

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

IN THE MATTER OF APPLICATIONS )  
65700, 66229, AND 66963 FILED TO )  
CHANGE THE PLACE OF USE )  
OF THE PUBLIC WATERS OF A )  
SURFACE WATER SOURCE WITHIN )  
THE CARSON DESERT HYDROGRAPHIC )  
BASIN (101), CHURCHILL COUNTY, )  
NEVADA. )

RULING

#5078

GENERAL

I.

Application 65700 was filed on December 7, 1999, by the United States of America, Fish and Wildlife Service to change the place of use of 2,881.19 acre-feet annually (afa) (963.61 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under Truckee-Carson Irrigation District ("TCID") Serial Nos. 819-2, 821, 821-6, 824-1, 825, 827, 831, 2169, 2169-A, and 2169-B, Claim No. 3 Orr Ditch Decree, and Alpine Decree.<sup>1</sup> The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 35.83 acres NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 04, T.19N., R.31E., M.D.B.&M.  
Parcel 2 - 37.26 acres SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 04, T.19N., R.31E., M.D.B.&M.  
Parcel 3 - 29.47 acres NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 04, T.19N., R.31E., M.D.B.&M.  
Parcel 4 - 8.47 acres NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 05, T.19N., R.31E., M.D.B.&M.  
Parcel 5 - 24.49 acres SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 05, T.19N., R.31E., M.D.B.&M.  
Parcel 6 - 30.61 acres NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 05, T.19N., R.31E., M.D.B.&M.  
Parcel 7 - 37.79 acres SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 05, T.19N., R.31E., M.D.B.&M.  
Parcel 8 - 5.14 acres SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 05, T.19N., R.31E., M.D.B.&M.  
Parcel 9 - 18.31 acres NE $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.  
Parcel 10 - 33.89 acres SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.  
Parcel 11 - 12.38 acres SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.  
Parcel 12 - 26.45 acres NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.  
Parcel 13 - 36.41 acres NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.  
Parcel 14 - 34.72 acres SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 07, T.19N., R.31E., M.D.B.&M.

<sup>1</sup> Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D.Nev. 1944) ("Orr Ditch Decree"); and Final Decree, U.S. v. Alpine Land and Reservoir Co., Civil No. D-183 (D.Nev. 1980) ("Alpine Decree").

been conducted as required under other federal laws. The State Engineer finds there is no violation of NRS § 533.368.

**XXI.**

The protestants alleged that the applications, if granted, would violate the Truckee-Carson Pyramid Lake Water Settlement Act's mandate that water rights be purchased from willing sellers, when in fact the applicant and other agencies of the United States government have created a non-competitive water-right market; thus, dictating and deflating the value of water rights in the Newlands Project in violation of the Act, and causing damage to the City of Fallon's existing water rights in violation of the Act. The State Engineer finds this protest claim presents no relevant issue of Nevada water law for the State Engineer to consider and is without merit as to his decision making as the State Engineer has no position as to the pricing of water rights.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>56</sup>

**II.**

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where<sup>57</sup>:

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

The State Engineer concludes that protest claims identified above as Items 7, 8, 17 and 24 are irrelevant to any issues before the State Engineer or were not plead with reasonable certainty in order for the State Engineer to be able to adequately determine

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<sup>56</sup> NRS chapters 533 and 534.

<sup>57</sup> NRS 533.370(3).

the issues raised by them.

**IV.**

The State Engineer concludes the applications are not defective in that they are not requesting a change in manner of use. The State Engineer concludes the issue of the attempted reservation of 0.51 of an acre-foot per acre is not ripe for decision and is moot upon the State Engineer's decision that these applications are not requesting a change in manner of use.

**V.**

The State Engineer concludes that the protest claim that the applications would reduce drain flows and impair the water quality of return flows to wetland areas or that by reducing the quality of return flows to Lahontan Valley wetlands areas there will be a violation of the federal Clean Water Act and Nevada's water quality regulations promulgated thereunder by the Nevada Division of Environmental Protection is not established, particularly since the very purpose of these change applications is to move more water to the wetlands areas. The State Engineer concludes that the issue as to whether there is a violation of the federal Clean Water Act or Nevada water quality regulations is not within the areas the State Engineer has been given jurisdiction over under Nevada law. The State Engineer concludes there is nothing that supports this protest allegation and finds just because there may be less return flows that does not necessarily mean the quality of those waters will change, particularly when they will be replaced with direct flows of better quality water.

**VI.**

The State Engineer concludes the proposed place of use is adequately identified under the applications.

**VII.**

The State Engineer concludes the protestants claims that these specific change applications will have a detrimental affect on the City of Fallon or other water right owners in the Newlands Project is not supported by the evidence.

**VIII.**

The State Engineer concludes there is no information or evidence to support the protest claims that these change applications would threaten to prove detrimental to the public interest or conflict with or impair existing water rights by removing water resources from lands within aquifer recharge areas or that these applications would present a hazard to the health, safety and welfare of the community. The State Engineer concludes the applicants proved that the lands at the existing places of use as to Application 65700 are within a discharge not a recharge area, and are already mainly within the boundaries of the wildlife refuge, and are not being irrigated at this time. The State Engineer concludes as to Applications 66229 and 66963 that the existing places of use are outside the area of downward groundwater movement, but rather are in areas where the recharge moves upward from the intermediate aquifer to the shallow aquifer; therefore, impacts to water levels, if any, will be minimal, particularly since the lands are not presently being irrigated. The State Engineer concludes as to these change applications the evidence does not support that these existing places of use are within a significant areas of recharge particularly as to water rights held by the City of Fallon, and Churchill County.

**IX.**

The State Engineer concludes there is no information to support the protest claim that the applications if granted would adversely affect costs of charges for delivery of water or lessen the efficiency in delivery of water to other Newlands Reclamation Project water right holders.

**X.**

The State Engineer concludes there is no information to support the protest claim that the applications if granted would adversely affect the tax base.

**XI.**

The State Engineer concludes there is no information to support the protest claim that the applications if granted would create a potential dust hazard and air pollution, particularly since it is quite likely that some sort of native vegetation will cover these lands, and in light of the State Engineer's conclusion in a similar ruling that the dirt roads in the area have more likelihood of causing dust and air pollution issues than the stripping off water rights of the lands at issue here. The State Engineer concludes that issues as to air quality resulting from water rights being removed are not within the jurisdiction of the State Engineer under Nevada water law.

**XII.**

The State Engineer concludes violations of the National Environmental Policy Act are not within his review under Nevada water law. The State Engineer concludes whether the provisions of Public Law 101-618 are violated because either NEPA is violated or the mandated and prerequisite ground-water studies and mitigation agreements have not been done is for another forum.

**XIII.**

The State Engineer concludes there is no violation of NRS § 533.368 by the fact that the entire water rights acquisition program has not been analyzed in a programmatic environmental impact statement. The State Engineer concludes his job is to review these change applications independently as they are filed and not in consideration of some future unknown change application that might be filed.

**XIV.**

The State Engineer concludes that the issues of market price as to sellers of water rights is not within his jurisdiction and should not be part of his deliberation as to a change application.

**XV.**

The State Engineer concludes there is no information to support the allegation that reduced aquifer recharge would change ground-water quality significantly or that these change

applications will cause violations of the Safe Drinking Water Act. The State Engineer further concludes that violations under the Safe Drinking Water Act are for another forum.

**RULING**

The protests to Applications 65700, 66229 and 66963 are hereby overruled and the applications granted for the 2.99 acre-feet per acre requested for transfer and subject to:

1. the payment of statutory permit fees;
2. existing water rights.

No ruling is made on the attempted reservation of the 0.51 acre-feet per acre, because no attempt has been made to move that water; therefore, it is not ripe for decision.

Respectfully submitted,

  
HUGH RICCI, P.E.  
State Engineer

HR/SJT/hf

Dated this 26th day of  
September, 2001.

**EXHIBIT No. 1**

Exhibit A to the Application 65700 describes the proposed place of use as the following:

In T.21N., R.32E., M.D.B.& M. - Sections 2 through 11, 14 through 22, 27 through 34.

In T.21N., R.31E., M.D.B.& M. - all Sections.

In T.20N., R.32E., M.D.B.& M. - Sections 3 through 10, Sections 16 through 21, 29 and 30.

In T.20N., R.31E., M.D.B.& M. - all Sections.

In T.19N., R.31E., M.D.B.& M. - Sections 2 through 11, 14 through 22, Sections 27 through 33.

In T.19N., R.30E., M.D.B.& M. - Section 13 - all those portions of the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  and SE $\frac{1}{4}$  SE $\frac{1}{4}$  lying east of Stillwater Slough; Section 24 - NE $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$ .

**Exhibit No. 2**

Exhibit B to Application 66229 describes the proposed place of use in Carson Lake Area as the following:

In T.16N., R.29E., M.D.B.& M. - tract 37; Section 1 lots 3 to 6, inclusive, S $\frac{1}{2}$  SW $\frac{1}{4}$  and SE $\frac{1}{4}$ ; Section 2 lots 1, 2 and 5 to 10, inclusive, S $\frac{1}{2}$  SE $\frac{1}{4}$ ; Section 3 lots 3, 4, and 6 to 9, inclusive, S $\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  and SE $\frac{1}{4}$ ; Section 4 lots 1, 2 and 5 to 7, inclusive, NE $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$  and SE $\frac{1}{4}$ ; Section 5 lots 1 to 4, inclusive, S $\frac{1}{2}$  SW $\frac{1}{4}$  and S $\frac{1}{2}$  SE $\frac{1}{4}$ ; Section 6 lots 1 to 3, inclusive, and lots 8, 11, 12, 14 and 17, S $\frac{1}{2}$  SE $\frac{1}{4}$ .

In T.17N., R.29E., M.D.B.& M. - tract 37; tract 38; tract 40; Section 9 lots 4, 6, -8 and 10; Section 19 lots 1 to 4, inclusive.

In T.18N., R.29E., M.D.B.& M. - Section 35, S $\frac{1}{2}$  SE $\frac{1}{4}$ .

In T.16N., R.30E., M.D.B.& M. - Section 5 lots 3 to 6, inclusive, and lots 11 and 12, SW $\frac{1}{4}$ ; Section 6, Lots 1 to 21, inclusive, and SE $\frac{1}{4}$ .

In T.17N., R.30E., M.D.B.& M. - tract 37; Section 5 lots 3 and 4, S $\frac{1}{2}$  NW $\frac{1}{4}$  and SW $\frac{1}{4}$ ; Section 6 lots 1 to 5, inclusive, and lots 9 to 12, inclusive, S $\frac{1}{2}$  NE $\frac{1}{4}$  and SE $\frac{1}{4}$ ; Section 7 lot 4, and lots 7 to 12, inclusive, NW $\frac{1}{4}$  NE $\frac{1}{4}$  and E $\frac{1}{2}$  NE $\frac{1}{4}$ ; Section 8 W $\frac{1}{2}$ ; Section 17 W $\frac{1}{2}$ ; Section 18 lots 1 to 4, inclusive; Section 19 lot 1; Section 20 lots 1 to 4, inclusive; E $\frac{1}{2}$  NW $\frac{1}{4}$  and E $\frac{1}{2}$  SW $\frac{1}{4}$ ; Section 29 lots 1 to 4, inclusive, E $\frac{1}{2}$  NW $\frac{1}{4}$  and E $\frac{1}{2}$  SW $\frac{1}{4}$ ; Section 30 lot 1; Section 31 lots 1, 2, and 6 to 9, inclusive; Section 32 W $\frac{1}{2}$ .