

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Applications 18222 and 19386 )  
of Loren E. Blakeley, Application 18223 of )  
Richard Heimsoth, and Application 19091 of )  
Hubert Bruns and Chris Gansberg to Appropriate )  
from West Fork Carson River and Its Tributary, )  
Forestdale Creek, in Alpine County )

Decision D 10114

ADOPTED MAY 25 '61

DECISION APPROVING APPLICATIONS

Application 18222 of Loren E. Blakeley proposes direct diversion from the West Fork Carson River through an extension of the existing Heimsoth Upper West Side Ditch, the diversion point of which is located about two miles downstream from Woodfords and four miles upstream from the Nevada boundary, for stockwatering and irrigation of forty acres. As amended at the hearing hereinafter referred to, Application 18222 is limited to a request for 1.00 cubic foot per second from November 1 to the succeeding June 1. Supplementary Application 19386 of Loren E. Blakeley was withdrawn by the applicant at said hearing and has been canceled.

Application 18223 of Richard Heimsoth proposes direct diversion from the same source of 3.00 cubic feet per second for stockwatering and irrigation of 220 acres through an extension of the same Heimsoth Upper West Side Ditch. As amended at the hearing, its proposed season is also limited to the period from November 1 to the succeeding June 1.

Application 19091 of Hubert Bruns and Chris Gansberg proposes the construction of Forestdale Reservoir on Forestdale Creek, tributary to

the West Fork Carson River, for the appropriation by storage of 575 acre-feet per annum, to be collected between November 1 and the succeeding June 30, for recreation in the reservoir and irrigation of lands near Nevada consisting of about 600 acres of applicant Bruns and about 670 acres of applicant Gansberg. Water released from Forestdale Reservoir in the irrigation season would flow down Forestdale Creek and West Fork Carson River a total of about 20 miles to the points of rediversion, consisting of three existing ditches, including the same ditch proposed to be used by applicants Blakeley and Heimsoth.

Protests to said applications having been received, a public hearing was held in Markleeville on October 4, 1960, before Chairman Kent Silverthorne and Board Member Ralph J. McGill. Evidence having been received and the proceedings having been submitted for decision, the Board finds as follows:

1. Forestdale Creek rises near the summit on the eastern side of the Sierra Nevada Mountains, the dam site described in Application 19091 being approximately one mile east of the summit at about elevation 8,000 feet. The principal runoff of Forestdale Creek and of West Fork Carson River occurs during the spring and early summer when the heavy snows are melting. The flow of Forestdale Creek and of West Fork Carson River drops markedly during the summer and fall but each has some flow all year.

2. The protest of the California Department of Fish and Game directed to the proposed Forestdale Reservoir has been settled by stipulation with applicants Bruns and Gansberg providing that a flow of 1.00 cubic foot per second, or the natural flow of the stream, if less, will be allowed to flow past the Forestdale dam site at all times. This stipulation is found to be reasonable and in the public interest.

3. The protests of applicants Blakeley and Heimsoth to Application 19091 can be disposed of on the same basis as all other protests to the three subject applications. All other protests, except that of the Truckee-Carson Irrigation District, are based upon vested rights to use water primarily for stockwatering and for irrigation of lands along the West Fork Carson River in California near Nevada and in Nevada above the junction with the East Fork Carson River. Summer diversions along this reach of West Fork Carson River for the past several years have been supervised by a water-master appointed by the United States District Court in Carson City, Nevada, in connection with the action entitled United States v. Alpine Land and Reservoir Company, Equity No. D-183. A flow of about 139 cubic feet per second at Woodfords is required to satisfy these vested rights, and in most years more than this magnitude of flow is maintained through June.

4. The only other protestant is the Truckee-Carson Irrigation District which operates the Newlands Project of the United States Bureau of Reclamation and is expected to be a beneficiary of the Bureau's Washoe Project, at least with respect to regulation of flood flows to Lahontan Reservoir, which is downstream on the Carson River. The District's water-master indicated that there would be no basis for its protests to the subject applications if water sufficient for the requested permits in addition to water for existing California rights and usage is apportioned to California by the terms of the anticipated California-Nevada Compact. The Board agrees. An interstate water compact, duly ratified by Congress, would establish firmly and finally the fair share of the waters of the Carson River allotted to California for use in California under California law. All three applicants are expressly placed on notice that permits issued to them, being junior to established California rights on the Carson

River, would be among the first California water rights to be subject to possible loss or modification, depending on compact terms. See Hinderlider v. La Plata & Cherry Creek Ditch Co., (1938) 304 U.S. 92, 58 S.Ct. 803.

Recognition of this fact should satisfy the protests of the Truckee-Carson Irrigation District.

5. The evidence indicates that applicants Blakeley and Heimsoth have no intention of applying water to beneficial use between November 1 of each year and March 1 of the following year, and their respective permits shall be limited accordingly. The use intended by all applicants is beneficial.

6. Unappropriated water is available, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

From the foregoing findings, the Board concludes that Application 19091 should be approved, that Applications 18222 and 18223 should be approved in part, and that permits should be issued to the applicants subject to the limitations and conditions in the following Orders.

IT IS HEREBY ORDERED that Application 18222 be and the same is, approved in part, and that a permit be issued to the applicant Loren E. Blakeley subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 1.0 cubic foot per second by direct diversion to be diverted between about March 1 and about June 1 of each year for stockwatering and irrigation uses.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1963.

5. Complete application of the water to the proposed uses shall be made on or before December 1, 1964.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

8. Rights under this permit are and shall be subject to (1) rights determined by the decree entered November 29, 1921, by Judge L. T. Price in the Superior Court, Alpine County, in connection with the West Fork Carson River Adjudication, and (2) such other rights as may presently exist on the stream, insofar as said existing and adjudicated rights are maintained.

9. Permittee is hereby placed on notice that this permit, being junior to all California rights on the Carson River existing as of July 21, 1958, the date of filing of Application 18222, will be among the first California water rights to be subject to possible loss or modification should the allocation of water of the Carson River to California under a California-Nevada Compact be inadequate to satisfy all rights.

IT IS HEREBY ORDERED that Application 18223 be, and the same is, approved in part, and that a permit be issued to applicant Richard Heimsoth subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 3.0 cubic feet per second by direct diversion between about March 1 and about June 1 of each year for stockwatering and irrigation uses.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1963.

5. Complete application of the water to the proposed uses shall be made on or before December 1, 1964.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

8. Rights under this permit are and shall be subject to (1) rights determined by the decree entered November 29, 1921, by Judge L. T.

Price in the Superior Court, Alpine County, in connection with the West Fork Carson River Adjudication, and (2) such other rights as may presently exist on the stream, insofar as said existing and adjudicated rights are maintained.

9. Permittee is hereby placed on notice that this permit, being junior to all California rights on the Carson River existing as of July 21, 1958, the date of filing of Application 18223, will be among the first California water rights to be subject to possible loss or modification should the allocation of water of the Carson River to California under a California-Nevada Compact be inadequate to satisfy all rights.

IT IS HEREBY ORDERED that Application 19091 be, and the same is, approved, and that a permit be issued to applicants Hubert Bruns and Chris Gansberg, subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 575 acre-feet per annum by storage to be collected from about November 1 of each year to about June 30 of the succeeding year for recreation and irrigation uses.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before December 1, 1961, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1963.

5. Complete application of the water to the proposed uses shall be made on or before December 1, 1964.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

8. The permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

9. Permittee shall continuously bypass not less than 1.0 cubic foot of water per second, or the natural flow when less than 1.0 cubic foot per second, past their storage dam on Forestdale Creek for maintenance of fish.

10. A separate application for approval of plans and specifications for construction of the dam shall be filed with and approved by the California Department of Water Resources prior to the construction of the dam described in Application 19091.

11. Rights under this permit are and shall be subject to (1) rights determined by the decree entered November 29, 1921, by Judge L. T. Price in the Superior Court, Alpine County, in connection with the West Fork Carson River Adjudication, and (2) such other rights as may presently exist on the stream, insofar as said existing and adjudicated rights are maintained.

12. Permittee is hereby placed on notice that this permit, being junior to all California rights on the Carson River existing as of November 20, 1959, the date of filing of Application 19091, will be among the first California water rights to be subject to possible loss or modification should the allocation of water of the Carson River to California under a California-Nevada Compact be inadequate to satisfy all rights.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of                      1961.

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Kent Silverthorne, Chairman

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Ralph J. McGill, Member

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W. A. Alexander, Member