

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

IN THE MATTER OF APPLICATIONS 52485)  
AND 52486 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF ELDORADO CANYON & )  
TRIBUTARIES IN DAYTON VALLEY, LYON )  
COUNTY, NEVADA. )

RULING

GENERAL

I.

Application 52485<sup>1</sup> was filed on September 9, 1988 by John Lawrence (Nevada) Inc. to appropriate 10 c.f.s. of water from Eldorado Canyon & Tributaries for quasi-municipal use within the NW1/4 Section 16, Section 17, S1/2 NE1/4, SE1/4, E1/2 SW1/4, SW1/4 SW1/4 Section 18, Section 19, T.16N., R.22E., M.D.B.&M. and E1/2 NE1/4, NE1/4 SE1/4 Section 23, N1/2 N1/2, N1/2 S1/2 N1/2 Section 24 T.16N., R.21E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 31 T.16N., R.22E., M.D.B.&M.

Application 52486<sup>1</sup> was filed on September 9, 1988 by John Lawrence (Nevada) Inc. to appropriate 12 c.f.s. of water from Eldorado Canyon & Tributaries for quasi-municipal use within the NW1/4 Section 16, Section 17, S1/2 NE1/4, SE1/4, E1/2 SW1/4, SW1/4 SW1/4 Section 18, Section 19, T.16N., R.22E., M.D.B.&M. and E1/2 NE1/4, NE1/4 SE1/4 Section 23, N1/2 N1/2, N1/2 S1/2 N1/2 Section 24 T.16N., R.21E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 31 T.16N., R.22E., M.D.B.&M.

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<sup>1</sup> Applications 52485 and 52486 are public record on file in the office of the State Engineer.

Applications 52485 and 52486<sup>2</sup> were timely protested by the U.S. Fish and Wildlife Service on the following grounds:

- "1. The waters of the Carson River and its tributaries are fully appropriated.
2. The U.S. Fish and Wildlife Service holds water permits to water flows below the Newlands Reclamation Project. Approval of the application(s) would decrease the rate flows below the Newlands Project and interfere with the FWS water rights."

The protestant requests Applications 52485 and 52486 be denied.

Applications 52485 and 52486<sup>2</sup> were timely protested by the Truckee Carson Irrigation District on the following grounds:

"This (these) application(s) will tend to adversely affect adjacent and downstream adjudicated surface waters since the diversion will consumptively use water which has historically returned to the Carson River."

The Protestant requests application 52485 and 52486 be denied.

Applications 52485 and 52468<sup>2</sup> were timely protested by the Pyramid Lake Paiute Tribe of Indians on the following grounds:

- "1. The Carson River and its tributaries are Fully appropriated.
2. The proposed appropriation will result in increased diversions of Truckee River water to the Newlands Project and corresponding reduced inflows into Pyramid Lake.

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<sup>2</sup> Copies of the protests are public record on file with Applications 52485 and 52486 on file in the office of the State Engineer.

3. The additional water to be diverted from the Truckee River is subject to the Pyramid Lake Paiute Tribe's prior and paramount water right for fishery purposes which was impliedly reserved when the Pyramid Lake Indian Reservation was established in 1859. This portion of the Pyramid lake Paiute Tribe's reserved water right has not been extinguished or diminished.

4. Granting or approving Application(s) 52485 and 52486 would conflict with and tend to impair the value of the Pyramid Lake Paiute 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.

5. Granting or approving Application(s) 52485 and 52486 would be detrimental to the public welfare in that it would: (i) be likely to jeopardize the continued existence of Pyramid Lake's two principle fish, and 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 recreational value of Pyramid Lake; and (v) interfere with the purposes for which the Pyramid Lake Indian Reservation was established.

6. The additional water to be diverted from the Truckee River is the subject to prior Applications Nos. 48061 and 48494 filed by the Pyramid Lake Paiute Tribe with the Nevada State Engineer. Application(s) 52485 and 52486 should not be considered until the State Engineer acts on Applications Nos. 48061 and 48494.

7. The additional water to be diverted from the Truckee River has been and is being put to beneficial use by the Pyramid Lake Paiute Tribe for the benefit of the Pyramid

Lake fishery. The Pyramid Lake Paiute Tribe's beneficial use of the water sought to be appropriated long predates Nevada's admission to the Union.

8. The Pyramid Lake Paiute Tribe of Indians will be adversely affected if Application(s) 52485 and 52486 are granted because (i) it will result in greater diversion of Truckee River water away from Pyramid Lake to the detriment of the threatened and endangered species inhabiting Pyramid Lake; and (ii) it will impair, conflict and interfere with the Tribe's remaining reserved right to the 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."

Therefore the protestant requests that the above referenced application(s) be denied.

**FINDINGS OF FACT**

I.

The source of water for applications 52485 and 52486 (Eldorado Canyon Creek) is tributary to the Carson River.<sup>3</sup>

II.

In the findings of fact of U.S. vs. Alpine Land and Reservoir Co. et al the decree states: "the Carson River and its Tributaries are interstate streams and the waters of the Carson River and its Tributaries are fully appropriated."<sup>4</sup>

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<sup>3</sup> U.S.G.S. Quadrangle Map 7 1/2 minute; series entitled Dayton Nevada Provisional Edition 1987. (572A).

<sup>4</sup> US vs Alpine Land and Reservoir Company et al final Decree. US District Court for the State of Nevada, Civil No. D-183 BRT. Findings of Fact pg. 1.

III.

Application 23729<sup>5</sup> was filed on March 6, 1967 by W.E. Hermann to appropriate 50.0 c.f.s. of water from El Dorado Canyon and Tributaries to be used for irrigation of 1850 acres of land. The place of use proposed was also irrigated from the Carson River under Claims 723, 724 and 725.

Application 23729 was approved for a permit on July 7, 1967 prior to the issuance of the US vs. Alpine Land and Reservoir et al decree on October 28, 1980, and it is included in the declaration of appropriation in said decree.<sup>4</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.<sup>5</sup>

II.

The State Engineer is prohibited by law from granting a permit where:<sup>7</sup>

- a. there is no unappropriated water in the source, or
- b. its proposed use or change conflicts with existing rights or
- c. the proposed use threatens to prove detrimental to the public interest.

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<sup>5</sup> Permit 23729, Certificate 12136 is a public record on file in the Office of the State Engineer.

<sup>6</sup> NRS 533.325.

<sup>7</sup> NRS 533.370 Subsection 3.

III.

The source of water described in Applications 52485 and 52486 is from a stream that is part of the Carson River system that is fully appropriated.

RULING

Applications 52485 and 52486 are hereby denied on the grounds that the source is fully appropriated and that approval of said applications would conflict with and impair the value of existing rights.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/GC/pm

Dated this 24th day of  
October, 1990