

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

IN THE MATTER OF APPLICATION )  
58115 FILED TO APPROPRIATE )  
THE PUBLIC WATERS OF THE CARSON )  
RIVER WITHIN THE CARSON DESERT )  
HYDROGRAPHIC BASIN (101), )  
CHURCHILL COUNTY, NEVADA. )

RULING

# 5232

GENERAL

I.

Application 58115 was filed on September 23, 1992, by John Torvik to appropriate 500.0 cubic feet per second of water from the Carson River and its tributaries. The proposed manner and place of use is for irrigation upon approximately 20,000 acres of land located within the Newlands Irrigation District. A more detailed description of this acreage is offered by Attachment "A" to the application, which is incorporated into this ruling. The proposed point of diversion is described as being located at Lahontan Dam, which is situated in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 33, T.19N., R.26E., M.D.B.&M.<sup>1</sup>

II.

The purpose for which Application 58115 was filed is better defined by Exhibit "B", which accompanied the application. Here the applicant states that this application was filed to appropriate any unappropriated water or future rights that may become available for appropriation from the Carson River and its tributary sources.<sup>1</sup>

III.

Application 58115 was timely protested by Albert Mussi on the grounds that all the waters of the Carson River are fully appropriated and adjudicated and he has trouble getting his 1898 and 1908 water rights served now.<sup>1</sup>

The protestant, Albert Mussi, requested that the State Engineer deny Application 58115.

IV.

Application 58115 was timely protested by the Pyramid Lake Paiute Tribe of Indians on the following grounds:<sup>1</sup>

1. Pursuant to federal reclamation law said application requires the approval of the Secretary of the Interior which has not been obtained.

2. The approval of said application by the Secretary of the Interior is not in the interests of the Newlands Reclamation Project or of the United States because: (i) it would violate the Secretary's obligations pursuant to the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; (ii) it would violate the Secretary's trust obligations to the Pyramid Lake Paiute Tribe of Indians; (iii) it would violate the Secretary's duty to protect, preserve and restore the Pyramid Lake fishery for the use and benefit of the Pyramid Lake Paiute Tribe of Indians; and (iv) it would violate the reserved right of the Pyramid Lake Paiute Tribe to the unappropriated waters of the Truckee River that are needed to maintain, restore and preserve the Pyramid Lake fishery.

3. Granting or approving the above referenced application by the State Engineer and/or the Secretary of the Interior would result in increased diversions of water from the Truckee River to the Carson River watershed and to Lahontan Reservoir and therefore would conflict with and tend to impair the value of the Pyramid Lake Tribe's existing rights to waters of the Truckee River because the Tribe is entitled to the use of all the waters of the Truckee River which are not subject to valid, vested, and perfected rights and the applicant does not have a vested right to use the waters of the Truckee River on the proposed places of use described in their applications.

4. Granting or approving the above referenced application by the State Engineer would be detrimental to the public welfare in that it would: (i) be likely to jeopardize the continued existence of Pyramid Lake's two principal fish, the endangered cui-ui and the threatened Lahontan cutthroat trout; (ii) prevent or interfere with the conservation of those endangered and threatened species; (iii) take or harm those threatened and endangered species; (iv) adversely affect the

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<sup>1</sup> File Number 58115, official records in the Office of the State Engineer.

recreational value of Pyramid Lake; and (v) interfere with the purposes for which the Pyramid Lake Indian Reservation was established.

5. On information and belief, said application should be denied because it would increase the consumptive use of water within the Newlands Project and/or increase the amount of water that is diverted to the Project from the Truckee River.

6. The application should not be approved because the applicants have not entered into a repayment contract with the United States.

7. The application should not be approved because the proposed use of the Newlands Reclamation Project's water rights is not authorized by federal law.

8. The application should not be approved because the proposed place of use is not within the authorized service area or boundaries of the Newlands Reclamation Project.

9. The application violates the provisions of Nevada law which protect the endangered cui-ui.

10. The application should not be approved because the applicant has not obtained permission to use federal facilities for the transportation of the water it is seeking to obtain and transfer.

11. The application should not be approved because the Carson River is fully appropriated as found by the United States District Court for the District of Nevada in its Final Decree in the case of United States v. Alpine Land & Reservoir Co., Docket No. D-183 HDM.

12. The Pyramid Lake Paiute Tribe of Indians will be adversely affected if the above referenced application is granted because: (i) it will result in greater diversions of Truckee River water away from Pyramid Lake to the detriment of the threatened and endangered species inhabiting Pyramid Lake; (ii) it will interfere with the implementation of the Operating Criteria and Proectures [sic] for the Newlands Reclamation Project; (iii) it will interfere with, violate and undermine the implementation of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act, Public Law 101-618; and (iv) it will impair, conflict and interfere with the Tribe's reserved right to the unappropriated waters from the Truckee River that are needed to maintain, restore and preserve the Pyramid Lake fishery and to fulfill the purposes of the Pyramid Lake Indian Reservation.

The protestant, the Pyramid Lake Paiute Tribe of Indians, requested that the State Engineer deny Application 58115.

V.

Application 58115 was timely protested by Bruce Babbitt on behalf of the United States Department of the Interior, on the following grounds.<sup>1</sup>

1. The water of the Carson River and its tributaries are fully appropriated.
2. The applicant has no right of access to the proposed point of diversion.
3. Appropriation of flows of this magnitude would adversely impact listed species under the Endangered Species Act.

The protestant, Bruce Babbitt, requested that the State Engineer deny Application 58115.

**FINDINGS OF FACT**

I.

Nevada Revised Statutes 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to a water right application. The State Engineer finds that a hearing is not necessary to consider Application 58115.

II.

Application 58115 requests a new appropriation of water from the Carson River and its tributaries. The relative use of the waters of the Carson River, including its tributary sources was determined through the adjudication process with the final determination set forth in the Alpine Decree.<sup>2</sup> The State Engineer finds that Application 58115 requests a new appropriation of water from a decreed stream system.

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<sup>2</sup> Final Decree, U.S. v. Alpine Land and Reservoir Company, Civil No. D-183 (D. Nev. 1980).

**III.**

The Alpine Decree establishes and determines direct diversion rights for irrigation and other uses upstream from and including the Newlands Project and declares the Carson River and its tributaries to be fully appropriated.<sup>2</sup> The State Engineer finds that the waters of the Carson River and its tributaries have been appropriated under existing water rights to the extent that no water from this source is available for capture under any permit derived from Application 58115.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</sup>

**II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>4</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that Application 58115 requests an additional appropriation of water from a surface source that is fully appropriated under existing senior water rights. The State Engineer concludes that the approval of Application 58115 would conflict with existing water rights to appropriate water from the Carson River and its tributaries.

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<sup>3</sup> NRS chapter 533.

<sup>4</sup> NRS § 533.370(3).

IV.

Through the adjudication process it was determined that the waters of the Carson River and its tributaries are fully appropriated. The State Engineer concludes that the approval of additional water from a source that is fully appropriated would threaten to prove detrimental to the public interest.

RULING

The protest issues relating to no unappropriated water are upheld, and Application 58115 is hereby denied on the grounds that its approval would conflict with existing water rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the other protest claims.

Respectfully submitted,



HUGH RICCI, P.E.  
State Engineer

HR/MDB/jm

Dated this 5th day of  
May, 2003.