

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF APPLICATION 54235)
FILED TO CHANGE THE POINT OF)
DIVERSION OF THE WATERS OF THE EAST)
FORK OF THE CARSON RIVER IN CARSON)
VALLEY, STATE OF NEVADA, HERETOFORE)
APPROPRIATED UNDER CLAIMS 176, 177,))
178 AND 179 OF THE ALPINE DECREE.)

RULING

GENERAL

Application 54235¹ was filed on December 18, 1989, by James E. Hussman and Katheryn Hussman to change the point of diversion of water heretofore appropriated under claims 176, 177, 178 and 179 of the Alpine Decree for irrigation of 146 acres of land. The applicants seek to change the point of diversion from the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T.12N., R.20E., M.D.B.&M. (upper field ditch) to the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 10, T.12N., R.20E., M.D.B.&M. (upper New Virginia Ditch).

Application 54235 was timely protested¹ by the Jacobsen Family Trust (Stoddard Jacobsen) on the grounds that:

"The upper or new Virginia Ditch serves the irrigation needs of the Williams, Nelson, Hussman and Jacobsen trust properties. The court order settling the quiet title suit by D. Oxoby terminated all ditch easements for the Virginia Company ditches. I am now negotiating with the Williams property owners for an easement for the Virginia Ditch. When this is settled, I will honor the present rights of Hussman for two parcels of water rights and one parcel for Nelson and the Williams right.

I have been using the Virginia Ditch for the irrigation of my property for natural flow water, for reservoir water and for pumped well water. Any additional rights transferred into the ditch would make it very difficult to continue to use the ditch in the present manner. I therefore strongly protest the transfer of any more water rights into the Virginia Ditch."

¹ Public record in the office of the State Engineer.

FINDINGS OF FACT

I.

The protest to Application 54235 pertains to ditch easements on private property downstream of the proposed point of diversion.¹

II.

The State Engineer is without express authority to distribute water in the Alpine Decree.²

III.

The State Engineer is without authority to adjudicate the property rights either by presumption or by agreement.³

IV.

The State Engineer further finds that the proposed change in point of diversion poses no threat to existing rights and will not be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.⁴

² See Final Decree in United States of America v. Alpine Land and Reservoir Co., et al., Civil No. D-183-BRT United States District Court, District of Nevada.

³ NRS Chapters 533 and 534 are silent as to the State Engineer's authority to grant ingress, egress or trespass to applicants.

⁴ NRs 533.325 and U.S. v. Alpine Land and Reservoir Company, et al., Civil No. D-183-BRT, U.S. District Court, District of Nevada, Final Decree Administrative Provision No. VII.

II.

The State Engineer is prohibited by law from granting a permit under an application to change where:⁵

1. The proposed change conflicts with existing rights, or
2. The proposed change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that Application 54235 is in proper order to change the point of diversion of claims No. 176, 177, 178 and 179 of the Alpine Decree as provided under Administrative Provision VII of said decree.⁶

IV.

The State Engineer determines that the protest to Application 54235 pertains to ditch easements on private property downstream of the proposed point of diversion over which he has no authority.

V.

The State Engineer concludes that the change in point of diversion will not interfere with existing rights nor threaten to prove detrimental to the public interest.

⁵ NRS 533.370.

⁶ NRS 533.325 and U.S. v. Alpine Land and Reservoir Company, et al., Civil No. D-183-BRT, U.S. District Court, District of Nevada, Final Decree Administrative Provision No. VII.

RULING

The protest to Application 54235 is hereby overruled and said application is hereby approved subject to prior rights on the source and further subject to distribution jurisdiction by the Federal Water Master.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/GC/bk

Dated this 19th day of

July, 1990.