

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

THE UNITED STATES OF AMERICA,

Civil No. D-183 BRT

Plaintiff,

VS.

**ALPINE LAND & RESERVOIR COMPANY,
a corporation, et al.,**

Defendants.

FINAL DECREE

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
TABULATION AND ADMINISTRATIVE PROVISIONS**

FINDINGS OF FACT

I. This Court has jurisdiction over the subject matter and the parties to this proceeding.

II. The Carson River and its tributaries are interstate streams and the waters of the Carson River and its tributaries are fully appropriated.

III. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the government's first reclamation project, now known as the Newlands Project.

IV. The United States has diligently proceeded with the construction of the Newlands Project and has expended over Six Million Dollars (\$6,000,000) in that construction. The works so constructed have been used for many years for the storage of Carson River water and the distribution thereof to Project lands. The principal structure of the Project is the Lahontan Reservoir which was completed at a cost of approximately One Million Four Hundred Thousand Dollars (\$1,400,000). Lahontan Reservoir has a capacity of 295,149 acre-feet to the spillway crest. With 20 inch flashboards on the crest, the capacity is 317,280 acre-feet. The lands of the Newlands Project irrigated or susceptible of irrigation by the waters of the Carson River and its tributaries include 80,000 acres of cultivable lands, 50,000 acres of pasture lands, and 7,500 acres of land in the Truckee Division of the Project.

V. There existed prior to July 2, 1902 certain vested rights, owned by old-time settlers in Churchill County, in and to the use of waters of the Carson River and its tributaries. The United States, subsequent to July 2, 1902, acquired the right, title and interest of these owners in the waters, ditches, dams, and other irrigation facilities and structures and in return agreed to construct water storage and distribution facilities and to deliver certain waters to these owners.

VI. Prior to July 2, 1902, there existed under the ownership of Frank W. Inman and his wife the right to divert 40 c.f.s. of water of the Carson River with a priority of 1882 for the purpose of producing power. On February 12, 1912, Frank W. Inman and his wife executed an agreement conveying this power right to the United States.

VII. The United States possesses Trust Patents to five riparian rights on the West and East Forks of the Carson River in Alpine County, California, in favor of the following five beneficiary Indians of the Washoe Tribe, in the acreage as specified:

<u>Name</u>	<u>Acreage</u>
Dr. Bob	1.40
Hattie Miller (Cow Bitch)	19.73
Molly's Pete	16.40
Maggie James	4.40
GO-DAH-DIC-PETE	8.25

VIII. The lands on which the waters of the Carson River and its tributaries are used lie in an arid region of the United States; to make these lands productive, irrigation thereof is necessary; these lands vary widely in texture, porosity, terrain, inclination, vegetation, crop use, sub-surface stratas and other factors which affect the amount of water necessary to irrigate different portions of said lands and further affect the amount of water which is returned to the main course by drainage and other means; the various areas require, for proper irrigation and crop productivity varying quantities of water per acre. In the Newlands Project, the water duties are 3.5 acre-feet per acre delivered to the land for the bottom-land and 4.5 acre-feet per acre delivered to the land for the bench land. In the lands above the Newlands Project the water duties are 4.5 acre-feet per acre diverted to the canal for the bottom-lands, 6.0 acre-feet per acre diverted to the canal for the alluvial fan lands and 9.0 acre-feet per acre diverted to the canal for the bench lands. The water duties assigned for the various categories of the land are the total duties from whatever source of surface water.

The net consumptive use of surface water for irrigation on the Newlands Project is 2.99 acre-feet per acre. The net consumptive use of surface water for irrigation of the lands above the Lahontan Reservoir is 2.5 acre-feet per acre.

IX. The Carson River and its tributaries are divided into eight segments:

Segment 1: The East Fork of the Carson River from the California/Nevada state line up to the headwaters of the East Fork in the mountains.

Segment 2: The East Fork of the Carson River from the California/Nevada state line to the confluence of the East and West Forks of the Carson River.

Segment 3: The West Fork of the Carson River from the gauge at Woodfords, California upstream to the headwaters in the mountains.

Segment 4: The West Fork of the Carson River from the gauge at Woodfords to the California/Nevada State line.

Segment 5: The West Fork of the Carson River (and Brockliss Slough) between the California/Nevada state line and the confluence of the East and West Forks of the Carson River.

Segment 6: The main stream of the Carson River from the confluence of the East Fork, West Fork and Brockliss Slough to the gauge at Carson City.

Segment 7: The main stream of the Carson from the Carson City gauge to Lahontan reservoir. This segment is further subdivided for administration into autonomous subsegments:

- (a) Mexican Ditch, Dayton and the reach between Rose Ditch and Cardelli Ditch, inclusive;
- (b) Gee Ditch;
- (c) Koch Ditch;
- (d) Houghman and Howard Ditches;
- (e) Buckland Ditch.

Segment 8: The area below the Lahontan Dam.

X. The historic practices, customs, agreements and decrees followed by the water users and the Federal Water Master on the Carson River and its tributaries:

1. General:

(a) The Watermaster shall begin to direct the distribution of water on such date that he determines there is not enough water in the Upper Carson River to serve the most junior priority.

(b) When such distribution begins, the water users are notified that the river is on regulation and diversions will be monitored.

(c) Subject to the exceptions described below, the water is distributed on the basis of priority and acreage.

(d) For purposes of distribution, the river is administered in segments in accordance with established practices, customs, agreements and decrees.

(e) When the river is on regulation each segment of the river is treated autonomously.

(f) The high alpine reservoirs on both forks of the river are filled out of the priority order. This is done because the snow does not melt sufficiently at those high elevations to fill the reservoirs until the summer when the river flow has already begun to diminish down in the valley.

(g) On all segments of the river, rotation is practiced so as to serve the junior priorities as long as possible.

(h) On both the East Fork and the West Fork, any user, regardless of his priority, who does not need the water does not get it. If the user has a need for it, he gets the water under his priority; if he does not have a need for it, the water goes to the next junior priority.

2. Segment 1:

Since this segment consists largely of riparian lands, there are no relevant customs and the Water Master exercises little supervision except to regulate the release of water from the Alpine Land and Reservoir reservoirs. Water in these reservoirs is represented by corporate stock and is rented, traded and sold to any landowner.

3. Segment 2:

(a) When the flow rate at the Gardnerville gauge reduces to 200 cubic feet per second, 1/3 of the river flow is directed into the Allerman Canal and 2/3 of the flow stays in the river. The point of measurement for the 1/3-2/3 split is at a weir located 100 feet downstream of the intersection of Highway 395 and the Allerman Canal. Water users on the Heybourne Tract served by the Allerman Canal, the upper New Virginia, Company and Cottonwood ditches hire a ditch rider to assist, under the direction of the Water Master, in the distribution of water.

(b) Reservoirs 1, 2 and 4 on the Dangberg lands are filled 3 times yearly. The reservoirs are filled once in February and March pursuant to their storage rights. The reservoirs are filled twice later in the year as a means of regulating the water flow in the Virginia

and Allerman ditches and ensuring sufficient irrigation head during periods of peak irrigation demand.

(c) Most diversions in this and the other segments are based upon a two-week irrigation interval. The smaller canals such as the Peter Heitman, Berning, Christensen-Hussman, Madison or Topping No. 1 and Topping No. 2 divert for several days on a two-week interval. Other larger canals and sloughs divert on a continuous basis and individual ditches and laterals coming off these larger canals will be on the two-week rotation. Canals and sloughs that divert continuously are the Allerman Canal, Upper New Virginia, Rocky Slough, Henningsen System, Stodieck, St. Louis Straight, Homestream, Company, Cottonwood and Williams Slough.

The continuous diversion made by the St. Louis Straight and island portion of Homestream will be stopped and transferred to the Allerman Canal when the 1/3-2/3 split takes place.

(d) When the East Fork goes on regulation, the Cottonwood Slough is used to convey water downstream to the Williams Slough diversion rather than using the main channel of the East Fork.

4. Segment 3:

This segment on the West Fork consists largely of riparian lands and the Water Master exercises little supervision except to regulate the release of water from the mountain reservoirs for downstream use. Traditionally the water stored in the mountain reservoirs has not been considered appurtenant to any particular place of use.

5. Segment 4:

(a) The Anderson-Bassman Decree, Exhibit 16, provides that beginning the first Monday in June and continuing to the end of the irrigation season the available water supply is rotated on a weekly basis between Segment 4 and Segment 5. This custom applies to all water users on these two segments, not just the original parties to the Anderson-Bassman lawsuit or their successors in interest.

(b) The Price Decree, Exhibit 18, and the 1941 Agreement, Exhibit 19, control the rotation among the Segment 4 users during the week that Segment 4 has water under the Anderson-Bassman Decree.

(c) During the non-irrigation season, diversions are made by the Snowshoe Thompson No. 2 ditch via Indian Creek to store water in the Mud Lake Reservoir.

6. Segment 5:

(a) As mentioned above, this segment's diversions are made according to the weekly rotation schedule with Segment 4 after the first Monday in June.

(b) During Segment 5 week the water is allocated according to priorities. During Segment 4 week, any Segment 5 junior appropriators who did not get direct flows during Segment 5 week are allowed to use the return flows from Segment 4.

(c) The Dresslers usually bring their alpine stored waters down during Segment 5 week but Bruns and Gansberg usually bring their Lost Lake water down during Segment 4 week.

(d) The water stored in Mud Lake Reservoir is sometimes released to downstream users in exchange for direct diversion that would normally go to those downstream users.

(e) Brockliss Slough, starting in the vicinity of Dressler Lane, carries West Fork water drainage down to the confluence of Brockliss Slough and the East and West Forks. During times of short supply in Brockliss Slough, the use of water is rotated among the three oldest priorities; a second rotation is observed among the other priorities.

(f) Drainage water is occasionally diverted from the old West Fork into Brockliss Slough and then to lands west of Brockliss Slough.

(g) Due to the destruction of the Jones Company West ditch by flood, the lands formerly irrigated from that ditch are now served with return waters from Bull Slough. Bull Slough also receives return flows from irrigation using mountain creeks not considered tributaries of the Carson.

(h) Some rights which appear to be served with West Fork water are actually served with East Fork water which, after being used to irrigate East Fork lands, drains into the West Fork channel. These lands are generally those in between Squires Ditch and the Muller-Bartels dam on the West Fork.

(i) Water taken out of the East Fork through Rocky Slough and into Edna Ditch and other small ditches is used to irrigate lands between the East Fork and the West Fork.

7. Segment 6:

The diversions in this segment occur by pumping from the river. When the main stream is on regulation, the amount of water that gets to each pump is sufficient to satisfy that priority. As a result, and because of the high cost of regulation in comparison to benefits, the Water Master makes no attempt to regulate in this segment unless a controversy arises.

8. Segment 7:

Due to the intermittent nature of the river's surface flow, appearing upstream and disappearing downstream from various diversion structures, this segment is regulated in autonomous sub-segments.

9. Segment 8:

There are no relevant practices or customs in this segment and the Water Master only regulates when a controversy arises.

XI. The California riparian landowners are entitled to the riparian water rights permitted under California law.

XII. For proper administration of the respective rights of the parties in this action, it is necessary and proper that general administrative provisions be incorporated in this Decree and that a Water Master be appointed to carry out the provisions of the Decree.

XIII. The parties, persons, corporations, intervenors, grantees and substituted parties named in the following tabulation, and their successors-in-interest and assigns, constitute and are

the only appropriators, riparian owners and users of the waters of the Carson River and its tributaries. The sole class of exceptions to the foregoing statement is the landowners on the Newlands Project who took land patents from the United States. Each such landowner is the owner of an appurtenant water right for the patented land as discussed in the opinion filed in this case. The Court has not been provided with a tabulation of these owners and their irrigated acreages. As to the future tabulation of these details, see Administrative Provision VI. All of the above-mentioned parties and their successors and assigns are the owners of water rights to the waters of the Carson River and its tributaries for the legally described acreages or places of use and with the listed priority dates, all contained in the following tabulation.

CONCLUSIONS OF LAW

I. The parties hereto are entitled to a Decree in this action adjudging and declaring that they are the owners and entitled to use the rights set forth in the following tabulation.

II. In accordance with the Findings of Fact and Conclusions of Law, IT HEREBY IS ORDERED, ADJUDGED AND DECREED as follows:

That the parties, intervenors, grantees, successors in interest and assigns are, and each of them hereby is, as against every party to this action, adjudged to be the owners of the water rights hereafter specified and set forth and entitled to divert, store and use from the Carson

River and its tributaries and from the streams and springs hereafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs for the irrigation of their respective lands as described in the tabulation, for generating power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the amounts discussed in the previous sections on water duty, subject and according to the respective priority dates and riparian ownership stated below and the historic customs, practices, agreements and decrees discussed above.

All points of diversion and places of use are described with reference to the Mount Diablo Base and Meridian. Where an entity owns multiple water rights, that entity is listed at the beginning of a series of water rights from a particular diversion ditch and is not repeated for each place of use. Similarly, if a series of places of use under the same owner all have the same priority date, that date is listed once on the first line of the series and is not repeated for each place of use. The only exception to this system is the tabulation of the water rights in Segment 4, where the Special Master listed the places of use for each owner and then gave total acreages for the relevant priority dates. The listing of owners is correct only insofar as the current information has been supplied to the Court. Any grantees, assignees or successors in interest should contact the Water Master with proof of chain of title.

Acreages and priorities are established in conformity with the evidence taken before the Special Master. Any changes of place or manner of use or point of diversion which have

been since approved in the manner provided by the Temporary Restraining Order and Special Master's Report shall be recognized and recorded by the Water Master.

ADMINISTRATIVE PROVISIONS

I. Without the application of water, the lands described above are dry and arid and irrigation is necessary for the production of valuable crops thereon. The respective amounts of water stated above to have been appropriated for or used on these lands, are, in each instance, the maximum amount necessary and sufficient for the reasonable and economical irrigation of crops thereon.

II. The above-named parties who have appropriated water for irrigation have also used and are entitled and allowed to use water for livestock and domestic purposes, but only in such amounts as may be necessary for watering stock and for domestic purposes. The priority in respect to the use of water for livestock and domestic purposes shall be identical to the priority of that party's irrigation right.

III. The parties, intervenors, grantees, successors in interest and substituted parties, assigns and each of their servants or agents and all persons claiming by, through or under them in or to the water rights or lands above described are, and each of them is hereby, until otherwise ordered, restrained from asserting or claiming, except in this action, any right in or to the waters of the Carson River or its tributaries, or the waters of any of the creeks or streams or other waters mentioned above except in accordance with the rights specified, determined and allowed by this Decree.

All claimants or potential claimants mentioned in the above paragraph are as well hereby, until otherwise ordered by the Court, restrained and enjoined from diverting, taking or interfering in any way with the waters of the Carson River or its tributaries, including creeks, streams and springs, so as to in any way prevent or interfere with the diversion, use and enjoyment of the water of any of the persons or parties as allowed by this Decree, having due regard to the relative priorities and historic practices recognized in this Decree. All claimants or potential claimants mentioned in the above paragraph are hereby enjoined and restrained from taking, diverting or using any of the water allowed to them, in any manner or at any time while this Decree remains in force so as to in any way interfere with the prior rights of any other persons or parties having prior rights under this decree (subject to this Decree's provisions on segmentation of the river) until such persons or parties having prior rights have received for their use the waters hereby allowed to them.

IV. The quantities of water to be diverted by the owners of the several ditches, through those ditches, on account of the several priorities herein allowed, are allowed subject to the obligations of said owners to divert and use water only at such times as needed and only in such amounts as may be required for actual, reasonably economical beneficial use. Rotation, or the combining and exchanging of the use of water between ditches and among users shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economy in the use of the water of the river or its tributaries, or in order to give each ditch or user a more advantageous irrigation

head, provided that such rotations shall not injuriously affect any of the rights determined and allowed by this Decree. The Water Master may direct such rotations after consultation with the various interested water users.

V. This Decree does not and shall not in any way affect the title to rights in any property other than the rights to the diversion and use of water as herein stated and allowed. In the cases where this Decree allows water to be diverted through any ditch by the ditch owner on behalf of another party, the conditions of any contractual relations existing between them are not hereby determined.

VI. A Water Master shall be appointed by this Court to carry out and enforce the provisions of this Decree and the instructions and orders of this Court. If any proper order, rule or direction of the Water Master, made in accordance with and for the enforcement of this Decree, is disobeyed or disregarded, he is empowered and authorized to cut off the water from the ditch or canal owners who disobey or disregard the order, rule or direction. If such a cutoff should occur the Water Master shall promptly report to the Court his actions and the circumstances surrounding the case.

When the Court deems it necessary, the Court shall authorize the employment by the Water Master of assistants so as to properly carry out the provisions of this Decree and the orders of the Court. The term of employment, expenses and compensation of the Water Master and his assistants, the payments and means and methods of securing funds to pay the same, shall be fixed by orders of the

Court from time to time. Any person feeling aggrieved by any action or order of the Water Master may, in writing and under oath, complain to the Court, after service of a copy of the complaint on the Water Master. The Court shall promptly review the action or order and make such order as the circumstances warrant.

All disputes on the Carson River system involving the existence or ownership of water rights, the distribution of water or the transportation or measurement of water shall first be submitted to the Water Master for determination as a jurisdictional prerequisite to any complaint to the Court for relief.

The Water Master shall establish a file system for the water rights on the Carson system. The files will be numbered to correspond to the claim numbers set forth in this Decree and subdivided as may become necessary according to future ownership changes. The Water Master must be notified by the parties when title to a water right is changed and proof of the change of title must be provided to the Water Master. The Water Master shall not be required to deliver water to any new owner unless this provision is complied with. The file system shall be extended to include the Newlands Project farmlands only when the lands are sold or transferred or the water rights are sold or transferred. In each such instance the Water Master shall not be required to deliver water to the new owner until the Water Master's office has been informed of the transfer and proof of title going back to the original United States patent has been supplied.

The party in interest shall provide the Water Master with a copy of either the approved application by the State Engineer or this Court's order where requests for changes in the place of diversion, place of use or manner of use are approved. The Water Master is not required to recognize such changes unless and until provided with the order or approved application.

VII. 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. Any person feeling himself aggrieved by any order or decision of the State Engineer on these matters may appeal that decision or order to this Court. Proceedings for review of a decision or order by the State Engineer must be commenced within 30 days of the rendition of the order or decision.

No such appeal proceedings will be heard by this Court unless notice thereof, containing a statement of the substance of the order or decision complained of, and of the manner in which the same injuriously affects the appellant's interests, has been served upon the State Engineer, personally or by registered or certified mail, at his office at the State Capitol within 30 days of the rendition of the decision or order in question. A similar notice must also be served personally or by registered or certified mail upon other persons who are affected by the order or decision. A bond shall not be required unless a stay is requested. The decision of the State Engineer shall be prima facie correct, and the burden of proof shall be upon the party challenging the Engineer's decision. Change of manner of use applications from use for irrigation to any other use and changes in place

of use applications shall be allowed only for the net consumptive use of the water right as determined by this Decree.

Applications for changes in the place of diversion, place of use or manner of use as to California or as to both California and Nevada shall be made directly to this Court in accordance with the regular rules of procedure and notice must be served on all affected interests.

VIII. The owner or owners of each ditch or canal now or hereafter authorized to directly divert water from the Carson River or any of its tributaries, shall, at his, its, or their own expense, install and maintain in the ditch or canal a reliable, sufficient and easily operated regulating headgate, to be approved by the Water Master, whereby the water diverted into said ditch or canal may be regulated. The owner or owners of any such ditch or canal shall have two years from the date of entry of this Decree to fulfill this provision.

Those users who receive water from any particular ditch or canal shall allocate the installation costs of these devices among themselves in proportion of any user's water right acreage to the total water right acreage served by the ditch or canal. In this way the owner or owners of each canal or ditch shall receive proportionate contribution from all those users who benefit from the use of the ditch or canal, whether by use of the direct flows or by use of the return flows. Upon failure of any owner or owners of any such ditch or canal to install these devices within the prescribed time, the Water Master, upon ten days' notice, may cut off the water from any such ditch or canal until the

required devices are installed and maintained. Upon the failure of any user to contribute his fair and proportionate share of the cost to the owner or owners of any canal or ditch, the Water Master, upon ten days' notice, may cut off that user's water until the contribution has been made.

IX. The stored water of any reservoir may be turned into and carried in the channel of any natural stream and mingled with the natural waters and diverted therefrom for the proper uses of the persons or parties entitled thereto. The Water Master, upon timely notice, shall so regulate the headgates along the streams and do and direct such other things as may be needful to transport such stored water and deliver the same to the person or persons entitled thereto. All persons are hereby prohibited from in any way interfering with any such stored water while the same is being legally carried to the persons or parties entitled thereto.

X. No user entitled to the use of water under this Decree shall be allowed to divert more than 40% of his total entitlement in any one calendar month.

XI. Whenever any of the parties hereto, or their successors or assigns as the owners of any of the water rights hereby fixed and allowed, is not receiving the amount of water to which he or they are entitled under this Decree, he or they may request the Water Master to distribute the water in accordance with the terms of this Decree, and the Water Master, either personally or by his assistant, may thereupon enter the lands of any and all parties and persons having rights

designated in this Decree and of their successors in interest, and shall regulate their, or any of their headgates, ditches and other works used for the diversion and application of such waters so as to apportion the waters as provided in this Decree.

XII. Each party shall bear his or its own costs herein incurred.

XIII. The Court hereby expressly reserves jurisdiction to modify, amend, eliminate, add to or change any provision of this Decree.

DONE IN OPEN COURT this 28th day of October 1980.


UNITED STATES DISTRICT JUDGE