

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

IN THE MATTER OF PROTESTED APPLICATIONS)
54729 THROUGH 54741 FILED TO CHANGE THE)
POINT OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF THE WATERS OF THE WEST)
FORK OF THE CARSON RIVER, HERETOFORE)
DECEED IN THE CARSON RIVER DECREE,)
DOUGLAS COUNTY, NEVADA AND ALPINE)
COUNTY, CALIFORNIA.)

RULING

4207

GENERAL

I.

Applications 54729 through 54741 were filed with the State Engineer on May 9, 1990, by Aqueduct I Ltd., hereafter referred to as Aqueduct I, to change the point of diversion, place of use and manner of use of certain water rights heretofore decreed in the Alpine Decree.^{1,2} Later, portions of Applications 54736 and 54737 and all of Applications 54739, 54740 and 54741 were withdrawn by the Applicant.³ The claim numbers of the remaining water rights and the quantity of water requested to be changed are listed below:

¹ File No's. 54729 through 54741, official records in the Office of the State Engineer.

² Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

³ Aqueduct I, acting through counsel, withdrew those claim numbers from consideration in a letter to the Hearing Officer, dated March 25, 1994, official records in the Office of the State Engineer.

<u>Application No.</u>	<u>Alpine Decree Claim No.</u>	<u>Acres Withdrawn</u>	<u>Quantity of Water, AF @ 2.5 AF/Acre</u>
54729	520, 521, 522	91.5	228.75
54730	523, 524, 525, 526, 527	23.1	57.75
54731	528	36.1	90.25
54732	529, 530, 531	133.2	333.00
54733	532, 533	72.2	180.50
54734	534	19.7	49.25
54735	535, 536	171.6	429.00
54736	542	37.0	92.50
54737	545, 546	144.0	360.00
54738	553	<u>29.5</u>	<u>73.75</u>
TOTAL		757.9	1894.75

The proposed point of diversion is the Millich Ditch located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, T.11N., R.19E., M.D.B.&M., Alpine County, California. A proposed alternate diversion is the Snowshoe Thompson #2 Ditch, located in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35, T.11N., R.19E., M.D.B.&M., Alpine County, California. The Applicant proposes to divert 40% of the total quantity of water in April, 40% in May, and the remaining 20% in June, of each year.

Applications 54729 through 54738 were filed for primary permits, under the provisions of NRS 533.440, which describes the primary-secondary permitting process. Under Applications 54729 through 54738, the Applicant proposes to store water in Mud Lake Reservoir, located within portions of Sections 3, 4, 9, and 10, T.11N., R.20E., M.D.B.&M., for later release to some unidentified beneficial use.¹

II.

Applications 54729 through 54741 were sent to the Federal District Court in accordance with the Order entered by The Honorable Judge Bruce R. Thompson on August 17, 1990.⁴ On November 6, 1991, Judge Thompson entered an Order which limited the issues

⁴ Exhibit No. 4, Public Administrative Hearing before the State Engineer, March 11, 1994.

to be considered by the State Engineer under the applications for primary permits.⁵ On February 18, 1993, The Honorable Judge Philip M. Pro entered a Stipulation and Order which resolved the issues at the Federal Court level.⁶ On December 17, 1993, Judge Pro ordered that an administrative hearing be conducted before the State Engineer in accordance with Nevada law.⁷ In Judge Pro's order, the parties to this action were allowed to submit a list of issues which they believed should be heard by the State Engineer.

III.

In accordance with the Federal Court Order,⁷ the State Engineer conducted a public administrative hearing on March 11, 1994, to consider Applications 54729 through 54738.⁸ The issues that were considered by the State Engineer, as defined in Judge Thompson's Order of November 6, 1991⁵ were listed in the hearing notice as follows:

(1) Do the ditches, which Aqueduct I proposes to use to divert its water to storage have adequate capacity to serve all users on those ditches?

(2) Does Aqueduct I own sufficient capacity in the ditches it proposes to use to carry all of the water it intends to divert into those ditches?

(3) Does Aqueduct I own sufficient capacity in Mud Lake Reservoir to store all of the water requested to be changed by Applications 54729 through 54738?

(4) Is storage of water, as contemplated by Aqueduct I, lawfully authorized by Nevada law and under the terms of the above entitled action?

⁵ Exhibit No. 5, Public Administrative Hearing before the State Engineer, March 11, 1994.

⁶ Exhibit No. 6, Public Administrative Hearing before the State Engineer, March 11, 1994.

⁷ Exhibit No. 7, Public Administrative Hearing before the State Engineer, March 11, 1994.

⁸ Exhibit No. 1, Public Administrative Hearing before the State Engineer, March 11, 1994.

(5) Whether the storage of water, independent of any other use, is a beneficial use under Nevada law, and if not, whether the State Engineer should hold action on Aqueduct I's change applications until Aqueduct I identifies a recognized beneficial use and place of use for its water?

(6) Whether the storage rights of Aqueduct I under Claim Nos. 463, 814 and 814A may be used only to supplement Aqueduct I's direct diversion rights to the extent necessary to satisfy the maximum duty of those direct diversion rights?

(7) Whether Aqueduct I must also change the manner of use of its existing storage rights in Mud Lake Reservoir?

(8) Whether Aqueduct I must also change the place of use of its existing storage rights in Mud Lake Reservoir?

(9) Whether Aqueduct I's ownership of the necessary capacity of ditches and Mud Lake Reservoir are elements which should be considered in deciding whether to grant the requested changes?

(10) Whether Mud Lake and Red Lake are supplemental to direct diversion rights?

(11) Where any measuring device(s) should be located?

(12) Whether the approval of a change application, filed by a party who obtained water rights with no intent to place the water to beneficial use, is permissible under Nevada law?⁸

IV.

The attorneys for Douglas County and Lyon County requested that the safety of Mud Lake Dam be added to the list of issues to be considered by the State Engineer, at the hearing regarding Applications 54729 through 54738.⁹ The State Engineer determined that the safety of Mud Lake Dam is not an issue that should be

⁹ Exhibits 8 and 9, Public Administrative Hearing before the State Engineer, March 11, 1994.

considered at the hearing.¹⁰ Instead, the safety of Mud Lake Dam will be considered at a later date, if Applications 54729 through 54738 are approved.

FINDINGS OF FACT

I.

In Applications 54729 through 54738, Aqueduct I proposes to divert water to Mud Lake, from the West Fork of the Carson River through the Millich Ditch and/or the Snowshoe Thompson Ditch No. 2.¹ The flow capacities of these two ditches, as computed at the limiting sections are 34 cubic feet per second (cfs) and 25 cfs, respectively.¹¹ The capacity necessary to deliver the Aqueduct I water through the Millich Ditch, and to satisfy existing Carson River water rights is 30 cfs in April, 26 cfs in May, and 26.5 cfs in June of each year.¹¹ The capacity required in the Snowshoe Thompson Ditch No. 2, if this ditch were used to convey the Aqueduct I water to Mud Lake, is 22.5 cfs in April, 22 cfs in May and 22.5 cfs in June of each year.¹¹ The consulting engineer recommends the ditches be inspected when these quantities of water are flowing, to insure that no damage occurs to the ditch banks and diversion structures.¹¹

The State Engineer finds that the ditches that Aqueduct I proposes to use to divert water to Mud Lake under Applications 54729 through 54738, have sufficient hydraulic capacity to serve all water users. The State Engineer further finds that Aqueduct I must inspect the ditches used to convey water and is responsible for the repair of any damage caused by the higher flows and for the mitigation of any interruption in water delivery to existing water users due to damage caused by the higher flows.

¹⁰ Exhibit 10, Public Administrative Hearing before the State Engineer, March 11, 1994.

¹¹ "Investigation of the Mud Lake Reservoir and Conveyance Methodology" A Report prepared for Aqueduct I by Thiel, Winchell and Associates. This Report was Exhibit No. 2 in the action United States v. Alpine Land and Reservoir Co., CV-D-190 PMP, D. Nev.

II.

No evidence or testimony was provided in opposition to Aqueduct I's assertion that it owns sufficient capacity in the ditches that are proposed to be utilized under Applications 54729 through 54738. Aqueduct I asserts that it obtained easements when it acquired the Dressler Ranch in 1989.¹² The conveyance system to Mud Lake has been utilized by the Dressler family, over the years, in the non-irrigation season, to satisfy the storage rights under Claim No's. 463, 814, and 814A of the Alpine Decree. The State Engineer finds that Aqueduct I owns sufficient capacity in the ditches to convey water to Mud Lake, as proposed under Applications 54729 through 54738.

III.

Under Alpine Decree Claim Numbers 814 and 814a, the volume of water authorized to be stored in Mud Lake Reservoir is 3172 acre feet.² The total capacity of the reservoir is estimated to be 5367 acre feet.¹¹ Therefore, there appears to be sufficient capacity to store the 1894.75 acre feet as proposed under Application 54729 through 54738. The ownership of the unused capacity was the subject of a law suit in which the Court ruled that Aqueduct I was the owner.¹³ The State Engineer finds that Aqueduct I owns sufficient capacity in Mud Lake Reservoir to store the water as proposed under Applications 54729 through 54738.

IV.

Aqueduct I requests that change Applications 54729 through 54738 be approved as reservoir permits in accordance with NRS 533.440.¹² Applications for secondary permits will then be filed by those parties who would place the water to a beneficial use. The State Engineer finds that the storage of water for later use,

¹² Post-Hearing brief filed by Aqueduct I, dated May 9, 1994.

¹³ Heritage Ranch v. Aqueduct I Limited Partnership, CV-N-90-411-BRT (D. Nevada 1990).

as proposed in Applications 54729 through 54738, is authorized under Nevada law.¹⁴

V.

Aqueduct I is not asserting that the storage of water is a beneficial use. Aqueduct I proposes to store the water in Mud Lake under reservoir permits, then release the water to any party, i.e., Carson City,¹⁵ who will then place the water to beneficial use under secondary permits, as provided under Nevada law. The State Engineer finds that Applications 54729 through 54738 are clear in this regard and action on these applications may be taken at this time.

VI.

Aqueduct I acquired the Dressler portions of Claim No's. 463, 814, and 814A.^{12,16} These rights, as decreed, were entirely in the name of Fred H. Dressler. These rights are described in the Alpine Decree as "reservoir rights" and no place of use is associated with these rights.^{12,16} Historically, this water was entirely used by the Dresslers to supplement the irrigation of portions of their property on which direct diversion water rights under the Alpine Decree were appurtenant.¹² The priorities of the water rights that are the subject of this ruling range from 1863 to 1913. Late dated priorities would be cut off very early in the summer. The stored water enabled the Dresslers to irrigate later in the summer when their land may have been out of priority.

The State Engineer has found in prior rulings, using a well known empirical formula, that 45% of the consumptive use in Western Nevada occurs after July 15. Therefore, with late dated priorities, it is necessary to utilize storage water to obtain a full season supply.

¹⁴ 533.055, 533.440.

¹⁵ Exhibit No. 15, Public Administrative Hearing before the State Engineer, March 11, 1994.

¹⁶ Post-Hearing brief filed by Donald E. Bently, dated May 6, 1994.

Many Carson River irrigators do not obtain their full duty of water under their direct diversion rights alone. Those irrigators who own storage rights, are able to obtain up to their full duty of water, by adding the stored water to their direct diversion rights. The delivery of the full duty of water on lands formerly held by the Dresslers required the water stored under Claim No's. 463, 814 and 814A to be added to Dresslers' direct diversion rights. The State Engineer finds that the Aqueduct I portion of the storage rights under Claim No's. 463, 814 and 814A cannot be separated from the Aqueduct I direct diversion rights.

Water stored in Mud Lake was never used on non-water righted lands, nor used for any purpose other than irrigation. The State Engineer finds that the water under the Aqueduct I portion of Claims 463, 814, and 814A was stored for the supplemental irrigation of Dresslers' (now Aqueduct I's) decreed lands but was not appurtenant to any particular parcel of land.

VII.

The Alpine Decree established the maximum amount of water, on a yearly basis, that can be delivered to the land (duty).¹⁷ For the lands above the Newlands project the decree allows 4.5 acre feet per acre (AF/AC) for bottom lands, 6.0 AF/AC for alluvial fans and 9.0 AF/AC for beach lands. However, the decree does not attach one of these designations to any particular parcel of land. The decree further describes the consumptive use for the lands above Lahontan Reservoir as being 2.5 AF/AC.

The Alpine Decree further provides the State Engineer with guidance when evaluating applications to change the manner of use.¹⁸ By decree, changes in the manner of use are to be allowed only for the net consumptive use which, for lands above Lahontan Reservoir, is 2.5 AF/AC as described above. This provision allows

¹⁷ Findings of Fact VIII, Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

¹⁸ Administrative Provision No. VII, Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

the "river to be kept whole" for downstream users by compensating for return flows. The State Engineer finds that the applicant seeks to strip 757.9 acres of irrigation which equates to the 1894.75 acre feet to be transported and changed to Mud Lake storage for later release.

The State Engineer finds that the water stored under the Aqueduct I portion of Claim No's. 463, 814 and 814A must be added to the Aqueduct I direct diversion rights in order to obtain the entire consumptive use of 2.5 acre feet per acre, requested to be changed under Applications 54729 through 54738. Therefore, the maximum quantity of water to be stored in Mud Lake for later release under the subject applications plus the Aqueduct I portions of Claim No's. 463, 814 and 814A is 1894.75 AF.

VIII.

Applications 54729 through 54738 are filed to change direct flow irrigation rights to storage. The State Engineer finds that the water stored under the Aqueduct I portions of Claim No's. 463, 814 and 814A is already decreed as storage. The State Engineer further finds that it is not necessary to file change applications of Claim No's. 463, 814 and 814A for later release to other beneficial uses.

IX.

Mud Lake Reservoir can be distinguished from the high mountain lakes. The high alpine reservoirs on both forks of the Carson River are filled out of priority because the snow melt doesn't begin at the higher elevations until the flow has diminished on the Valley Floor.¹⁹ Additionally, in the decree, the water stored in the mountain reservoirs in Segment 3 is not appurtenant to any particular place of use.²⁰ The State Engineer finds that Mud Lake Reservoir is not in Segment 3 and is not a mountain reservoir. Therefore, it shall be filled according to priority and the water

¹⁹ Findings of Fact X (1f), Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

²⁰ Findings of Fact X (4), Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

stored in Mud Lake Reservoir will be appurtenant to particular places of use as described by future secondary permits.

X.

The ownership of the ditches and Mud Lake Reservoir is an important issue in the delivery of water to storage under primary Applications 54729 through 54738. However, the approval of these applications by the State Engineer does not grant ownership, easement, or any right to the ditches, reservoir, or the lands crossed by the ditches. It is the responsibility of the permittee to obtain the legal right to use and maintain the system of ditches, canals, and creeks necessary to receive the water. As found earlier in this ruling, Aqueduct I has obtained the ownership to the required capacities in the ditches and Mud Lake Reservoir. The State Engineer finds that the ownership of the capacity in the ditches and the capacity of Mud Lake reservoir will not preclude the approval of Applications 54729 through 54738. The State Engineer further finds that Aqueduct I is responsible to resolve any problems that may arise regarding ownership, easement, or right to access any land, under Applications 54729 through 54738.

XI.

The record contains no testimony or evidence regarding the water stored in Red Lake (Claim No's. 810 and 810A). There is no evidence on the record to indicate that Aqueduct I acquired the Dressler portion of Claim No's. 810 and 810A. Therefore, no finding can be made regarding Claim No's. 810 and 810A.

XII.

The existing points of diversion under the Alpine Decree Claims requested to be changed by Applications 54729 through 54738, are all located relatively close to the existing places of use.²¹ There is an insignificant transportation loss associated with the delivery of water to the existing places of use.

²¹ Post-Hearing brief filed by the United States of America, dated May 6, 1994, and Post-Hearing brief filed by Melvin Schwake, Sr., Melvin Schwake, Jr., and Nathan and Cynthia Leising, dated May 9, 1994.

Under Applications 54729 through 54738, Aqueduct I proposes to divert water from the West Fork of the Carson River, through the Millich Ditch or the Snowshoe Thompson No. 2 Ditch, through Indian Creek, re-divert from Indian Creek, and on to Mud Lake, a distance of about eight miles.^{21,22} There would be a relatively large transportation loss from the proposed point of diversion on the West Fork to Mud Lake.

The location of the measuring device of Aqueduct I's water determines who bears the increased transportation loss. If the measuring device is placed near Mud Lake Reservoir, then all water right holders downstream will bear the increased loss. To approve Applications 54729 through 54738 with the measurement at Mud Lake Reservoir, would interfere with existing rights, which is prohibited by law.²³ Aqueduct I shall bear the entire loss for all water placed into storage during the irrigation season. Transportation loss for water put into storage during the non-irrigation season shall be accounted for as it has in the past. The State Engineer finds that as a condition of approval of Applications 54729 through 54738, the measurement of water under these applications shall occur, as near as practical, to the point of diversion on the West Fork of the Carson River, at another location near the point where the water enters Mud Lake and, if necessary, at other points near the diversions by others along the watercourse. The State Engineer further finds that the approval of Applications 54729 through 54738 will not conflict with existing rights if the measurement of water under said applications occurs as stated above.

Aqueduct I proposes to divert a total of 1894.75 acre feet of water each year under Applications 54729 through 54738, by diverting 40% of the total in April, 40% in May, and the remaining

²² Exhibit No. 3, Public Administrative Hearing before the State Engineer, March 11, 1994.

²³ NRS 533.370.

20% in June. The average flow rates required to deliver this water are 12.74 cfs in April, 12.33 cfs in May, and variable in June.

The proposed points of diversion lie in Segment 4 of the Carson River. By decree, diversions from the West Fork rotate between Segments 4 and 5 beginning on the first Monday in June.²⁴ Water is further rotated pursuant to the Anderson-Bassman & Price Decrees which were incorporated into the Alpine Decree. Therefore, the diversion rate for June cannot be specific but shall be regulated by the Federal Water Master. These flow rates, in addition to those required for the existing water users, shall be measured near the proposed point of diversion from the West Fork of the Carson River. There will be additional losses once water is released from storage for a downstream consumptive use. Those losses will be assessed once the secondary applications are filed. The amount will be determined by consultation between the State Engineer and the Federal Water Master.

XIII.

Aqueduct I obtained decreed direct diversion and storage water rights and storage capacity in Mud Lake. Aqueduct I requests that its direct diversion water go into storage under primary permits, for later beneficial use under secondary permits, as allowed in NRS 533.440. Aqueduct I submitted a proposed agreement with the City of Carson City, for the use of this water.¹⁵ The execution of this agreement is dependent upon the State Engineer's decision in this action. The State Engineer finds that Aqueduct I intends that the water will be placed to a beneficial use, under the primary - secondary permitting process.

XIV.

There is evidence in the State Engineer's records that indicates that wells drilled on the valley floor are recharged in part by the Carson River.²⁵ The State Engineer finds that if the

²⁴ Findings of Fact X (5), Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

²⁵ Maurer, D.K., United States Geological Survey Water Resources Investigation Report 86-4328, 1986.

lands being stripped of Carson River water under Applications 54729 through 54738, are then irrigated by drilling wells in California, over which the Nevada State Engineer has no control, there would be an effect on downstream Carson River decreed rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the subject matter of this action.²⁶

II.

The State Engineer may not approve an application to change an existing water right where:

1. The proposed change conflicts with existing rights,
or
2. The proposed change threatens to prove detrimental to the public interest.²⁷

III.

All applications for reservoir permits are subject to the provisions of NRS 533.324 through 533.435, except those sections where proof of beneficial use is required to be filed. The person proposing to apply to a beneficial use the water stored in any such reservoir, shall file an application for a permit, to be known as the secondary permit, in compliance with the provisions of NRS 533.324 through 533.435, except that no notice of such application shall be published.²⁸

IV.

When the necessity for the use of water does not exist, the right to divert it ceases, and no person shall be permitted to divert the waters of this state except at such times as the water

²⁶ NRS 533.040 and Administrative Provision VII, Final Decree in United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

²⁷ NRS 533.370.

²⁸ NRS 533.440.

is required for a beneficial use.²⁹ Therefore, water diverted to and stored in Mud Lake by the applicant shall only occur at such times and in such amounts as required to fulfill any or all secondary permits.

V.

The Millich Ditch can safely convey 34 cfs of water as estimated by the consulting engineer for Aqueduct I.¹¹ The maximum flow rate of water necessary to satisfy existing rights and the water under Applications 54729 through 54738 is 30 cfs. The State Engineer concludes that Millich Ditch has adequate capacity to deliver water under the applications and to serve all existing water users.

The Snowshoe Thompson Ditch No. 2 can convey 25 cfs, as estimated by the consulting engineer for Aqueduct I.¹¹ The maximum flow rate required to deliver water to existing water users on this ditch and the water under Applications 54729 through 54738 is 22.5 cfs. The State Engineer concludes that the Snowshoe Thompson Ditch No. 2 has adequate capacity.

The State Engineer further concludes that the system of ditches, canals, and creeks used to deliver water to Mud Lake Reservoir must be inspected monthly by a qualified person, during April, May, and June of each year when water is delivered to Mud Lake Reservoir. Aqueduct I is responsible for the inspections and for submitting a report of the inspections to the State Engineer, on or before July 31 of each year. Any damage at any point in the conveyance system to Mud Lake caused by the increased flows must be repaired by Aqueduct I. Additionally, Aqueduct I will be responsible for the interruption of delivery of water to existing water users, caused by the increase flows in the ditches.

VI.

Aqueduct I asserts that it has acquired ownership from the Dressler family, of the capacity of the conveyance system to Mud

²⁹ NRS 533.045 and Administrative Provision IV, Final Decree United States v. Alpine Land & Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980).

Lake Reservoir. Because there is no evidence or testimony on the record to the contrary, the State Engineer concludes that Aqueduct I owns sufficient ditch capacity to convey the water to Mud Lake Reservoir, as proposed under Applications 54729 through 54738.

VII.

The State Engineer concludes that there is sufficient capacity in Mud Lake Reservoir to store additional water under Applications 54729 through 54738. The State Engineer further concludes that this capacity is owned by Aqueduct I.

VIII.

Storage of water with the intention of placing the water to a beneficial use is allowed under Nevada law.²⁸ The water stored in Mud Lake Reservoir under Applications 54729 through 54738 will be placed to a beneficial use, under primary-secondary permits. The State Engineer concludes that Applications 54729 through 54738 meet the requirements of applications for primary permits and action may be taken at this time.

IX.

The water stored in Mud Lake Reservoir under the Aqueduct I portions of Claim No's. 463, 814 and 814A, was historically used to supplement the irrigation of unspecified Dressler (now Aqueduct I) lands, on which a direct diversion water right existed. The State Engineer concludes that the Aqueduct I portion of the storage rights (Claim No's. 463, 814 and 814A) are supplemental to Aqueduct I direct diversion rights and these storage rights may not be separated from the direct diversion rights. The State Engineer further concludes the delivery of the full consumptive use of 2.5 acre feet per acre requires both the Aqueduct I direct diversion rights and the Aqueduct I portion of the storage rights under Claim No's. 463, 814 and 814A. Therefore, the State Engineer concludes that the maximum quantity of water to be stored in Mud Lake Reservoir under Applications 54729 through 54738 and Aqueduct I's portions of Claim No's. 463, 814 and 814A is 1894.75 acre feet.

X.

State Engineer's approval of Applications 54729 through 54738 does not grant the ownership or easement for any lands or water conveyance structures necessary for the delivery of water. The State Engineer concludes that Aqueduct I is responsible to resolve any ownership issues.

XI.

The State Engineer concludes that the measurement of water delivered under Applications 54729 through 54738, should occur near the point of diversion at the West Fork of the Carson River. The State Engineer further concludes that another measuring point should be placed at the point of entry to Mud Lake Reservoir. Any transportation loss would then be charged to Aqueduct I and not the other water users on the Carson River. There shall be no conflict with existing rights.

XII.

There is nothing in the record that would indicate that the approval of the subject application would prove detrimental to the public interest.

XIII.

Although the Nevada State Engineer has no control over groundwater development in California, he does have control over water imported into Nevada.³⁰ The State Engineer concludes that if the lands being stripped of Carson River water rights under Applications 54729 through 54738, are then irrigated by wells, there will be an injurious effect on other decreed water right holders. The State Engineer reserves the right to declare the approval of the subject applications null and void if such groundwater development occurs and he will seek relief in the Federal District Court having jurisdiction over the Alpine Decree.

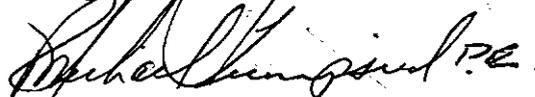
³⁰ NRS 533.515.

RULING

Applications 54729 through 54738 are hereby approved subject to the following:

1. Existing rights;
2. Payment of statutory fees;
3. The installation of measuring devices near the point of diversion on the West Fork of the Carson River and near the point of entry to Mud Lake Reservoir. The specific locations must be acceptable to the Federal Water Master and the State Engineer.
4. The maximum amount of water that can be stored by the applicant for later release for consumptive use is 1894.75 AF.
5. Secondary applications shall be filed for any release for consumptive use. Additional losses will be assessed, depending on the time of release and recapture and the distance and method of transport.
6. No water shall be diverted or stored except in an amount necessary to fulfill the secondary uses.
7. The approval becomes null and void if any attempt is made to drill wells and irrigate, from a groundwater source, the lands being stripped of water.

Respectfully submitted,



E. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/JCP/pm

Dated this 25th day of
July, 1995.