

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

IN THE MATTER OF APPLICATIONS 56732 AND)
56734 FILED TO CHANGE THE POINTS OF)
DIVERSION, MANNER OF USE AND PLACE OF)
USE OF A PORTION OF THE WATERS OF THE)
TRUCKEE RIVER HERETOFORE APPROPRIATED)
UNDER PERMITS 24613 AND 24614 WITHIN)
THE TRUCKEE CANYON SEGMENT GROUNDWATER)
BASIN (91), WASHOE COUNTY, NEVADA.)

RULING

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GENERAL

I.

Application 56732 was filed on September 9, 1991, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.2395 cubic feet per second (cfs), not to exceed 58.21 acre-feet annually (afa), a portion of the waters of the Truckee River heretofore appropriated under Permit 24613.¹ Permit 24613 changed the manner and place of use of Truckee River Claim 180.² The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated water service area. The proposed point of diversion is described as being located at Sierra Pacific Power Company's existing water treatment plants.³ The existing manner of use is for recreation (irrigation of golf course) and domestic purposes.¹

II.

Application 56734 was filed on September 9, 1991, by Westpac Utilities to change the point of diversion, manner of use and place of use of 1.289 cfs, not to exceed 518.71 afa, a portion of the

¹File No. 56732, official records in the Office of the State Engineer.

²Final Decree in United States of America v. Orr Water Ditch Co., In Equity Docket No. A-3 (D.Nev.1944) (hereinafter "Orr Ditch Decree").

³The points of diversion described in Applications 56732 and 56734 are Steamboat Canal, Highland Ditch, Idlewild Treatment Plant, and North Truckee Ditch.

EXHIBIT

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TOW 252

waters of the Truckee River heretofore appropriated under Permit 24614.⁴ Permit 24614 changed the manner and place of use of Truckee River Claim 181(208).² The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated water service area. The proposed point of diversion is described as being located at Sierra Pacific Power Company's existing water treatment plants.³ The existing manner of use is for recreation (irrigation of golf course) and domestic purposes.⁴

III.

Applications 56732 and 56734 were timely protested by the Truckee Carson Irrigation District ("TCID"). The Protestant requested that the applications be issued subject to the following specific conditions:

1. Limit the application to the consumptive use amount leaving the remaining amount in the Truckee River to meet downstream water rights which rely on these return flows. This condition shall be met only upon the removal of wastewater from the river and application to land, wildlife areas or other sites and uses where return waters to the river are precluded or significantly reduced by the Reno/Sparks Joint Treatment facility or other treatment facilities, including those considered by Washoe County, and/or the wastewater amounts are not replaced by an equal amount of water rights. These wastewater treatment or disposal processes include the proposed Dodge Flat area and the disposal of wastewater in the Washoe County southeast proposed treatment facility by the "slow rate" land application method. Both of these processes of disposing of wastewater essentially removes the water from the Truckee River, thereby precluding the historical return flows that make up downstream rights, including that of the TCID.

⁴File No. 56734, official records in the Office of the State Engineer.

2. Assure that lands from which the water rights are transferred do not receive any Truckee River water either inadvertently or directly. A reduction in river flows brought about by either precluding return flows or by "double diversion" as discussed under this condition will damage all downstream users, including the TCID.
3. The diversion for the various applications shall be made according to their priority and the period of use shall be as decreed.
4. Such application is also subject to the provisions of the ORR DITCH DECREE and the TRUCKEE RIVER AGREEMENT dated July 1, 1935, entered into by the United States of America, the Truckee-Carson Irrigation District, the Washoe County Water Conservation District, the Sierra Pacific Power Company and others.

FINDINGS OF FACT

I.

On November 14, 1989, a public administrative hearing was held by the State Engineer concerning two prior applications to transfer Orr Ditch Decreed water rights from below Derby Dam in the vicinity of Wadsworth and one prior application to change the point of diversion from below Vista and above Wadsworth to Westpac Utilities water treatment plants for utilization within the place of use of Westpac Utilities' certificated water service area. The two applications below Derby Dam were also protested by TCID who presented their case in support of their protests at the hearing. The other application which was not protested was also discussed at the hearing. Further possible change applications were discussed at the hearing and the cumulative effect of such changes was analyzed.⁵ The State Engineer finds that Applications 56732 and 56734 are similar to the applications heard at the November 14,

⁵Transcript, public administrative hearing before the State Engineer, November 14, 1989, concerning Applications 53092, 53093 and 53369.

1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Applications 56732 and 56734 are similar to the arguments presented by protestant TCID at the aforementioned hearing.

II.

The Orr Ditch Decree specifically allows persons who hold rights adjudicated in said decree to change the point of diversion, place and manner of use of these rights as long as they do so in accordance with the Nevada Water Law and such change would not injure the rights of other persons whose rights are fixed by the decree.⁶ It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.⁷ The State Engineer finds that he has a full understanding of the issues involved in Applications 56732 and 56734 and that he has already taken evidence at the aforementioned hearing concerning the merits of applications like these and similar to the protests at issue here.

III.

The Sierra Pacific Power Company's service area is sewerred and the wastewater is treated and returned to the Truckee River upstream of the protestant's point of diversion. The State Engineer finds that the change of the full duty of water from irrigation to municipal use as proposed under Applications 56732 and 56734 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Applications 56732 and 56734 will not conflict with any downstream water rights.

⁶Orr Ditch Decree, p. 88.

⁷NRS 533.365(3).

IV.

The State Engineer finds that the priority and period of use of Orr Ditch decreed water rights remain the same under a change application and the regulation of the same is the responsibility of the Federal Water Master.⁸

V.

The State Engineer has reviewed the analysis presented at the November 14, 1989, hearing concerning existing rights and finds that the approval of these applications will not conflict with existing rights nor threaten to be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this determination.⁹

II.

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

- A. the proposed use conflicts with existing rights, or
- B. the proposed use threatens to prove detrimental to the public interest.¹⁰

III.

The State Engineer concludes the granting of Applications 56732 and 56734 will not conflict with existing rights or threaten to prove detrimental to the public interest.

⁸Orr Ditch Decree, p. 87.

⁹NRS Chapter 533.

¹⁰NRS 533.370(3).

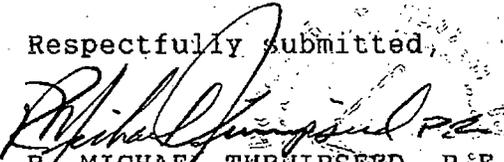
Ruling
Page 6

RULING

The protests to Applications 56732 and 56734 are hereby overruled and said applications are hereby approved subject to:

1. payment of statutory fees;
2. resolution of title;
3. existing rights on the source; and
4. continuing jurisdiction and regulation by the Federal Water Master.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MJR/ab

Dated this 10th day of
January, 1997.