

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

IN THE MATTER OF APPLICATIONS 53372 AND)
53684 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 VARIOUS TRUCKEE RIVER DECREE)
RIGHTS WITHIN THE TRUCKEE CANYON SEGMENT)
(91), WASHOE COUNTY, NEVADA.)

RULING

4514

GENERAL

I.

Application 53372 was filed on June 9, 1989, by Westpac Utilities to change the point of diversion, manner of use and place of use of 2.36 cubic feet per second (cfs), not to exceed 265.03 acre feet annually, a portion of the waters of the Truckee River heretofore appropriated under Orr Ditch Decree Claims 404, 407 and 410.¹ The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated 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.²

II.

Application 53684 was filed on July 13, 1989, by Westpac Utilities to change the point of diversion, manner of use and place of use of 2.59 cfs, not to exceed 767.29 acre feet annually, a portion of the waters of the Truckee River heretofore appropriated under Orr Ditch Decree Claims 49, 52.5 and 53.¹ The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated water service area. The

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

²File No. 53372, official records in the Office of the State Engineer.

proposed point of diversion is described as being located at Sierra Pacific Power Company's existing water treatment plants. The existing manner of use is for irrigation.³

III.

Applications 53372 and 53684 were timely protested by the Truckee Carson Irrigation District (TCID). The protestant requested that the applications be issued subject to the following specific condition:^{2,3}

Applicant to provide written assurance that only the consumptive use portion of the water rights are to be transferred since it is the intent of the Reno/Sparks Treatment Facility not to return treated effluent to the Truckee River but to divert the effluent to land application.

IV.

By letter dated January 22, 1990, Westpac Utilities requested a portion of the area originally under Claim 52.5 be removed from consideration by the State Engineer pursuant to the change application.

V.

By letter dated August 14, 1995, Sierra Pacific Power Company requested another portion of Application 53684 be withdrawn. The applicant requested that 105.8 acre-feet under Claim 49, and 7.69 acre feet under Claim 53 be removed from consideration by the State Engineer pursuant to the change application.

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

³File No. 53684, official records in the Office of the State Engineer.

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 Applications 53372 and 53684 are similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Applications 53372 and 53684 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. 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 Applications 53372 and 53684 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 sewered 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 53372 and 53684 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Applications 53372 and 53684 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 be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this determination.⁴

II.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate the public waters where:⁵

- 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 Applications 53372 and 53684 will not conflict with existing rights or threaten to prove detrimental to the public interest.

⁴NRS Chapter 533.

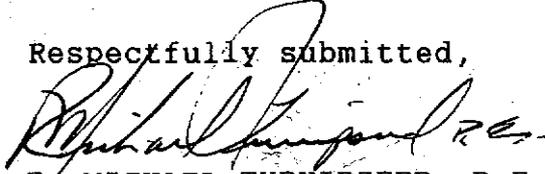
⁵NRS 533.370(3).

RULING

The protests to Applications 53372 and 53684 are hereby overruled and said applications are 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/MJR/ab

Dated this 11th day of
March, 1997.