

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

IN THE MATTER OF APPLICATION 51415 FILED )  
TO CHANGE THE POINT OF DIVERSION, PLACE )  
OF USE AND MANNER OF USE OF THE PUBLIC )  
WATERS OF THE STATE OF NEVADA, HERETOFORE )  
APPROPRIATED BY THE UNITED STATES OF )  
AMERICA PURSUANT TO THE RECLAMATION ACT )  
OF JUNE 17, 1902. SAID APPLICATION )  
ATTEMPTS TO CHANGE THE WATERS OF THE )  
TRUCKEE RIVER FROM HAZEN, CHURCHILL )  
COUNTY, NEVADA TO RENO, WASHOE COUNTY, )  
NEVADA. )

RULING  
# 3849

GENERAL

I.

Application 51415 was filed on October 7, 1987, by Acqua Terra, Inc. to change the point of diversion, place and manner of use of 125 acre feet of water per year of the Truckee River heretofore appropriated by the United States of America pursuant to the Reclamation Act of June 17, 1902 and allegedly conveyed to applicant's predecessor in interest pursuant to that certain Agreement of March 23, 1906 between the Central Pacific Railway Company, a Corporation, and the United States of America. The proposed use is municipal within the certified water service area of Westpac Utilities, Reno, Washoe County, Nevada. The existing use is quasi-municipal and domestic within portions of Sections 27, 33 and 34, T.20N., R.26E., M.D.B.&M. and a portion of Section 4, T.19N., R.26E., M.D.B.&M., which is the area in and around Hazen, Churchill County, Nevada. The proposed point of diversion is the Westpac Utilities existing water treatment plants, located in the Truckee Meadows, as described in Application 51415. The existing point of diversion is Derby Dam, located within the NE1/4 SW1/4 of Section 4, T.19N., R.26E., M.D.B.&M.<sup>1</sup>

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<sup>1</sup> State of Nevada, Exhibit No. 2, Public Administrative Hearing before the State Engineer, August 5, 1991.

II.

Application 51415 was timely protested<sup>2</sup> on March 31, 1988 by the Truckee Carson Irrigation District on the grounds that:

The applicant proposes to change water "previously appropriated" by the United States which is not specified within the decree nor has filed a valid Proof of Appropriation with the State Engineer. The Agreement referenced by the applicant does not include water recognized or adjudicated by the Truckee River Decree. This application is a new appropriation for water within an adjudicated system where, according to statute, no unappropriated water exists.

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.

III.

In accordance with NRS 533.363, the County Commissioners of Churchill and Washoe Counties were notified of Application 51415. A response from the Board of the Churchill County Commissioners recommended that Application 51415 be denied.<sup>3</sup> The Board of the Washoe County Commissioners recommended that Application 51415 be approved.<sup>4</sup>

IV.

The State Engineer granted a request for intervention by the United States Department of the Interior.<sup>5</sup>

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<sup>2</sup> State of Nevada, Exhibit No. 3, Public Administrative Hearing before the State Engineer, August 5, 1991.

<sup>3</sup> State of Nevada, Exhibit No. 6, Public Administrative Hearing before the State Engineer, August 5, 1991.

<sup>4</sup> State of Nevada, Exhibit No. 7, Public Administrative Hearing before the State Engineer, August 5, 1991.

<sup>5</sup> State of Nevada, Exhibit Nos. 9 and 10, Public Administrative Hearing before the State Engineer, August 5, 1991.

V.

By notice dated July 9, 1991,<sup>6</sup> a public administrative hearing was held before the State Engineer on August 5, 1991.

FINDINGS OF FACT

I.

The water right which Application 51415 seeks to change originated from an appropriation of the waters of the Truckee River by the Central Pacific Railway Company, to use 200,000 gallons per day for railroad purposes at Wadsworth, Nevada. In an Agreement between the Central Pacific Railway Company and the United States of America dated June 18, 1906,<sup>7</sup> the United States recognized this water right and agreed to convey this water via the main canal, today known as the Truckee Canal, to the area known as Hazen, Nevada. This same 1906 Agreement,<sup>7</sup> contains the paragraph labeled "Fourth" which states:

"The Company hereby relinquishes to the United States all its claims to waters of the Truckee River below the headworks of the said main canal."

The protestant<sup>8</sup> and the intervenor<sup>9</sup> argued that in view of the above paragraph contained in the 1906 Agreement, the Central Pacific Railway Company relinquished all its water rights to waters of the Truckee River below Derby Dam, including the right which Application 51415 attempted to change. Therefore, the protestant and the intervenor feel that Application 51415 should be denied because the Applicant, who is the successor to the

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<sup>6</sup> State of Nevada, Exhibit No. 1, Public Administrative Hearing before the State Engineer, August 5, 1991.

<sup>7</sup> State of Nevada, Exhibit No. 4, Public Administrative Hearing before the State Engineer, August 5, 1991.

<sup>8</sup> Post-Hearing Brief filed by Mike Evans, Attorney for the Protestant in Application 51415, official records of the State Engineer.

<sup>9</sup> Post-Hearing Brief filed by James E. Turner, Attorney for the Intervenor in Application 51415, official records of the State Engineer.

Central Pacific Railway Company, does not own the base right. Instead they argue, this water right belongs to the United States.

The Applicant<sup>10</sup> argues that the above paragraph from the 1906 Agreement did not relinquish the water right in question here but did relinquish other water rights below Derby Dam claimed by the Central Pacific Railway Company. However, the State Engineer finds no other water rights and no evidence or testimony was provided to explain what other water rights the Railroad may have relinquished. Furthermore, the Central Pacific Railway Company and its successor the Southern Pacific Company, who were parties in the Truckee River adjudication, were not awarded any water right in the Orr Ditch Decree<sup>11</sup> that are appurtenant to lands below Derby Dam on the Truckee River or on the Truckee Canal. Therefore, the State Engineer finds that the Central Pacific Railway Company, the predecessor to the Applicant, relinquished the water right in question to the United States.

## II.

Application 51415 proposes to change the place of use from the Hazen area, within the boundaries of Truckee Carson Irrigation District, to the Reno area, outside the boundaries of Truckee Carson Irrigation District. The applicant contends that the reduction in the quantity of water diverted at Derby Dam into the Truckee Canal resulting from this change, is insignificant<sup>10</sup> and the resultant loss of efficiency is immeasurable.<sup>12</sup> Therefore, according to the applicant, there is no injury to the downstream users.

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<sup>10</sup> Post-Hearing Brief filed by Applicant's attorney Ross deLipkau, in Application 51415, official records of the State Engineer.

<sup>11</sup> Final Decree in United States v. Orr Water Ditch Co., In Equity, Docket No. A-3 (D. Nevada 1944). Central Pacific/Southern Pacific was awarded upstream water rights, Claim Nos. 526 and 527, p. 56.

<sup>12</sup> Testimony of Applicant's Witness, Richard Arden, in Transcript, p. 157-159, Public Administrative Hearing before the State Engineer, August 5, 1991.

The protestant's position is that approval of Application 51415 lessens the district's efficiency in its delivery and use of water,<sup>8</sup> notwithstanding the fact that Application 51415 involves a very small quantity of water. The protestant is concerned that at some undefined and undefinable point in time the cumulative effect of this application and anticipated future applications would erode the district's efficiency to an unacceptable level.

The quantity of water at issue here is extremely small. The effect of changing this water on the district's efficiency would also be very small and cannot even be measured or calculated. Therefore, the State Engineer makes no finding on the effect on the district's efficiency to deliver water.

#### CONCLUSIONS

##### I.

The State Engineer has jurisdiction in this matter.<sup>13</sup>

##### II.

The State Engineer is prohibited by law from granting a permit where:

- A. the proposed use or change lessens an irrigation district's efficiency in its delivery or use of water,<sup>14</sup> or
- B. the proposed use or change conflicts with existing rights.
- C. the proposed use or change threatens to prove detrimental to the public interest.<sup>15</sup>

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<sup>13</sup> Final Decree in United States v. Alpine Land and Reservoir Co., Civil No. D-183 BRT (D. Nevada 1980), p. 161.

<sup>14</sup> NRS 533.370 (1) b.

<sup>15</sup> NRS 533.370 (3).

III.

The Central Pacific Railway Company, predecessor to the Applicant, relinquished its ownership to the water right that Application 51415 seeks to change, to the United States of America. Therefore, it would not be in the public interest to approve Application 51415 because the Applicant is not the owner of the base water right.

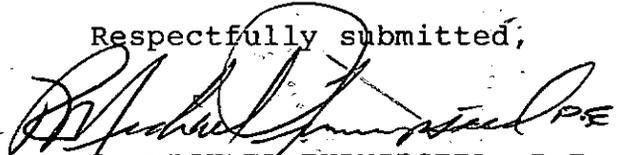
IV.

Approval of Application 51415 would result in a very small reduction in the quantity of water diverted from the Truckee River to the Truckee Carson Irrigation District at Derby Dam and a very small effect on the district's efficiency to deliver water, however it cannot be measured or calculated. Therefore, no conclusion can be made regarding the effect on the district's efficiency to deliver water.

RULING

The protest filed by the Truckee Carson Irrigation District to granting Application 51415 is UPHELD and Application 51415 is hereby DENIED on the grounds that the Applicant is not the legal owner of the water represented as the basis for the change.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/JCP/pm

Dated this 4th day of  
December, 1991.