

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

IN THE MATTER OF APPLICATIONS 64135)
AND 64136 FILED CHANGE THE PLACE OF)
USE OF A PORTION OF THE PUBLIC WATERS)
OF EAST FORK OF THE CARSON RIVER LOCATED)
WITHIN CARSON VALLEY HYDROGRAPHIC)
BASIN (105), DOUGLAS COUNTY, NEVADA.)

RULING

4734

GENERAL

I.

Application 64135 was filed on May 21, 1998, by William Jac Shaw to change the place of use of a portion of the water of the East Fork of the Carson River previously appropriated under Claim Number 257 of the Carson River Decree for irrigation and other purposes as decreed. The proposed place of use is described as a portion of the E $\frac{1}{2}$ SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 20, T.12N., R.20E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.12N., R.20E., M.D.B.&M.¹

II.

Application 64136 was filed on May 21, 1998, by Donald E. Bently to change the place of use of a portion of the water of the East Fork of the Carson River previously appropriated under Claim Numbers 256, 257 and 263 of the Carson River Decree² for irrigation and other purposes as decreed. The proposed place of use is described as a portion of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 3, the E $\frac{1}{2}$ and N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 4, the NE $\frac{1}{4}$

¹ File No. 64135, official record in the office of the State Engineer.

² Final Decree in United States v. Alpine Land and Reservoir Co., Civil No. D-183 BRT (D. Nev. 1980).

of Section 9, and the NW¼ NW¼ of Section 10, all described as being located within T.11N., R.20E., M.D.B.&M., the NE¼ NE¼, SW¼ NE¼, SE¼ NE¼, NW¼ SE¼, E½ SE¼, SW¼ SE¼, NE¼ SW and the SE¼ SW¼ of Section 20, the NW¼ NW¼, SW¼ NW¼, SE¼ NW¼, W½ SW¼ and the E½ SW¼ of Section 21, the SW¼ of Section 27, the W½ of Section 28, the E½, NW¼, E½ SW¼ of Section 29, the E½ NE¼ of Section 32, the NW¼, NE¼ SW¼, SE¼ SW¼, SW¼ SE¼ and the NE¼ of Section 33, and the N½ NW¼ of Section 34 all in T. 12N., R. 20 E. M.D.B.&M. The point of diversion is described as being located within the NW¼ SE¼ Section 10, T.12N., R.20E., M.D.B.&M.³

III.

Applications 64135 and 64136 were timely protested by Heise Land and Livestock, Inc., Clarence Burr on the following grounds:

1. The application fails to provide sufficient information regarding the reasons, necessity and effects of change to properly evaluate the effects of the proposed change on the protestant.
2. The actual proposed uses of the water must be set forth pursuant to NRS 533.330.
3. It appears the proposed change will adversely affect the protestant's ground water table and existing well rights.
4. The application will result in commingling of water.
5. The application requires federal court approval.
6. The application fails to clearly describe how the alternate use will operate.
7. The proposed change will result in protestant losing ability to irrigate to full capacity with more senior water rights.

³ File No. 64136, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

A review of Applications 64135 and 64136 indicates the new owners propose to change the place of use of the waters under Carson River Claim Numbers 256 and 257 to lands that are located approximately 1 mile further south on the Edna-Wilslef ditch. The proposed place of use of the water transferred under Claim Number 263 is within $\frac{1}{4}$ mile of the original place of use. There is no change in the point of diversion of the Claim Numbers 256, 257 and 263. The State Engineer finds the applicants have provided sufficient information to evaluate the applications.

II.

Each of the subject applications states that the water will be used for irrigation and other purposes as Decreed. The State Engineer finds that the use as Decreed is a valid continuation of the current use as specified in the Carson River Decree and the applications sufficiently identify the proposed use.

III.

The local groundwater table may have been raised due to secondary recharge that may have occurred due to irrigation of lands upgradient of the protestant's land. The State Engineer finds that he does not have the authority to force an irrigator using surface water to continue to irrigate lands to continue to provide a secondary recharge for a groundwater source.

IV.

Application 64135 proposes to change the place of use 20.60 acres of land. The State Engineer finds there are no other valid water rights within the proposed place of use under Application 64135, therefore, there is no issue as to the commingling of water rights.

V.

Application 64136 proposes to change 74.085 acres of land formerly under Claim Numbers 256 and 257 to the proposed place of use. Currently there is more acreage within the proposed place of use than covered by valid water rights. The exact amount and location of the cultivated acreage within the place of use under each right will be determined at the time of beneficial use. The Carson River Decree specifies that Claim Number 263, waters from the East Fork of the Carson River, and Claim Number 550, waters out of the West Fork of the Carson River, are alternate rights for the same lands. While both of these two claims can furnish water to the same acreage, the total quantity of water used cannot exceed the duty granted in the decree from both sources. Through Application 64136, the applicant is attempting to transfer the existing place of use under Claim Number 263 to the same acreage that the alternate right under Claim Number 550 was transferred to under Permit 60673 thereby bringing the alternate rights together again as set forth in the Carson River Decree. The State Engineer finds that the water transferred from Claim Numbers 256 and 257 will be used on land with no other valid water rights, and the waters under Claim Number 263 will be used as stated in the Carson River Decree, therefore, there is no issue as to commingling of water rights.

VI.

Carson River Decree, Paragraph VII, Page 161, provides that applications for changes in the place of diversion, place of use or manner of use as to Nevada shall be directed to the State Engineer. The State Engineer finds that he has authority in this matter, and federal court approval is not required.

VII.

Application 64136 transfers the portion of Claim Number 263 which is an alternate right to Claim Number 550, a portion of which was previously transferred under Permit 60673. The amount of water placed put to beneficial use within the proposed place of use of the alternate right will be restricted to total duty as set by the decree. The State Engineer finds that alternate right will operate as it has historically under the Carson River Decree, to supplement the water under Permit 60673.

VIII.

The protestant's water rights under the Carson River Decree are from the Rocky Slough. There are separate headgates for the Rocky Slough and the Edna-Wilslef Ditch out of the Carson River. The Federal Water Master distributes the waters of the Carson River in accordance with the various priority dates listed in the Decree. The State Engineer finds he does not have the authority to distribute the waters of the Carson River, and since the applicant's water rights are out of a separate ditch, use by the applicant cannot interfere with the protestant's ability to irrigate with a senior water right.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:⁵

⁴ NRS Chapter 533 and Article VII of the Carson River Decree.

⁵ NRS § 533.370(3).

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

III.

The State Engineer concludes the applicant has provided sufficient information to evaluate the application.

IV.

Neither Application 64135 nor Application 64136 requests a change in the manner of use. The State Engineer concludes that the manner of use will be as decreed in the Carson River Decree.

V.

The State Engineer concludes that the groundwater table fluctuates and he cannot force an irrigator to continue irrigation with surface water to provide secondary recharge to the protestant.

VI.

The State Engineer concludes that there is no commingling of water under Application 64135 other than that already provided by the Carson River Decree.

VII.

The State Engineer concludes that there is sufficient additional acreage within the proposed place of use of Application 64136 that there will be no commingling of water rights.

VIII.

The State Engineer concludes that these applications to transfer water further along the Edna-Wilslef Ditch will not affect the protestant, and the Federal Water Master has been

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charged with the operation of the diversions from the Carson River, and if the protestant has a senior right to be satisfied first it is the Federal Water Master who is to assure it is so served.

RULING

The protests to Application 64135 and Application 64136 are hereby overruled and said applications are approved subject to the Carson River Decree and the payment of the statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MJR/cl

Dated this 21st day of
May, 1999.