

IN THE OFFICE OF THE STATE ENGINEER

IN THE MATTER OF CHANGE APPLICATIONS)
50317, 50318, 50774, 50775 AND 50776 FILED)
TO CHANGE CERTAIN RIGHTS TO CARSON)
RIVER WATER, LYON COUNTY, NEVADA.)

RULING

GENERAL

Change Application 50317 was filed on October 28, 1986, to change the point of diversion of a portion of the water as evidenced by Claim 788 in the Carson River Decree which decrees the right to use the Carson River for irrigation of 593 acres. The application seeks the right to change the point of diversion to the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.17N., R.24E., M.D.B.&M. (Buckland Ditch).^{1 2}

Change Application 50318 was filed on October 28, 1986, to change the point of diversion of a portion of the water as evidenced by Claim 787 in the Carson River Decree which decrees the right to use the Carson River for the irrigation of 257 acres. The application seeks the right to change the point of diversion to the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.17N., R.24E., M.D.B.&M. (Buckland Ditch).^{1 2}

Change Application 50774 was filed on April 3, 1987, to change the point of diversion of water as evidenced by Claim 785 in the Carson River Decree which decrees the right to use the Carson River for the irrigation of 81 acres. The application seeks the right to change the point of diversion to NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.17N., R.24E., M.D.B.&M. (Buckland Ditch).^{1 2}

Change Application 50775 was filed on April 3, 1987, to change the point of diversion of water as evidenced by Claim 786 in the Carson River Decree which decrees the right to use the Carson River for the irrigation of 109 acres. The application seeks the right to change the point of diversion to the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.17N., R.24E., M.D.B.&M. (Buckland Ditch).^{1 2}

¹ Public record in the office of the State Engineer.

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

Change Applications 50776 was filed on April 3, 1987, to change the point of diversion of water as evidenced by Claim 787 in the Carson River Decree which decrees the right to use the Carson River for the irrigation of 257 acres. The application seeks the right to change the point of diversion to the NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 32, T.17N., R.24E., M.D.B.&M. (Buckland Ditch).^{1 2}

All applications were advertised for the statutory period and subsequently were protested by Raymond, Alma, Robert and Richard DePaoli¹ on the following grounds:

1. That Frank D. Ghiglia, Jr. and Elenor J. Ghiglia have filed Applications 50774, 50775 and 50776 to change the point of diversion from the Big Bend Ditch to the Buckland Ditch and expect to expend no funds in connection with the change.
2. That Peggy J. Amerongen has filed Applications 50317 and 50318 to change the point of diversion from the Big Bend Ditch to the Buckland Ditch and expects to expend no funds in connection with the change.
3. That the Buckland diversion dam and Buckland Ditch were built by and have been maintained by the Protestant, DePaolis.
4. That there is insufficient capacity in the Buckland Ditch to carry the applicants' water.
5. That the capacity is restricted in part by culverts through various portions of Fort Churchill State Park and by the culverts under U.S. Hwy 95 and Southern Pacific Railroad.
6. A 1983 agreement wherein the Nevada Division of State Parks installed a water system crossing the Buckland Ditch in two places.
7. That the State Engineer must deny the application if it interferes with existing rights.
8. The applicants have no ownership interest in the Buckland Ditch.

9. That the State Engineer is without authority to take property rights away from the protestants nor grant them to the applicants.
10. The ditch would have to be enlarged to carry the applicants' water at great cost to the protestants to maintain.
11. The Carson River is peculiar in that late in the season water raises and sinks depending on the bed load. A strict system of priorities does not work well in these circumstances.³ In this case, the applicants seek to change a water right having an 1864 priority into the Buckland Ditch where the protestants have water rights having priorities of 1863 and 1874. Protestants have never had to refrain from diverting their 1874 water right to serve the 1864 water right of the applicant.
12. Granting of the applications is not in the public interest. It would increase the transit losses of the protestants' water and its not in the public interest to allow the applicant to use a dam and ditch where he has no property interest.⁴

The State Engineer sent notices to set a hearing on two different occasions but vacated both dates in favor of a formal field investigation held on site on Tuesday, January 26, 1988.

The protestant and both applicants were represented by counsel and each party had an engineering consultant. Counsel for all parties were allowed to brief and counterbrief the situation at the conclusion of the field investigation.

³ Extracted by counsel for the protestants from "what the Court said" in U.S. vs. Alpine Land and Reservoir Company, et al. 503 F. Sup. 877 (D. Nev. 1980).

⁴ The State Engineer summarized the grounds of protest from a 9 page and 14 page protest filed by counsel for the protestants. Public record in the office of the State Engineer.

FINDINGS OF FACT

I.

The field investigation revealed that the capacity of the Buckland Ditch including all culverts, bridges and other restrictions is sufficient to transport the applicants' water rights or at least up to approximately 30 c.f.s. The culverts and bridges had a capacity much greater than the ditch having capacities of approximately 100 c.f.s.⁵

II.

The applicants produced an agreement dated June 15, 1942,¹ between J.N. Hawkins and Helen V. Hawkins (Predecessor in interest to the protestant) and Norman Biltz (predecessor in interest to both applicants) wherein Biltz was allowed to enlarge the Buckland Ditch and replace all the headgates at his expense in order to transport his Carson River water right.⁶

III.

The State Engineer is without authority to adjudicate the property rights either by prescription or by agreement.⁷

⁵ Brian Randall of Resources Concepts, Inc. in Carson City representing Amerongen and Rob Lauder of Lumos and Associates of Carson City representing Ghiglia had surveyed and cross sectioned the ditch and culverts to determine their capacity. Furthermore the Federal Water Master regularly diverts 30 c.f.s. into the ditch

⁶ On January 30, 1946, J.N. and Helen Hawkins assigned their interest in the agreement and ditch to Charles W. Mummy who on March 20, 1946, assigned his interest to Jewelle C. Parman who on January 6, 1955, assigned his interest to Adeline, M.W., L.J., R.A., H.P. and R.D. DePaoli. DePaolis' acknowledged the agreement and assignments by having it recorded with the Lyon County Recorder on January 26, 1955.

The agreement states that it is binding on the heirs, successors and assigns.

⁷ NRS Chapters 533 and 534 are silent as to the State Engineer's authority to grant ingress, egress or trespass to applicants.

IV.

Information available to the State Engineer indicates that the Buckland Ditch has been used in excess of 40 years to transport the applicants' water with no apparent conflict between an 1861 or 1864 priority water right mingled with the protestants' 1863 and 1874 priority water.⁸

V.

At the onsite field investigation there was a discussion by the attorneys and engineering consultants as to the transit losses in the Buckland Ditch at various flows and various times of the year. The consensus was that there is moderate transit losses through the protestants' ranch but very high transit losses through the Ghiglia Ranch because it is so sandy. On the other hand, channel loss down the Carson River to the applicants' decreed point of diversion is at times 100% and consumes all of the water.⁹

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action and determination.¹⁰

⁸ It should be noted that there was no clear procedure as to how to effect a change in point of diversion in 1942, the date of the agreement. The Final Decree in Alpine in 1980 set the authority with the Nevada State Engineer for those water rights in Nevada. See NRS Chapter 533 and U.S. v. Alpine Land and Reservoir Company, et al., Civil No. D-183 BRT, U.S. District Court, District of Nevada.

⁹ Statements by the Federal Water Master indicate that until recent times, the land owned by both applicants was in a single ownership and the owner "did the best he could with water he could get down the Buckland Ditch." There was no conflict over priorities or transit losses because the ditch had less transit loss than the dry Carson River bed and he could better utilize the water in the Buckland Ditch and absorb whatever water was lost transporting it through the DePaoli Ranch. The engineering consultants had measured a 12% loss through the DePaoli Ranch and 66% loss through the Ghiglia Ranch with 5 c.f.s. at the diversion. They had not measured the loss with a 30 c.f.s. diversion which the Water Master allows for the three ranches.

¹⁰ 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 from granting a change application if:

1. The change will conflict with other rights on the source, and
2. If the change in point of diversion, manner and/or place of use is not in the public interest.¹¹

III.

The State Engineer concludes that the 1942 agreement is binding on all parties and has been exercised for more than 40 years, therefore there is no evidence of impairment of existing rights.

IV.

The State Engineer concludes that there may be times when there is insufficient water to serve the 1864 priority rights under Claims 787 and 788 because the transit losses consume all of the water. During those times the Federal Water Master may have to use his discretion to serve junior priorities further up the Buckland Ditch.

V.

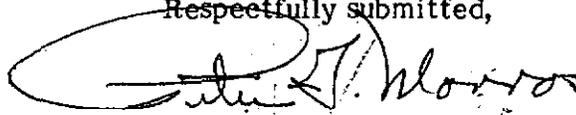
The State Engineer concludes that conservation of water by transporting it in the Buckland Ditch rather than the Carson River is in the public interest and the decreed right of the applicants should be served with the best management practices available to them.

¹¹ NRS 533.370(4).

RULING

The protests to Applications 50317, 50318, 50774, 50775 and 50776 are hereby overruled and said applications are hereby approved subject to prior rights on the source and further subject to distribution jurisdiction by the Federal Water Master.

Respectfully submitted,



PETER G. MORROS
State Engineer

PGM/RMT/bk

Dated this 22nd day of

February, 1989.