Mexican Dam. This application was ready for action on December 18, 1977. There were no protests to this application.

Application 33870 was filed on September 29, 1977 by Lynn Armstrong Terry to change the point of diversion, manner and place of use of water heretofore appropriated under the proposed Findings of Fact and Decree on the Carson River. The amount of water to be changed is 2706 c.f.s. not to exceed 742 acre-feet per year. The manner of use is proposed to be changed from irrigation and domestic to municipal. The proposed point of diversion is described as being within the NW1/4 NE1/4 of Section 26, T.15N., R.20E., M.D.B.&M. The proposed place of use is described as being all of Section 4 and the E1/2 of Section 15, T.14N., R.20E., M.D.B.&M.; all of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, the E1/2 of Section 19, all of Sections 20, 21, 22, 23, 28, 29, the E1/2 of Section 30, the E1/2 of Section 31, all of Sections 32 and 33, all in T.15N., R.20E., M.D.B.&M.; the S1/2 of Section 31, the S1/2 of Section 32, all of Section 33 and the W1/2 of Section 34, all in T.16N., R.20E., M.D.B.&M.; all of Section 1, the E1/2 of Section 2, all of Sections 12 and 13, all in T.15N., R.19E., M.D.B.&M.; all of Section 35 and the S1/2 of Section 36 in T.16N., R.19E., M.D.B.&M. The existing place of use is described as 148.32 acres within the SW1/4 of Section 14, T.15N., R.20E., M.D.B.&M. The existing point of diversion is the NE1/4 SW1/4 of Section 35, T.15N., R.20E., M.D.B.&M. at the Mexican Dam. This application was ready for action on December 18, 1977. There were

no protests to this application.

Application 33871 was filed on September 29, 1977 by Lynn Armstrong Terry to change the manner and place of use of water heretofore appropriated under Permit 26837. The application proposes to change 3.4 c.f.s. of water from an underground source heretofore used for irrigation and domestic to municipal use. The proposed place of use is all of Section 4 and the E1/2 of Section 5 in T.14N., R.20E., M.D.B.&M.; all of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, the E1/2 of Section 19, all of Sections 20, 21, 22, 23, 28, 29, the E1/2 of Section 30, the E1/2 of Section 31, all of Sections 32 and 33, all in T.15N., R.20E., M.D.B.&M.; the S1/2 of Section 31, the S1/2 of Section 32, all of Section 33 and the W1/2 of Section 34, all in T.16N., R.20E., M.D.B.& M.; all of Section 1, the E1/2 of Section 2, all of Sections 12 and 13, all in T.15N., R.19E., M.D.B.&M.; all of Section 35 and the S1/2 of Section 36 in T.16N., R.19E., M.D.B.&M. The existing place of use is described as 202.715 acres located within the SW1/4 of Section 14, T.15N., R.20E., M.D.B.&M., and the NE1/4 SE1/4 and that portion of the NW1/4 SE1/4 lying easterly of the Mexican Ditch in Section 15, T.15N., R.20E., M.D.B.&M. Application 33871 was protested on December 19, 1977 by the Joe Ricci Ranch, Quilici Ranch, Minor Ranch, Joseph Chaves Ranch, Break-a-heart Ranches, Rolling A Ranch and Santa Maria Ranch. The protest stated that:

"1. The proposed change, if approved, will constitute an enlargement of the permit sought to be changed. That permit was for the irrigation of 202.715 acres of land in conjunction with water from the Mexican ditch (see paragraphs 4 and 12 of the application). The approval of the State Engineer states that the final water right '...will be dependent upon the amount of water actually placed to beneficial use.' The use for irrigation limits beneficial use to the irrigation season and it is sought by Application No. 33871 for permission to use the water for municipal purposes from January 1 to December 31 of each year.

2. The approval of the application would deprive the protestants and other downstream water users of the use of return flow from water appropriated and used for irrigation under Permit No. 26837.

3. The proposed change would result in the interception of water of the Carson River which otherwise would have been available for diversion under the prior vested water rights of the protestants, some of which said rights are tabulated in the proposed Findings of Fact, Conclusions of Law and Decree of John V. Mueller, Special Master in the case of United States of America vs. Alpine Land and Livestock Company, In Equity D-183, pending in the United States District Court in and for the District of Nevada and some are evidenced by permits heretofore issued by the State Engineer of Nevada." 1/

This application was ready for action on December 18, 1977.

## II

After due notice to all parties by certified letter dated December 23, 1977, a hearing in the matter of the described applications and protest was held before the State Engineer on January 19, 1978 in Room 220, Capitol Plaza, 1150 East Williams Street, Carson City, Nevada. 2/ Evidence, documents and arguments were provided at the hearing.

III

Carson City has entered a contract with Lynn Armstrong Terry to acquire the agricultural rights that exist on the Terry Ranch. 3/ No copy of that agreement has been filed in the office of the State Engineer or in the record of the January 19, 1978 hearing.

IV

The Carson River Stream System is presently in litigation in the case captioned "The United States of America vs. Alpine Land and Livestock Company, et al, No. D-183 presently pending before the United States District Court for the District of Nevada." 4/ The proposed findings of fact, conclusions of law and decree provide that "any of the owners or parties hereinbefore named shall, in the manner provided by law, be entitled to change the point of diversion and the place, means, manner or purpose of use of the waters to which they are so entitled, or of any part thereof, so far as they may do so without injury to the rights of other persons hereto and the same are fixed hereby: it being provided, however, that the water transferred to a different place of use shall not exceed the quantity theretofore beneficially used". 5/

V

The point of diversion described under Applications 33869 and 33870 is in close proximity to the natural channel and bed of the Carson River which flows adjacent to the existing place of use described in the applications. Testimony and evidence presented at the hearing indicate that the purpose of the change of point of diversion of the waters of the Carson River is to allow the diversion through an induced infiltration system whereby the water could be diverted through a well in lieu of the present direct surface diversion. 6/ Testimony and evidence also described the point of diversion as a well drilled in close proximity to the Carson River bed and penetrating favorable materials whereby with the initiation of pumping the water initially contributing to the flow of the well would be a combination of groundwater and Carson River Water and after a short period of time entirely Carson River Water. 7/

VI

The proposed infiltration well and testimony presented regarding the diversion of Carson River water through such a well is at a location other than as described in Applications 33869 and 33870. 8/

VII

Evidence and testimony provided at the hearing indicate that the down stream water users on the Carson River including the protestants in this action depend upon return flow from upstream irrigation to satisfy wholly or in part their decreed rights. 9/ Estimate of the percentage of return flow on the segment of the river in question ranged from 25 to 50. 10/

VIII

The Carson City Board of Supervisors are aware of the status of the Carson River water rights litigation and of the possible changes in the claims sought to be changed by Applications 33869 and 33870. 11/

IX

The Carson City Board of Supervisors has considered the public interest as regards water rights acquisition and related costs and use of water under the subject applications. 12/

X

Carson City anticipates that there will be a bond issue before the people within one year which will have an appropriation for acquisition of water rights included within that bond issue. 13/

XI

The Applicant under Application 33871 filed Application 29965 in the name of Lynn Armstrong on February 4, 1976 to appropriate underground water for irrigation purposes. Application 29965 was denied on October 15, 1976 on the grounds that approval would tend to impair the value of existing rights. Notice of appeal of said denial was filed on November 12, 1976. 14/

CONCLUSION

I

The State Engineer has jurisdiction of the parties in the subject matter of this action. 15/

II

Any person desiring to change the place of diversion, manner of use or place of use of any of the public waters already appropriated shall make an application to the State Engineer for a permit to make the same. 16/

III

Approval of Applications 33869, 33870 and 33871 would not result in any new or additional appropriation of water but would merely authorize a change in point of diversion, place of use and manner of use of water heretofore appropriated.

IV

The State Engineer shall approve all applications made in proper form where all fees have been paid which contemplate the application of water to beneficial use and where the proposed use or change does not tend to impair the value of existing rights, or to be otherwise detrimental to the public welfare. 17/

V

The applicant and the Carson City Board of Supervisors must have some certainty as to the quantity and availability of water under Applications 33869, 33870 and 33871. 18/

VI

Although there may be some flow to the Carson River or return to the ground water basin resulting from appropriation of water for irrigation purposes under Permit 26837, this is not a requirement of the permit. The Applicant under Permit 26837 is authorized to consume, for beneficial purposes, a duty of 4.0 acre-feet per acre from all sources. 19/

VII

Appropriation of water at any point other than that described as the point of diversion under Applications 33869 and 33870 will require an Application to Change. 20/ No predetermination or assurances of action to be taken on such application or applications is inferred or granted by this Ruling.

VIII

The Applicant and Carson City have indicated through testimony and by entering a contract, the intent to place water to beneficial use under the subject applications.

IX

Any diversion of water under any Permits issued under Applications 33869 and 33870 would necessarily be limited in accordance with the priority and irrigation season or any other determinations provided in the proposed Findings of Fact and Decree on the Carson River or any final judgement in that proceedings.

X

Water users downstream from the proposed point of diversion under Applications 33869 and 33870 are dependent on return flow and water rights of said users must be protected. The best testimony and information available for the reach of the Carson River in question in this matter is that the return flow approximates 40 per cent of water diverted.

XI

There is no evidence that, within the scope of the State Engineer's authority to consider the public interest or welfare, that the proposed changes would be detrimental to the public welfare.

XII

Any additional appropriation of water under Application 29965 would adversely affect water rights under any permit issued under Application 33871.

XIII

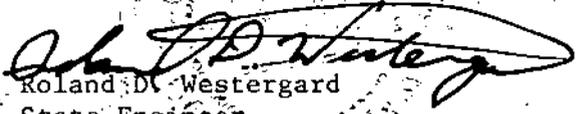
The findings, conclusion and ruling in this matter are limited and restricted to the fact and circumstance and merits of the issue at hand and do not by inference or otherwise necessarily establish any precedent or predeterminations in other current or future issues or proceedings.

RULING

The protest to Application 33871 is herewith overruled and permits will be issued under Applications 33869, 33870 and 33871 subject to the following conditions:

1. Diversions under Permits 33869 and 33870 will be in accordance with priorities, period of use and other provisions of the Proposed Finding of Fact and Decree on the Carson River or any final Judgement or Decree entered in the Carson River Adjudication proceedings relating to the claims being changed.
2. Diversion rates and total quantity allowed in acre-feet under Permits 33869 and 33870 will be limited to 60% of the diversion rate and total quantity allowed in the Proposed or Final Carson River Decree.
3. The diversion rate under Permit 33871 shall not exceed 3.4 c.f.s. and the total annual quantity diverted under Permit 33871 shall be limited to the difference between 810.86 acre-feet and the allowable diversions under Permits 33869 and 33870.
4. The total annual quantity diverted under Permits 33869, 33870 and 33871 shall not exceed 810.86 acre-feet.
5. Totalizing meters must be installed and maintained in the discharge pipe near each point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meters must be installed before any use of water begins, or before the Proof of Completion of Work is filed.
6. Records of diversions and quantities of water placed to beneficial use must be submitted to the State Engineer on a monthly basis.
7. Any quantity of water that may be allowed in appeal proceedings in the matter of Application 29965 will be deducted from the 810.86 acre-feet allowed in this Ruling.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/bl

Dated this 6<sup>th</sup> day  
of April, 1978.

FOOTNOTES

1. Public record on file at the State Engineers office.
2. Public record on file at the State Engineers office.
3. Hearing Transcript, page 12 and 96.
4. Public record on file at the State Engineers office.
5. Section XII Carson River proposed Decree - Public record on file at the State Engineers office.
6. Hearing Transcript, pages 23 - 55.
7. Hearing Transcript, page 13 and 23 - 55.
8. Hearing transcript, pages 92 - 93.
9. Hearing Transcript, pages 61 - 88.
10. Hearing Transcript, pages 68, line 7 and 8; page 75 lines 23 thru 25.
11. Hearing Transcript, page 97.
12. Hearing Transcript, pages 101 thru 103.
13. Hearing Transcript, page 104.
14. Application 29965 and Hearing Transcript, pages 103 and 104.
15. NRS 533.025 and 533.030, subsection 1.
16. NRS 533.325.
17. NRS 533.370.
18. Hearing Transcript, page 102.
19. Permit 26837.
20. Hearing Transcript, pages 93 and 105.