Permit No. 80585

THE STATE OF NEVADA

PERMIT TO CHANGE THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of Permittee:	**CITY OF RENO BY AND THROUGH TRUCKEE MEADOWS WATER AUTHORITY**
Source:	**TRUCKEE RIVER**
Basin:	**TRUCKEE CANYON SEGMENT**
Manner of Use:	**MUNICIPAL**
Period of Use:	**AS DECREED**
Priority Date:	**AS DECREED**

****

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit, to change the point of diversion, place and manner of use of a portion of the waters of the Truckee River as heretofore granted under Claim 7, Truckee River Decree, is issued subject to the terms and conditions imposed in said decree and with the understanding that no other rights on the source will be affected by the change proposed herein. A suitable measuring device must be installed and accurate measurements of water placed to beneficial use must be kept.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The point of diversion and place of use are as described on the submitted application to support this permit.

(Continued on Page 2)

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, **and not to exceed 24.0 acre-feet as decreed.**

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before: **N/A**
Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before: **July 25 2021**
Map in support of proof of beneficial use shall be filed on or before: **N/A**

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 25th day of **July,** A.D. **2011**

P.E.
State Engineer

Completion of work filed October 25, 2007 under 74746

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

Application No. 80585

APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office FEB 1 6 2011

Returned to applicant for correction

Corrected application filed

Map filed OCT 1 3 2008 under 7 7 4 7 8

The applicant City of Reno by and through Truckee Meadows Water Authority

P.O. Box 30013 (Street Address or PO Box) of Reno (City or Town)

Nevada 89520-3013 (State and ZIP Code) hereby make(s) application for permission to change the

☑ Point of diversion ☑ Place of use ☑ Manner of use ☑ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give title of Decree and identify right in Decree.)

Claim or Right No. 7 of the Truckee River Decree, said Decree entered by the District Court of the United States for Nevada in that certain action entitled, "The United States of America, Plaintiff vs. Orr Water Ditch Company, et al., Defendants", in Equity Docket A-3.

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1. The source of water is Truckee River
   (Name of stream, lake, underground, spring or other sources.)

2. The amount of water to be changed 24.00 afa along with a pro-rata share of the diversion rate
   (Second feet, acre-feet. One second foot equals 448.83 gallons per minute.)

3. The water to be used for Municipal/Domestic
   (Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use)

4. The water heretofore used for Suppling and Maintaining Log Pond
   (If for stock, state number and kind of animals.)

5. The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unsurveyed land, it should be stated.)

   The points of diversion of Truckee Meadows Water Authority's existing water treatment plants and Washoe County's Induction Well #4 as described in attached Exhibit "A" and as shown on the map supporting Permit No. 77478 on file with the Division of Water Resources, State of Nevada.

6. The existing point of diversion is located within (If point of diversion is not changed, do not answer.)

   Situate in the SE 1/4 NW 1/4 of Section 19, T 19N, R 18E, MDM or at a point from which the East 1/4 bears South 51°35' East, a distance of 1,110 feet as described in Certificate 181 and shown on the map submitted with Permit 1393..

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7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)

See attached Exhibit "B" as described in Permit No. 77478 and shown on the map accompanying said Permit on file with the Division of Water Resources, State of Nevada.

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

Approximately 6.00 acres known as the Verdi Log Pond situate in the East 1/2 of Section 18, T. 19N., R. 18E. M.D.B. &M., Washoe County NV. The log pond is shown on the map submitted with Permit 1393, Certificate 181. Also attached hereto as Exhibit "C" is an map showing the location of the log pond on APN 038-054-21.

9. Proposed use will be from January 1st (Month and Day) to December 31st (Month and Day) of each year.

10. Existing use permitted from as Decreed (Month and Day) to as Decreed (Month and Day) of each year.

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

The water will be diverted from river, treated and placed into TMWA's distribution system.

12. Estimated cost of works Completed

13. Estimated time required to construct works Completed
If well completed, describe well.

14. Estimated time required to complete the application of water to beneficial use Ten (10) years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary): (Failure to provide a detailed description may cause a delay in processing.)

Water is to be used for municipal service from TMWA

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2011 FEB 16 AM 8:
STATE ENGINEERS OFFICE

16. Miscellaneous remarks:

The purpose of this Application is a proposed change from DTR #7, suppling and maintaining a log pond in Verdi to a consumptive use for Municipal and Domestic purposes not greater than 24 AF. Backup refer to letters attached hereto as Exhibit "D" from the State Engineer dated June 28, 1985 and the Deputy Attorney General dated June 10, 1988.

Kenneth C. Briscoe
Type or print name clearly

Signature, applicant or agent

E-mail Address

775.834.8021
Phone No.

Truckee Meadows Water Authority
Company Name

P.O. Box 30013
Street Address or PO Box

Reno, Nevada 89520-3013
City, State, ZIP Code

APPLICATION MUST BE SIGNED BY THE APPLICANT OR AGENT

Revised 07/09

$200 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

EXHIBIT "A"

The following describes the multiple points of diversion for Truckee Meadows Water Authority's Water Treatment Plants and Facilities and Washoe County's Hidden Valley Induction Well #4, which are shown on the map accompanying Permit No. 77478 on file with the State of Nevada, Division of Water Resources, more particularly described as follows:

STEAMBOAT CANAL (HUNTER CREEK RESERVOIR) Detail 1:

The point of diversion is situate within the Northeast one-quarter of the Southwest one-quarter (NE¼ SW¼) of Section 31, T.19N., R.18E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Southeast corner of said Section 31 bears South 62°04' East, a distance of 3,195.00 feet.

KATZ DITCH (VERDI FLUME) Detail 2:

The point of diversion is situate within the Southeast one-quarter of the Southeast one-quarter (SE¼ SE¼) of Section 19, T. 19N., R. 18E., M.D.B.&M., Washoe County, Nevada from said point of diversion, the Southeast corner of said Section 19 bears South 39°58' East, a distance of 845.00 feet.

HIGHLAND DITCH (HIGHLAND RESERVOIR) Detail 3:

The point of diversion is situate within the Southwest one-quarter of the Southeast one-quarter (SW¼ SE¼) of Section 9, T.19N., R.18E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Southeast corner of said Section 9 bears South 75°16' East, a distance of 1,650.00 feet.

ORR DITCH (CHALK BLUFF TREATMENT PLANT) Detail 4:

The point of diversion is situate within the Northeast one-quarter of the Southwest one-quarter (NE¼ SW¼) of Section 17, T.19N., R.19E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Southwest corner of said Section 17 bears South 44°40' West, a distance of 3,211.00 feet.

ORR DITCH PUMP STATION (CHALK BLUFF TREATMENT PLANT) Detail 5:

The point of diversion is situate within the Northeast one-quarter of the Southeast one-quarter (NE¼ SE¼) of Section 17, T.19N., R.19E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Northeast corner of said Section 17 bears North 15°39'36" East, a distance of 3,264.77 feet.

IDLEWILD TREATMENT PLANT Detail 6:

The point of diversion is situate within the Southeast one-quarter of the Southeast one-quarter (SE¼ SE¼) of Section 10, T.19N., R.19E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Southeast corner of said Section 10 bears South 69°57'58" East, a distance of 842.34 feet.

NORTH TRUCKEE DITCH (GLENDALE TREATMENT PLANT) Detail 7:

The point of diversion is situate within the Southwest one-quarter of the Northeast one-quarter (SW¼ NE¼) of Section 7, T.19N., R.20E., M.D.B.&M., Washoe County, Nevada, from said point of diversion, the Northeast corner of said Section 7 bears North 39°28' East, a distance of 3,015.00 feet.

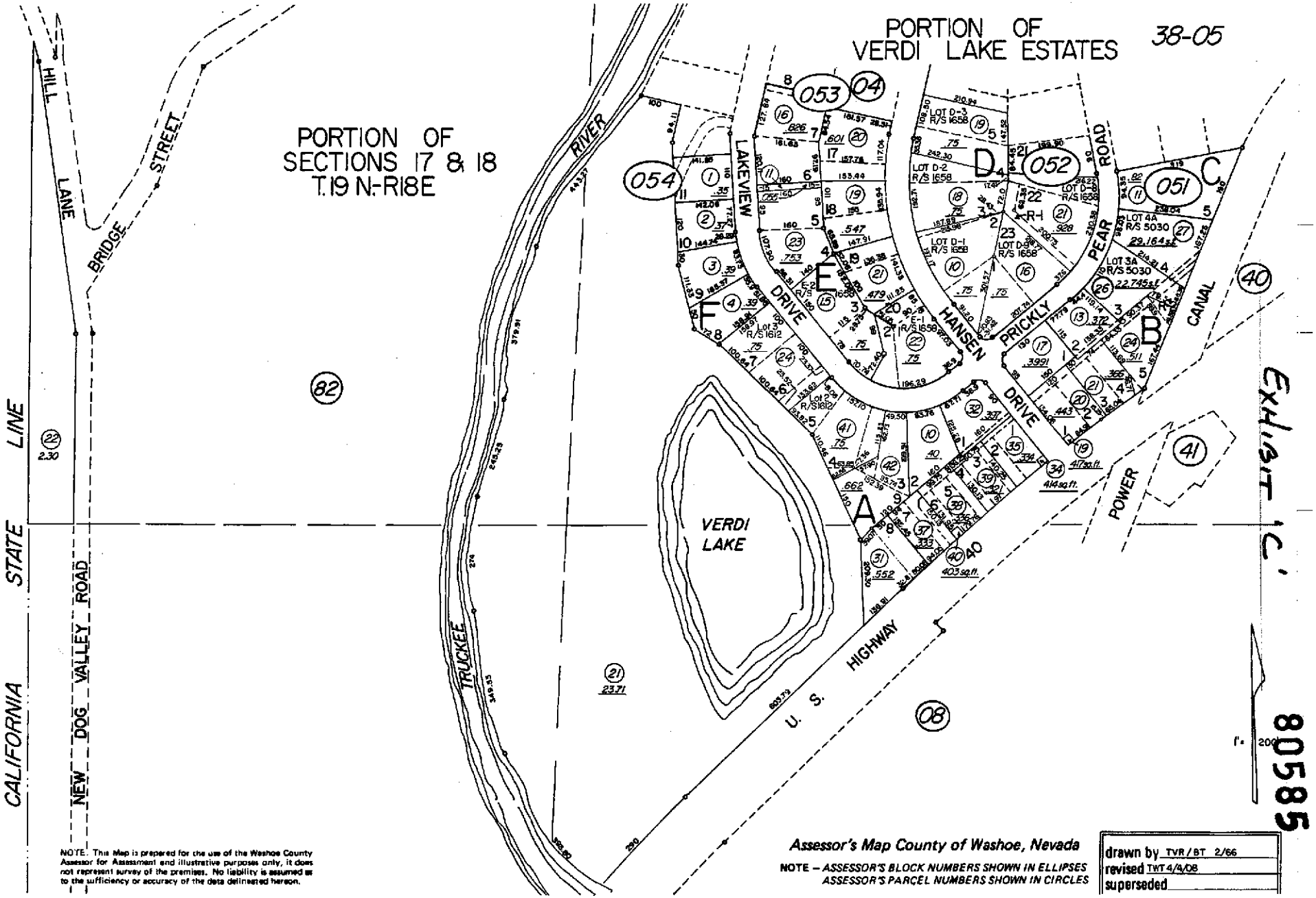
WASHOE COUNTY (HIDDEN VALLEY INDUCTION WELL #4) Detail 8:

The point of diversion is situate within the West one-half of the Northwest one-quarter (W½ NW¼) of Section 16 T.19N., R.20E., M.D.B.&M., Washoe County, Nevada from said point of diversion, the West one-quarter corner of Section 21, T.19N., R.20E., M.D.B.&M. bears South 09°54'07" West, a distance of 6929.94 feet.

EXHIBIT "B"
PROPOSED PLACE OF USE

DIVISION	SECTION	T-N	R-E	
ALL	1 – 5	18	18	M.D.B.& M.
E ½	6 & 7	18	18	M.D.B.& M.
ALL	8 – 17	18	18	M.D.B.& M.
E ½	18 & 19	18	18	M.D.B.& M.
ALL	20 – 29	18	18	M.D.B.& M.
E ½	30 & 31	18	18	M.D.B.& M.
ALL	32 – 36	18	18	M.D.B.& M.
ALL	1 – 5	19	18	M.D.B.& M.
E ½	6 & 7	19	18	M.D.B.& M.
ALL	8 – 17	19	18	M.D.B.& M.
E ½	18 & 19	19	18	M.D.B.& M.
ALL	20 – 29	19	18	M.D.B.& M.
E ½	30 & 31	19	18	M.D.B.& M.
ALL	32 – 36	19	18	M.D.B.& M.
ALL	1 – 5	20	18	M.D.B.& M.
E ½	6 & 7	20	18	M.D.B.& M.
ALL	8 – 17	20	18	M.D.B.& M.
E ½	18 & 19	20	18	M.D.B.& M.
ALL	20 – 29	20	18	M.D.B.& M.
E ½	30 & 31	20	18	M.D.B.& M.
ALL	32 – 36	20	18	M.D.B.& M.
ALL	1 – 5	21	18	M.D.B.& M.
E ½	6 & 7	21	18	M.D.B.& M.
ALL	8 – 17	21	18	M.D.B.& M.
E ½	18 & 19	21	18	M.D.B.& M.
ALL	20 – 29	21	18	M.D.B.& M.
E ½	30 & 31	21	18	M.D.B.& M.
ALL	32 – 36	21	18	M.D.B.& M.
ALL	1 – 36	17	19	M.D.B.& M.
ALL	1 – 36	18	19	M.D.B.& M.
ALL	1 – 36	19	19	M.D.B.& M.
ALL	1 – 36	20	19	M.D.B.& M.
ALL	1 – 36	21	19	M.D.B.& M.
ALL	5 & 6	16	20	M.D.B.& M.
ALL	1 – 36	17	20	M.D.B.& M.
ALL	2 – 35	18	20	M.D.B.& M.
W ½	36	18	20	M.D.B.& M.
ALL	1 – 12	19	20	M.D.B.& M.
N ½	13	19	20	M.D.B.& M.
ALL	14 – 23	19	20	M.D.B.& M.
ALL	26 – 35	19	20	M.D.B.& M.
ALL	06, 07 & 18	19	21	M.D.B.& M.
ALL	1 – 36	20	20	M.D.B.& M.
ALL	1 – 36	21	20	M.D.B.& M.
ALL	1 – 36	20	21	M.D.B.& M.
ALL	1 – 36	21	21	M.D.B.& M.

See supporting map on file under Permit No. 77478.



NOTE: This Map is prepared for the use of the Washoe County Assessor for Assessment and illustrative purposes only, it does not represent survey of the premises. No liability is assumed as to the sufficiency or accuracy of the data delineated hereon.

Assessor's Map County of Washoe, Nevada

NOTE – ASSESSOR'S BLOCK NUMBERS SHOWN IN ELLIPSES
ASSESSOR'S PARCEL NUMBERS SHOWN IN CIRCLES

drawn by TVR/BT 2/66
revised TWT 4/9/08
superseded

Exhibit "D"

Letters from the State Engineer dated June 28, 1985 and the Deputy Attorney General dated June 10, 1988.

RICHARD H. BRYAN
Governor

STATE OF NEVADA

ROLAND D. WESTERGARD
Director

PETER G. MORROS
State Engineer

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DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES

DIVISION OF WATER RESOURCES
Capitol Complex
201 S. Fall Street
Carson City, Nevada 89710

1393

June 28, 1985

RECEIVED
JUN 28 1985
W/R ENGINEERING/PLANNING

Florence R. Marsh
Verdi, Nevada 89439

Dear Ms. Marsh:

This letter will confirm our recent conversation concerning the status of Permit 1393, Certificate 181.

Permit 1393 was filed on July 13, 1909 by the Verdi Lumber Company to appropriate waters of the Truckee River. Certificate 181 was issued on January 22, 1914 under Permit 1393. As set forth in the attached certificate, the use is irrigation of 18.75 acres located in portions of Sections 18 and 19, T.19N., R.18E., M.D.B.&M. I would emphasize that this right carries a priority of July 13, 1909, which makes it junior to all other rights set forth under the Truckee River Decree.

In addition, under Claim No. 7 of the Truckee River Decree, the Verdi Lumber Company is entitled to have diverted from the Truckee River sufficient water for supplying and maintaining a log pond of the Verdi Lumber Company in the Town of Verdi for logging and saw mill purposes.

We are of the understanding that the surface area of the log pond is approximately 6 acres and based on an evaporation rate of 4 acre feet per acre the consumptive use of this right would be limited to 24 acre feet. This constitutes the interpretation of the limit and extent of the Verdi Lumber Company's right under Claim No. 7.

I also draw to your attention that the Truckee River Decree does not address the irrigation right set forth under Permit 1393, Certificate 181, therefore, this right is subject to all rights set forth under the Decree.

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If you have any further questions in this matter, please feel free to contact me.

Sincerely,

Peter G. Morros
State Engineer

PGM/bc
Enclosure
cc: Garry Stone

80585

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
DIVISION OF WATER RESOURCES
Capitol Complex
201 S. Fall Street
Carson City, Nevada 89710

BRIAN McKAY
Attorney General

GEORGE BENESCH
Deputy Attorney General
(702) 885-4380

June 10, 1988

Ms. Florence R. Marsh
Verdi, Nevada 89439

Re: Orr Ditch Decree; Claim No. 7,
Division of Water Resources
Permit Nos. 477 and 1393

Dear Mrs. Marsh:

In response to our discussion in the Attorney General's office on Thursday, May 12, 1988, I have reviewed and studied: the documents you provided; my notes from the discussion with you and Mr. Williams; and the files and records of the Division of Water Resources and offer the following thoughts for your consideration.[1] Inasmuch as a substantially similar inquiry was made in your letter of April 22, 1988, to the State Engineer, Peter G. Morros, for whom the undersigned acts as legal counsel, this summary may additionally be construed as the State Engineer's response to the subject letter.

It initially deserves mention that research into the State Engineer's records and files and previous discussions have revealed your inquiry of elected and appointed officials including former Senator Laxalt reflect obvious confusion and frustration over the status of the subject water rights. I apologize and sincerely hope the following helps on your understanding of the present status of Orr Ditch Decree Claim No. 7 and Permits 477 and 1393. Also for purposes of this summary, the undersigned assumes that you are the sole successor in interest to the Verdi Lumber Company which is what appears to be reflected in the State Engineer's files and records. Moreover, when referencing certain documents or when it otherwise might be helpful I will attach copies hereto as exhibits for your convenience.

It is my understanding that with respect to Claim No. 7 your position is that by virtue of Permit 1393 you, as successor to the Verdi Lumber Company, are entitled to 100 miners inches "flow-through" water rights for supply and maintenance of the old Verdi Lumber Company log pond on your property in Verdi and by virtue of Permit 477

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[1] Chapter 288 of the Nevada Revised Statutes provides opinions of the Attorney General or his Deputies are reserved for the State, its officers and its institutions and precludes the private practice of law. Thus, any deliberation contained herein (although the result of numerous years of specialized, exclusive practice in the area of Nevada water law) may be subject to varying interpretations and conclusions and you are, thus, encouraged to obtain private counsel in this regard.

and the contract dated September 28, 1907, between the Verdi Lumber Company and the Truckee River General Electric Company (Exhibit "A" attached hereto) you are entitled to 200 additional miners inches together with 20 inches for irrigation for a total of 220 inches. You concede you sold, or otherwise transferred to third parties, the 20 inches for irrigation and the evaporation from the 100 miners inches noted above (24 acre-feet). It is my further understanding that you wish to have the aforementioned 200 inches (also noted above) recognized in your name so you might sell them to prospective purchasers (See Exhibit "B" attached hereto) and reestablish your pond which the Federal Water Master has ordered "dried-up" in response to his reflecting the sale of the evaporation portion of the 100 inch entitlement under Claim No. 7 on his distribution records. (See Exhibit "C" attached hereto). Additional inquiry is directed to why may you not sell water from the "first 100 inch Claim #477...as a successor to the Verdi Lumber Company". (See Exhibit "B", page 2). In summary, you ask for affirmation of ownership of the aforementioned water rights indicating that Sierra Pacific Power Company and others have demonstrated interest in acquiring, or otherwise purchasing, these rights. (See Exhibits "B", and "D" attached hereto).

I have reviewed Claim No. 7 (Exhibit "E" attached hereto) from the Orr Ditch Decree and to the extent you suggest there is more than one water right (i.e. just the 100 inches) set forth therein, I concur. I do not, however, concur with your apparent position that one water right in Claim No. 7 is premised on Permit No. 1393 (100 inches) and another on Permit 477 (220 inches). These permits which will be discussed in more detail below were issued by the Nevada State Engineer with priorities of 1907 and 1911, respectively and are independent of the Orr Ditch Decree and any entitlement thereunder is in excess of the Decree rights as set forth herein below. Thus, Claim No. 7 which is based on historical use of Truckee River water prior to 1905 stands alone and will be examined first.

My reading of Claim No. 7 is that it depicts three separate entitlements to water as set forth in the three paragraphs. The first water right is for 399 cubic feet per second (c.f.s.) for power generation by Sierra Pacific Power Company. The second paragraph provides for diversion through the Verdi Power Ditch of 220 inches or 5.50 c.f.s. for supplying irrigation rights out of the Katz Ditch. Finally, provision is made in the third paragraph of Claim No. 7 for Sierra Pacific Power Company to divert through the Verdi Power Ditch to deliver to you as successor to the Verdi Lumber Company as follows:

> 100 inches of water with a priority of the year 1894 for supplying and maintaining the log pond of the Verdi Lumber Company in the Town of Verdi, and for logging and saw mill purposes.

Orr Ditch Decree p. 11, Exhibit "E" attached hereto. Additional consideration of the three provisions of Claim No. 7 is warranted.

It is my understanding you do not dispute the 399 c.f.s. provisions of the first paragraph of Claim No. 7 and no discussion on this provision is warranted here. Directing your consideration next to the second paragraph, the express purpose of the provision is to allow the diversion of "220 inches or 5.50 cubic feet of water per second for supplying the Katz Ditch for irrigation to the extent...hereinafter allowed...". (See Exhibit "E" attached hereto). Directing your attention to the top of page 19 of the Orr Ditch Decree (Exhibit "F" attached hereto), it is evident Claim 95 and 95a comprising of 106 irrigated

acres and 477 acre-feet of water per year are the extent of this right and unless you can demonstrate you are the successor to the Truckee River General Electric Company under these claims, you have no entitlement thereto.

What is the limit and the extent of the entitlement to water set forth in the final paragraph of Claim No. 7? My reading of this paragraph is that the Verdi Lumber Company is entitled to: (1) 100 inches of water; (2) for the purpose of supplying and maintaining a log pond (and for logging and saw mill purposes); (3) in the Town of Verdi. Thus, the entitlement for the Verdi Lumber Company under this paragraph is for 100 inches of water for a specific purpose and at a specific place. Under this entitlement, the Verdi Lumber Company or its successor may call for only up to 100 inches of flow for purposes of maintaining the Verdi Pond or other logging or saw mill purposes with a priority of 1894.

A construction of this third paragraph that any successor in interest to the Verdi Lumber Company is entitled to 100 inches, to use for whatever purpose and at whatever time and place she might see fit would be to ignore the express language of the decree. It is somewhat understandable how this mistaken interpretation might be made particularly in reviewing Exhibit "D", however, even a review of this exhibit reveals Sierra Pacifc Power Company in 1980 was willing to purchase the entire 100 inches under the final paragraph of Claim No. 7 only if the Nevada State Engineer permitted them to change the point of diversion, manner of use and place of use of those rights.

A review of the general provisions of the Orr Ditch Decree further reveals that on page 88 (Exhibit "G") the changes may only be made as follows:

> Persons whose rights are adjudicated hereby, there successors or assigns shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the waters to which they are entitled or any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree. (Emphasis added.)

Orr Ditch Decree, page 88, paragraph 4. The language "in the manner provided by law" has been interpreted by the Orr Ditch Court to mean that application for such a change must be made and approved by the State Engineer in accordance with Chapter 533 of the Nevada Revised Statutes which includes similar provisions. See NRS 533.370.

The State Engineer as I understand it has agreed that the consumptive use of this right is 24 acre-feet (size of the pond = 6 acres x 4 acre-feet per year evaporation rate) and decided only this amount may be changed as set forth above without adversely affecting rights of other parties. (See Exhibit "H") and it is my further understanding that you transferred this 24 acre-feet together with 70.74 acre-feet from Permit 1383 to the City of Reno as a result of negotiations with the developers of the Caughlin Ranch in southwest Reno.[2] (See Exhibit "I"). Under Chapter 533 of NRS and the Orr Ditch Decree the State Engineer has the sole discretion to allow a change in the place, means, manner

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[2] It is my further understanding that you apparently dispute agreeing to the provisions of this deed, however, it appears undisputed that you did receive compensation for the water rights referenced therein in excess of $100,000.

or purpose of a water right. The State Engineer appears to have allowed you to sell that amount of the subject 100 inch right the change of which would not cause injury to other appropriators under the subject decree.[3]

In addition to Claim No. 7, Permit 477 comes into issue. This permit is for a new appropriation (not included in the Orr Ditch Decree) for 100 miners inches for the Verdi log pond and irrigation of adjacent land to be taken from the Truckee River at the same place described in the Essex Ice Company appropriation. Permit 477 was cancelled by the State Engineer "on account of nonuse" on July 1, 1911. Thus, the successors of the Verdi Lumber Company are entitled to no rights under this permit. (See Exhibit "J").

Next, consideration must be directed to Permits 1393 which was filed on July 13, 1909, by the Verdi Lumber Company to appropriate waters of the Truckee River. (See Exhibit "K"). Upon the filing of Proof of Beneficial Use Certificate, 181 (Exhibit "L") was issued establishing a water right for irrigation of 18.75 acres and the maintenance of the Verdi log pond.

This water right appears to be the water right reflected in Claim No. 7 of the Orr Ditch Decree inasmuch as it is identical to this claim, save and except, the later date of priority and the subject Decree at page 88 in the last paragraph provides:

> The foregoing adjudication set forth in Claims Nos. 12744, inclusive, of this Decree are based upon conditions existing at or prior to the entry of said Temporary Restraining Order herein on February 13, 1926....

See Exhibit "M" attached hereto. Moreover, the subject Decree at page 87 (Exhibit "N") further provides injunctive language as follows:

> The parties, persons, corporations, intervenors, grantees, successors in interest and substituted parties hereinbefore named, and their and each of their servants, agents, attorneys, assigns and all persons claiming by, through or under them and their successors, in and to the water rights or lands herein mentioned or described, are and each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree....

Thus, it is somewhat apparent that there is but one water right for maintaining a log pond and related purposes at the old lumber mill site at Verdi.[4] Although one might

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[3] It is unclear whether application to change the place and manner of use have actually been filed with the State Engineer's office. Arguably, if no such applications have been approved, the water should remain as set forth in the decree. In any event if you are dissatisfied with this or any other determination of the State Engineer judicial review of this or any final order or decision by the appropriate court may be petitioned for. See NRS 533.450.

[4] A review of supporting maps filed with the State Engineer under Permit 1393 and those supporting the Orr Ditch Decree consistently depict only one log pond at the site in

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argue there are two such rights based on differing dates of priority of Claim No. 7 and Permit 1393.

Assuming for purposes of discussion only, there is a second water right, what is the limit and extent of this right for maintaining the log pond? One of the basic Nevada water law statutes, NRS 533.035 provides "beneficial use is the basis, the measure and the limit to the right to the use of water." Moreover, NRS 533.070 further provides the quantity of water appropriated is limited to the amount reasonably required for beneficial use and, finally, NRS 533.060 establishes the carrying capacity of ditch is irrelevant and right to use of water is limited to that reasonably and economically necessary.

If it is determined there is a second water right (and I don't believe there is) by application of the foregoing its limit and extent would only be that amount of water put to beneficial use under the first, or Claim No. 7, water right which appears to be nothing. It deserves mention, however, that if the second water right is somehow determined to be valid, this right is junior to all water rights set forth in the Orr Ditch Decree and its holder would not likely be in a position to "call" for water from the Federal Water Master thereunder except in extraordinary wet years or, perhaps, during flood periods. Furthermore, any change in the point of diversion, place of use or manner of use would have to be approved by the State Engineer as set forth above. Accordingly, the value of such a water right for utilization at another place and for other purposes is even more extenuated.

It is my sincere hope that the foregoing helps you in the understanding of the status of the subject water rights. All water rights on the Truckee River and other stream systems for that matter are relative to one another and are valid only in the amount and for the purpose and in the place for which they are appropriated unless changes are made through the State Engineer who in accordance with the Orr Ditch Decree and NRS 533.370 may not approve such a change which will adversely affect other existing recognized uses.

If you have any questions or if I can be of further assistance, please do not hesitate to contact this office.

Very truly yours,

GEORGE BENESCH
Deputy Attorney General

GB/bk
cc: Brian McKay
Peter G. Morros
Garry Stone