

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

IN THE MATTER OF APPLICATION 55383 )  
FILED TO CHANGE THE POINT OF DIVERSION, )  
MANNER OF USE AND PLACE OF USE OF A )  
PORTION OF THE WATERS OF THE TRUCKEE )  
RIVER HERETOFORE APPROPRIATED UNDER )  
TRUCKEE RIVER DECREE CLAIM NUMBERS 356 )  
AND 357 WITHIN THE TRUCKEE CANYON )  
SEGMENT (91), WASHOE COUNTY, NEVADA. )

RULING

# 4582

GENERAL

I.

Application 55383 was filed on October 18, 1990, by Westpac Utilities to change the point of diversion, manner of use and place of use of 2.3301 cubic feet per second (cfs), not to exceed 300.68 acre feet annually, a portion of the waters of the Truckee River heretofore appropriated under Claim Numbers 356 and 357 of the Orr Ditch Decree.<sup>1</sup> The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated water service area. The proposed points of diversion are described as being Sierra Pacific's existing water treatment plants. The existing manner of use is for irrigation and stockwater purposes.<sup>2</sup>

II.

Application 55383 was timely protested by the Truckee Carson Irrigation District ("TCID") which requested that the application be issued subject to the following specific conditions:<sup>2</sup>

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

EXHIBIT

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TCID 253

<sup>1</sup> Final Decree, US v. Orr Ditch Water Co., in Equity Docket A-3 (D. Nev. 1944).

<sup>2</sup> File No. 55383, official records in the office of the State Engineer.

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.

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. In the event that "instream minimum flow requirements" in the interest of the "Public Trust" are established in the future on any reach of the Truckee River below the new point of diversion into the Westpac Utility system, the amounts of water required to meet these needs be made up from these application rights that are proposed to be moved upstream.
4. The diversion for the various applications shall be made according to their priority and the period of use shall be as decreed.

### III.

Around August 26, 1993, a letter was received from Westpac Utilities requesting a portion of Application 55383 that being 0.1775 cfs and 22.90 acre feet of water, be withdrawn and remain at the existing place of use. The amount of water proposed to be changed by Application 55383 is now 2.1526 cfs and not to exceed 277.78 acre feet annually.<sup>2</sup>

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. Further possible change applications were discussed at the hearing and the cumulative effect of such changes was analyzed. The State Engineer finds that Application 55383 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 55383 is 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. It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application. The State Engineer finds that he has a full understanding of the issues

involved in Application 55383 and that he has already taken evidence at the aforementioned hearing concerning the merits of applications like these and of protests 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 and domestic use as proposed under Application 55383 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Application 55383 will not conflict with any downstream water rights.

IV.

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 prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this determination.<sup>3</sup>

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<sup>3</sup> NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate the public waters where:<sup>4</sup>

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

III.

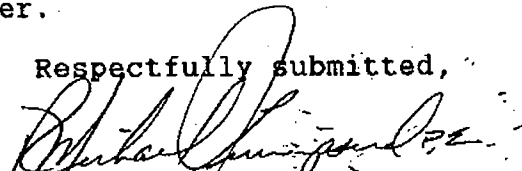
The State Engineer concludes the granting of Application 55383 will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 55383 is hereby overruled and said application is hereby approved subject to:

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

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MLN/ab

Dated this 13th day of  
November, 1997.

<sup>4</sup> NRS § 533.370(3).