

1-1-2013

United States v. Alpine Land & Reservoir Co., 2012 WL 4442804 (D. Nev. 2012)

Christopher Butler

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

Custom Citation

Christopher Butler, Court Report, United States v. Alpine Land & Reservoir Co., 2012 WL 4442804 (D. Nev. 2012), 16 U. Denv. Water L. Rev. 490 (2013).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Farmers cited imposed a duty on the Bureau to deliver the preferred amount of water to Farmers' irrigation contractors.

Holly Taylor

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

United States v. Alpine Land & Reservoir Co., 2012 WL 4442804 (D. Nev. 2012) (holding the state engineer did not err in (i) finding special administration rules under the Alpine Decree provided a change in point of diversion from one segment to another on the Carson River required an accompanying change in priority date; (ii) finding a constructive point of diversion, rather than a physical point of diversion, for the purposes of retaining priority would violate Nevada water law; and (iii) granting the change applications, as filed, would harm existing rights).

The United States District Court for the District of Nevada ("district court") issued the Alpine Decree in a previous ruling as a means of administering Carson River water rights. In the summer, some upper segments of the river are dry, while downstream segments have sufficient flows due to underground drainage or return flows from irrigation. During such conditions, it is physically futile for upstream junior appropriators to satisfy downstream senior appropriators' calls. Historically, farmers in the Carson River region administered the river in segments through mutual cooperation and practical experience with the physical limitations. The Alpine Decree formally divided the Carson River into eight segments and established autonomous administration of each segment.

The United States Fish and Wildlife Service ("FWS") filed seven applications with the Nevada State Engineer to change several of its water rights to the Stillwater National Wildlife Refuge. As part of its effort to restore and sustain the Lahontan Valley wetlands, FWS purchases water rights from willing sellers, and then applies to transfer those water rights for application in the Refuge. Each of the water rights was in the Carson River and listed the point of diversion as Buckland Ditch. Buckland Ditch is a point in Segment 7(e) of the Carson River as designated by the Alpine Decree. The State Engineer denied FWS's applications, reasoning the applications, as filed, would harm existing rights holders because the actual point of diversion would have been the Carson Dam, a point in Segment 8 downstream of the Buckland Ditch. FWS appealed the State Engineer's ruling to the district court.

On appeal, FWS claimed the State Engineer erred in (i) interpreting the Alpine Decree to require a change in priority when the point of diversion is changed to another segment of the Carson River; (ii) finding a constructive point of diversion, rather than a physical point of diversion for the purposes of retaining priority because it would violate Nevada water law; (iii) applying the wrong legal standard; (iv) relying on an extra-record comment when interpreting the Alpine Decree; and (v) denying the applications rather than granting them with conditions.

First, the district court found the State Engineer correctly interpreted the Alpine Decree to require a change in priority date when an application for a

change in the place of diversion contemplated moving water rights from one segment to another on the Carson River. Nevada water law generally permits a water right holder to change the point of diversion without losing priority of right. The Alpine Decree, however, modifies this right to limit it to changes within the original segment on the Carson River. The Water Master cannot enforce a senior priority awarded in one segment of the river against a junior priority awarded in another segment of the river. In this respect, the Alpine Decree awarded a limited right of priority. The district court reasoned that to carry over the priority date for a change in the place of diversion of a water right was contrary to the principle of reducing waste, which was something the Alpine Decree was intended to alleviate. Accordingly, the district court held State Engineer did not err in finding that the Alpine Decree requires that a change in point of diversion from one segment to another must result in a corresponding change of the priority date to the date of application for the change.

Next, the district court found that establishing a constructive point of diversion rather than a physical point of diversion, for the purposes of retaining priority, violated Nevada water law. FWS admitted it intended to divert water at Carson Dam, not Buckland Ditch. However, FWS argued Buckland Ditch was a valid "constructive" point of diversion because it was the point of diversion for administrative and accounting purposes. The district court found FWS failed to adequately address the issue of a constructive point of diversion and that use of constructive points is generally limited to appropriations without diversions.

Additionally, the district court ruled the State Engineer did not err in determining the applications, as filed, harmed existing water rights holders. The district court found FWS's proposal to divert and transfer water within a new segment of the river would conflict with existing water rights in several sections of the river.

Next, the FWS argued the State Engineer relied on an extra-record comment when interpreting the Alpine Decree. During a conference, the Federal Water Master made an extra-record comment to the State Engineer about the historical practice of requiring a change of date of priority in conjunction with changing a place of diversion from one river segment to another. The district court found whether the date of priority is lost is a question of law concerning the Alpine Decree and the reference to an extra-record explanation of historical practice is irrelevant to resolving that question. Therefore, the State Engineer correctly construed the Alpine Decree and its accompanying opinion regarding the loss of priority when the point of diversion is changed from one segment to another.

Finally, the district court rejected FWS's argument that the State Engineer erred in denying the applications, rather than granting them with conditions, because the applications did not provide an accurate location of diversion and FWS did not demonstrate any conditions that protected the public from adverse impacts of the applications.

Accordingly, the district court denied FWS's petition challenging the State Engineer's ruling.

Christopher Butler