

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

IN THE MATTER OF APPLICATION NUMBER)
54553 FILED TO CHANGE THE PLACE OF)
USE OF CERTAIN WATER WITHIN THE)
TRUCKEE CARSON IRRIGATION DISTRICT)
NEAR FALLON, CHURCHILL COUNTY,)
NEVADA.)

RULING

GENERAL

I.

Application Number 54553 was filed March 19, 1990, by Ted J. de Braga and Lois R. de Braga, to change the place of use of 1212.08 acre-feet of water as evidence by Truckee River Claim #3 of the Truckee River Decree United States of America vs. Orr Ditch Co. in Equity No. A-3 and United States vs. Alpine Land and Reservoir Co. No. D-183 BRT both by Federal District Court for the District of Nevada. The applicant seeks to change the place of use to portions of T.21N., R.32E., T.21N., R.31E., T.20N., R.32E., T.20N., R.31E., T.19N., R.31E., and T.19N., R.30E., all M.D.B.&M; more commonly known as the Stillwater Wildlife Management Area. The point of diversion is described as being within the N1/2 SW1/4 Section 19, T.20N., R.23E., M.D.B.&M. and SW1/4 SE1/4 Section 33, T.19N., R.26E., M.D.B.&M.¹

II.

The application was properly advertised and subsequently protested by Bruce and Gary Kent on the grounds that:¹

Taking ground out of production with the drain water going into the Stillwater Slough that ends up in Dutch Bill Lake witch I own, well dry up a lot of my wetlands that are water righted by 600 acres of pasture water right, drying up private wet land to preserve public wetland.

Therefore the protestant requests that the application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

¹ Public record of in the Office of the State Engineer.

III.

A public administrative hearing was properly noticed and held on September 21, 1990.²

FINDINGS OF FACT

I.

The protestant stated that the tail water and return flows from the Stillwater segment of the Truckee Carson Irrigation District including the applicants property collect in the Stillwater Slough and flow to private wetlands.³ However, the Protestant had no idea what contribution to the total Stillwater Slough water came from the land being stripped of water rights.⁴

II.

The protestant further stated that Stillwater Slough has to flow through Freeman Lake, overflows to Dutch Bill and Little Dutch Bill Lakes which over flows to Lund Lake.⁵

III.

A search of the records in the State Engineer's office revealed a claim of vested right for irrigation of 840 acres of crop land near Dutch Bill Lake but no water rights for the lake for wildlife or wetlands.⁶

² Exhibit 1 and transcript of public administrative hearing September 21, 1990, Carson City, Nevada pg. 6.

³ Transcript of public administrative hearing pg. 10 Testimony of Bruce Kent.

⁴ Transcript of public administrative hearing pgs. 11-12 Testimony of Bruce Kent.

⁵ Transcript of Public administrative hearing pg. 14 Testimony of Bruce Kent.

⁶ Claim #02037 filed by Kent Land and Livestock Co. filed in 1926; public record in the Office of the State Engineer.

IV.

The protestant stated that the change that is proposed would have no effect on his water rights decreed or otherwise.⁷

V.

The State Engineer finds that it is in the public interest to assist the Truckee Carson Irrigation District in meeting its target efficiencies as dictated in the Operating Criteria and procedures.⁸ The State Engineer further finds that water for the Stillwater Wildlife Management Area that is chargeable as project water will help Truckee Carson Irrigation District in attaining its efficiency goals.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.⁹

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public water where:¹⁰

- A. The proposed change conflicts with existing rights, or
- B. The proposed use or change threatens to prove detrimental to the public interest.

⁷ Transcript of administrative hearing September 21, 1990 Carson City, Nevada, pgs. 14 and 18 testimony by Bruce Kent public record in the Office of the State Engineer.

⁸ In 1973 the Secretary of Interior imposed an Operating Criteria on Truckee Carson Irrigation District which was modified several times until 1987. This criteria is under appeal and the subject of much debate.

⁹ NRS Chapter 533 and Final Decree p. 88 U.S. vs. Orr Water Ditch Co. et al. Equity A-3 (D Nev. 1949) and Final Decree p. 161 U.S. vs. Alpine Land and Reservoir Co. et al. Equity No. D-183 BRT (D. Nev. 1980).

¹⁰ NRS 533.370 (3)

III.

The State Engineer makes no findings as to the advantage of private wetlands as opposed to public wetlands.

IV.

The State Engineer concludes that any water use on wetlands, if it can be accountable project water and improve the overall efficiency of the project, is in the public interest.

V.

The proposed use of the water is for "Maintenance of Wetlands for Recreation and Wildlife/Storage" and the State Engineer concludes it to be a beneficial use of water.¹¹

RULING

The protest to application 54553 is hereby overruled on the grounds that the use of water is beneficial and the proposed change will not effect existing rights including those of the protestant. Application 54553 is hereby approved subject to prior rights and the payment of statutory permit fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/pm

Dated this 22nd day of
October, 1990.

¹¹ NRS 533.030 (2) declares recreation as a beneficial use.