

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATIONS 51898,) 51899, 51900, 51901, 51902 and 51903 FILED) TO CHANGE THE POINT OF DIVERSION,) PLACE AND MANNER OF USE OF A PORTION) OF THE PUBLIC WATERS OF THE CARSON) RIVER HERETOFORE APPROPRIATED) UNDER CARSON RIVER DECREE CLAIM) NUMBERS 704 AND 705 AND PERMIT 51643 IN) DAYTON VALLEY, CARSON CITY, NEVADA.)

RULING

GENERAL

I.

Application 51898 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 267 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Carson River Decree Claim Number 704. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M. (Mexican Dam) and the existing place of use is 160 acres located in portions of the NW1/4 Section 14 and portions of the SW1/4 and NW1/4 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Sections 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Sections 31, 32, 33, 34, 35, W1/2 36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and those portions of the SW1/4NW1/4 of Section 36 and the S1/2NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and the period of use is as decreed. The proposed manner of use is Municipal and period of use is January 1 to December 31 of each year.¹

¹ Public record in the office of the State Engineer under Applications 51898 through 51903, inclusive.

II.

Application 51899 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 133 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Carson River Decree Claim Number 704. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M. (Mexican Dam) and the existing place of use is 160 acres located in portions of the NW1/4 Section 14 and portions of the SW1/4 and NW1/4 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Sections 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Sections 31, 32, 33, 34, 35, W1/2 36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and those portions of the SW1/4NW1/4 of Section 36 and the S1/2NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and the period of use is as decreed. The proposed manner of use is Municipal and period of use is January 1 to December 31 of each year.¹

III.

Application 51900 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 127.83 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Carson River Decree Claim Number 705. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M. (Mexican Dam) and the existing place of use is 76.7 acres located in portions of the E1/2 SE1/4 Section 10 and the SW1/4 SW1/4 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Section 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Section 31, 32, 33, 34, 35, W1/2 36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and

those portions of the SW1/4NW1/4 of Section 36 and the S1/2 NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and period of use is as decreed. The proposed manner of use is Municipal and the period of use is January 1 to December 31 of each year.¹

IV.

Application 51901 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 63.92 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Carson River Decree Claim Number 705. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M. (Mexican Dam) and the existing place of use is 76.7 acres located in portions of the E1/2 SE1/4 Section 10 and the SW1/4 SW1/4 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Sections 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Sections 31, 32, 33, 34, 35, W1/2 36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and those portions of the SW1/4NW1/4 of Section 36 and the S1/2NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and period of use is as decreed. The proposed manner of use is Municipal and the period of use January 1 to December 31 of each year.¹

V.

Application 51902 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 27 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Permit 51643. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M. and the existing place of use is 16.2 acres located in portions of the W1/2 W1/2 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the SE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Sections 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Sections 31, 32, 33, 34, 35, W1/2

36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and those portions of the SW1/4NW1/4 of Section 36 and the S1/2NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and period of use is as decreed. The proposed manner of use is Municipal and the period of use is January 1 to December 31 of each year.¹

VI.

Application 51903 was filed on March 4, 1988, by Carson City to change the point of diversion, place and manner of use of 13.5 acre-feet annually from the Carson River, a portion of water heretofore appropriated under Permit 51643. The existing point of diversion is described as being within the NE1/4 SW1/4 Section 35, T.15N., R.20E., M.D.B.&M., and the existing place of use is 16.2 acres located in portions of the W1/2 W1/2 Section 11, T.15N., R.20E., M.D.B.&M. The proposed point of diversion is described as being within the NE1/4 SW1/4 Section 14, T.15N., R.20E., M.D.B.&M. and the proposed place of use is within T.15N., R.20E., M.D.B.&M., E1/2 of T.15N., R.19E., M.D.B.&M., Sections 2, 3, 4, E1/2 5, and that portion of the N1/2 of the NE1/4 of Section 6 which lies within Carson City limits, T.14N., R.20E., M.D.B.&M., Sections 31, 32, 33, 34, 35, W1/2 36, and those portions of the E1/2 of Section 36 which lie within Carson City limits T.16N., R.20E., M.D.B.&M., the S1/2 of Sections 34, 35, and 36, NE1/4 of Section 36, and those portions of the SW1/4NW1/4 of Section 36 and the S1/2NE1/4 of Section 35 which lie within the Carson City limits T.16N., R.19E., M.D.B.&M. The existing manner of use is as decreed and period of use is as decreed. The proposed manner of use is Municipal and the period of use is January 1 to December 31 of each year.¹

Applications 51898, 51899, 51900, 51901, 51902 and 51903 were protested on May 11, 1988, by Silver Saddle Ranch on the following grounds:²

"That the granting of the application, unless properly conditioned, could adversely affect protestant's use of its decreed rights to the waters of the Carson River. Also, the impacts, if any, on the application from the agreement

² See footnote 1.

between Carson City and the owner or owners of the water right under this claim are at this stage unknown, for the provisions of that agreement are not included in the application and are not available to this protestant."

FINDINGS OF FACT

I.

Applications to Change 51898 through 51903, inclusive, filed by Carson City have completed the statutory processing including the publication and protest periods consistent with the provisions of NRS Chapter 533 and the Carson River Decree titled the United States of America vs. Alpine Land and Reservoir Company, et al., Civil D-183 BRT, United States District Court for the District of Nevada.³

II.

On April 20, 1988, the State Engineer held a meeting in the office of the State Engineer, Carson City, Nevada, with representatives for the applicant and other Mexican Ditch water right holders under the Carson River Decree and the Federal Water Master, Garry Stone. Subsequent to that meeting Silver Saddle Ranch on May 11, 1988, filed protests to the applications.⁴

III.

As a result of the meeting held in the State Engineer's office on April 20, 1988, Carson City on April 26, 1988, submitted to the Federal Water Master a list of three (3) commitments that Carson City was willing to accept upon approval of the subject applications, those commitments are as follows:

³ NRS 533.360; NRS 533.365: See "Administrative Provisions" of Carson River Decree page 160 - 162 United States vs. Alpine Land and Reservoir Company, et al. Final Decree Civil No. D-183 BRT United States District Court, District of Nevada.

⁴ Public record in the office of the State Engineer under Applications 51898 through 51903, inclusive.

- "1. Pay for their proportionate share of Mexican Ditch maintenance based on the water rights owned or leased by Carson City. This would include the previously approved 62.5 acre-feet of Millard and Furgerson, but would not include the Terry water rights.
2. The City will agree to support you as the Water Master by providing personnel as required to regulate headgates on the Mexican Ditch under your supervision. It is anticipated that this will not be required at all times, but may be necessary during periods of regulation. The City will also support you and your office in any other way possible on request.
3. The City will pay the costs for you to have installed a gaging station on the Darling Ranch near the return point to the Carson River. It is estimated that this cost would not exceed \$2,500.00."

The State Engineer finds that the rights of the other decreed water right holders on Mexican Ditch will not be adversely effected or impaired if the approval of the subject applications is conditioned consistent with the commitments set forth in the Carson City letter of April 26, 1988.⁵

IV.

On August 16, 1988, Carson City submitted to the State Engineer copies of an agreement executed between Michael and Muriel H. Darling as owner of the decreed water rights under the subject applications to change and Carson City, Nevada, a consolidated municipality of the State of Nevada. The agreement sets out certain terms and conditions regarding the availability and use of the decreed waters for municipal purposes within the service area of Carson City. It is the State Engineer's finding that the agreement reasonably provides the information requested in the grounds of the protest.⁶

⁵ Public record in the office of the State Engineer under Applications 51898 through 51903, inclusive.

⁶ See footnote 5.

V.

On July 22, 1988, the State Engineer received from William J. Crowell, Jr., attorney at law, representing John C. Serpa, a notice of Lis pendens in an action titled John C. Serpa vs. Michael Darling, et al. In the letter accompanying the notice of Lis pendens, counsel for Mr. Serpa requested that the State Engineer decline to act on the subject applications until legal ownership of the water rights is determined.⁷

VI.

On August 15, 1988, the State Engineer received a letter under the signature of John C. Serpa indicating that Mr. Serpa was not opposed to the State Engineer proceeding with action on the subject applications with the understanding that the State Engineer's action would not prejudice any interests of Mr. Serpa in his lawsuit against the present owners of the rights, Michael and Muriel Darling.⁸

CONCLUSIONS

I.

The State Engineer has jurisdiction in the subject matter.⁹

II.

The State Engineer is prohibited from approving an application to change the point of diversion, manner or place of use if the application:¹⁰

1. Conflicts with existing rights on the source.
2. Is detrimental to the public interest.

⁷ See footnote 5.

⁸ See footnote 5.

⁹ NRS Chapter 533.

¹⁰ NRS 533.370.

III.

The State Engineer concludes that the approval of the subject applications to change under the conditions set forth in Carson City's letter of April 26, 1988, will sufficiently protect the interests of the other decreed water users on Mexican Ditch.

IV.

There is no evidence that the approval of the subject applications will adversely effect or impair other existing rights on the source.

V.

There is no evidence that the approval of the subject applications would not be in the public interest.

RULING

The protests to Applications 51898 through 51903, inclusive, are herewith upheld to the extent that the subject applications will be approved under the following terms and conditions.

1. The permittee will pay for their proportionate share of Mexican Ditch maintenance based on the water rights owned or leased by Carson City.
2. The permittee will agree to support the Federal Water Master by providing personnel as required to regulate headgates on the Mexican Ditch under the Federal Water Master's supervision. It is anticipated that this will not be required at all times, but may be necessary during periods of regulation.
3. The permittee will pay the costs for the Federal Water Master to have installed a gaging station on the Darling Ranch near the return point to the Carson River. It is estimated that this cost should not exceed \$2,500.00.
4. Applications 51898 through 51903, inclusive, are approved subject to the agreement between Carson City and Michael and Muriel H. Darling dated July 21, 1988, and the stipulation to amend by incorporating a new Exhibit "A" between Carson City and Michael and Muriel H. Darling dated July 31, 1988.

5. The permits approved under Applications 51898 through 51903, inclusive, shall terminate upon termination of the agreement set forth under condition 4 unless Carson City is able to demonstrate ownership of the decreed rights being changed. Upon termination of the permits the right to the use of the water set forth therein shall revert to the original decreed use.

Respectfully submitted,



Peter G. Morros
State Engineer

PGM/bk

Dated this 19th day of
August, 1988.