

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

IN THE MATTER OF APPLICATION 56388T)
FILED TO TEMPORARILY CHANGE THE PLACE)
OF USE OF WATER STORED IN MUD LAKE TO)
LAHONTAN RESERVOIR, CHURCHILL COUNTY,)
NEVADA.)

RULING

3812

GENERAL

Temporary Application 56388T was filed on May 28, 1991, by Aqueduct I Limited to change the manner and place of use of 1,057.0 acre-feet of water stored in Mud Lake Reservoir (Douglas County) to Lahontan Reservoir (Churchill County) Nevada.¹ The basis for the application is evidenced in Alpine Decree Claims 814 and 814a.² The applicant asserts a need to transfer the stored water for the temporary use during these drought conditions for recreation and fish propagation within the Lahontan Reservoir.

FINDINGS OF FACT

I.

Mud Lake is filled during the non-irrigation season by diversion from the West Fork of the Carson River through the Snowshoe Thompson No. 2 Ditch or Millich Ditch via Indian Creek and rediverted to Mud Lake.³

¹ Public record in the office of the State Engineer.

² United States v. Alpine Land & Reservoir Co., et al., Final Decree in U.S. District Court for the District of Nevada, Civil No. D-183 BRT, October 1980.

³ Alpine Final Decree, Findings of Fact X(5) under the description of segment 4. See also Alpine Final Decree, Claim 463 wherein Mud Lake can fill under an 1879 priority from October 1st to April 1st and from April 1st to May 1st under a 1909 priority.

II.

Mud Lake storage, when released, returns to the West Fork of the Carson River downstream of the direct flow diversions of the applicant.⁴ The State Engineer finds that the Mud Lake storage is used by exchange to supplement the direct flow diversions upstream by releasing water from Mud Lake to the West Fork of the Carson River in an amount equal to that diverted upstream.⁵

III.

The State Engineer finds a differentiation between Mud Lake storage and other high mountain reservoirs for the following reasons:

1. Mud Lake is described as being part of segment 4⁶ where as the Alpine and mountain reservoirs are described in segments 1 and 3.⁷

⁴ See Carson River Decree maps wherein water released from Mud Lake is used to irrigate lands north of the California-Nevada state line or returns along existing ditches to Dressler Lane and then back to the West Fork of the Carson River. For points of diversion of direct flow rights see Alpine Final Decree, Claims 523 through 536, 542, 545, 546, 553, 556 and note that points of diversion and places of use are upstream or near the California-Nevada state line.

⁵ See Alpine Final Decree Findings of Fact X(6)(d) under the description of segment 5 for authority and explanation of water use by exchange.

⁶ Alpine Final Decree, Findings of Fact X(5)(c).

⁷ Alpine Final Decree, Findings of Fact X(2) and (4).

2. Mud Lake is filled according to a definite priority schedule⁸ where as the high alpine reservoirs are filled out of priority.⁹
3. Water in the Alpine reservoirs is represented by corporate stock¹⁰ and is not appurtenant to any particular place of use¹¹ whereas Mud Lake was in single ownership at the time of the Decree.¹²

IV.

The State Engineer finds that Application 56388T is a temporary change filed for the 1991 season only.¹ The State Engineer further finds that 1991 is one of the driest years on record,¹³ and that the Carson River is expected to flow on 22% of average.¹⁴ Records show that during dry years the Carson River dries up from June or July on through the summer.¹⁵ The Alpine

⁸ Alpine Final Decree, Findings of Fact X(5)(c) under description of segment 4; see also Claim 463.

⁹ Alpine Final Decree, Findings of Facts X(1)(f).

¹⁰ Alpine Final Decree, Findings of Fact X(2).

¹¹ Alpine Final Decree, Findings of Fact X(4).

¹² Alpine Final Decree, Claims 814 and 814a show a single name of Fred Dressler.

¹³ U.S. Department of Agriculture Soil Conservation Service Snow Survey April 1, 1991.

¹⁴ U.S. Department of Agriculture Soil Conservation Service Streamflow forecast April 1, 1991.

¹⁵ See Carson River at Fort Churchill for the years 1961, 1966, 1968, 1976, 1977, 1981, 1987, 1988 and 1989, in Water Resources Data, U.S. Geological Survey.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.¹⁹

II.

The State Engineer is prohibited from approving an application to change the manner and place of use if the application:²⁰

- A. Conflicts with existing rights on the source, or
- B. Is detrimental to the public interest.

III.

Based on the foregoing, the State Engineer concludes that Mud Lake storage is not included in the category of high mountain or Alpine reservoirs and has not historically been operated as such.

IV.

Although the State Engineer is sympathetic to the plight of the fishery at Lahontan Reservoir, the State Engineer concludes it would not be in the public interest to attempt to transfer Mud Lake storage to Lahontan Reservoir in this particular year since the

¹⁹ Alpine Final Decree, Administrative Provision VII and NRS Chapter 533.

²⁰ NRS Chapter 533.370(3).

court noted that the Carson River rises and sinks between segments¹⁶ and all or a good portion of the water may be lost in the stream bed in segment 7. The State Engineer finds that during this one year it would be difficult to quantify how much of this water would make it to its intended place of use.

V.

The State Engineer finds that Application 56388T attempts only to change the storage right belonging to the applicant and not the direct flow rights.¹ The State Engineer further finds that if indeed the applicant has no need for the water in this particular dry year, they should not receive it,¹⁷ and should not have diverted it to storage so that it could have served junior priorities.

VI.

The Alpine court made certain findings as to duties of water for lands above Lahontan Reservoir, stating that no matter how much water was applied to the land, "other water users are not injured because the water not consumed all flows either back into the river or onto the water rights lands of another appropriator."¹⁸

¹⁶ United States v. Alpine Land & Reservoir Co., 503 F. Supp. 877, 892 (D. Nev. 1980).

¹⁷ Alpine Final Decree, Findings of Fact X(1)(h) and NRS 533.045.

¹⁸ United States v. Alpine Land & Reservoir Co., 503 F.Supp. 877, 890 (D. Nev 1980).

Carson River rises and sinks between segments and all or a good portion of the water may be lost in the stream bed in segment 7.

V.

The State Engineer further concludes that the transfer of this water directly to Lahontan Reservoir particularly in this dry year would injure downstream users by depriving them of return flows as found by the Alpine court.

VI.

The State Engineer further concludes that if the applicant has no need for this storage water, particularly in this dry year, he has no right to it.

RULING

Temporary Application 56388T is hereby denied on the grounds that it would not be in the public interest and existing water rights would be injured by reason of the foregoing Findings of Fact and Conclusions.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/bk

Dated this 28th day of
June, 1991.