

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

IN THE MATTER OF APPLICATIONS)
54574, 57575, 57576, 54577, 54578, 54579)
54580, 54581 AND 54582 FILED TO)
APPROPRIATE THE WATER FROM)
VARIOUS SURFACE SOURCES WITHIN)
THE TRUCKEE MEADOWS (087),)
TRUCKEE CANYON SEGMENT (091))
AND PLEASANT VALLEY (088))
HYDROGRAPHIC BASINS, WASHOE)
COUNTY, NEVADA.)

RULING

#5303

GENERAL

I.

Application 54574 was filed on March 20, 1990, by Washoe County to appropriate 20.0 cubic feet per second (cfs) of water from Evans Creek. Application 54574 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes within the South Truckee Meadows General Improvement District's place of use described as being located within portions of Sections 2, 11 and 12 and all of Section 1 of T.17N., R.18E., M.D.B.&M.; portions of Sections 1, 5, 6 and 7 of T.17N., R.19E., M.D.B.&M.; portions of Sections 2, 5, 6, 11, 14, 22, 23, 25, 26, and 27 and all of Sections 1, 12, 13, and 24 of T.17N., R.20E., M.D.B.&M.; portions of Sections 22, 23, 26 and 35 and all of Sections 24, 25 and 36 of T.18N., R.18E., M.D.B.&M.; portions of Sections 32, through 36, inclusive, and all of Section 19 through 31, inclusive, T.18N., R.19E., M.D.B.&M.; portions of Sections 2, 5, 8, 12, 17, 20, 32, 33, 34, and 36 and all of Sections 3, 4, 9, 10, 11, 13, 14, 15, 16, 19, 21 through 31, inclusive, and 35 of T.18N., R.20E., M.D.B.&M.; portions of Sections 7, 18 and 19 of T.18N., R.21E., M.D.B.&M. and portions of Sections 32, 33, and 35 and all of Section 34 of T.19N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¹/₄ SW¹/₄ of Section 35 of T.19N., R.19E., M.D.B.&M.¹

¹ File No. 54574, official records in the Office of the State Engineer.

II.

Application 54575 was filed on March 20, 1990, by Washoe County to appropriate 10.0 cfs of water from Dry Creek. Application 54575 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 11, T.18N., R.19E., M.D.B.&M.²

III.

Application 54576 was filed on March 20, 1990, by Washoe County to appropriate 10.0 cfs of water from Alum Creek. Application 54576 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the SW¼ NE¼ of Section 29, T.19N., R.19E., M.D.B.&M.³

IV.

Application 54577 was filed on March 20, 1990, by Washoe County to appropriate 30.0 cfs of water from Hunter Creek. Application 54577 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 19, T.19N., R.19E., M.D.B.&M.⁴

V.

Application 54578 was filed on March 20, 1990, by Washoe County to appropriate 10.0 cfs of water from an unnamed creek. Application 54578 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 22, T.19N., R.18E., M.D.B.&M.⁵

² File No. 54575, official records in the Office of the State Engineer.

³ File No. 54576, official records in the Office of the State Engineer.

⁴ File No. 54577, official records in the Office of the State Engineer.

⁵ File No. 54578, official records in the Office of the State Engineer.

VI.

Application 54579 was filed on March 20, 1990, by Washoe County to appropriate 10.0 cfs of water from an unnamed creek. Application 54579 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 23, T.19N., R.18E., M.D.B.&M.⁶

VII.

Application 54580 was filed on March 20, 1990, by Washoe County to appropriate 20.0 cfs of water from Thomas Creek. Application 54580 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 13, T.18N., R.19E., M.D.B.&M.⁷

VIII.

Application 54581 was filed on March 20, 1990, by Washoe County to appropriate 30.0 cfs of water from Whites Creek. Application 54581 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the NW¼ SE¼ of Section 19, T.18N., R.20E., M.D.B.&M.⁸

IX.

Application 54582 was filed on March 20, 1990, by Washoe County to appropriate 30.0 cfs of water from Galena Creek. Application 54582 proposes to appropriate the storm waters and any unappropriated water from this source to use for quasi-municipal purposes. The proposed place of use is identical to that described under Application 54574. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 8, T.17N., R.20E., M.D.B.&M.⁹

⁶ File No. 54579, official records in the Office of the State Engineer.

⁷ File No. 54580, official records in the Office of the State Engineer.

⁸ File No. 54581, official records in the Office of the State Engineer.

⁹ File No. 54582, official records in the Office of the State Engineer.

X.

The Pyramid Lake Paiute Tribe of Indians (PLPT), Westpac Utilities, a Division of Sierra Pacific Power Company (Westpac), the Truckee-Carson Irrigation District (TCID) and the United States Bureau of Reclamation (BOR) timely protested Applications 54574 through 54582. The Caughlin Creek Development Company, the Caughlin Ranch Partnership, the Caughlin Ranch Homeowner Association and the Juniper Trails Development Company also timely protested Application 54576. Louis Damonte protested Application 54581.

XI.

The PLPT protested Applications 54574 through 54582 on the following grounds:¹⁰

1. The water sought to be appropriated is subject to the Pyramid Lake Paiute Tribe's prior and paramount water right for fishery purposes which was impliedly reserved when the Pyramid Lake Indian Reservation was established in 1859. This portion of the Pyramid Lake Paiute Tribe's reserved water right was not extinguished or diminished by any subsequent action or event including the entry of the Orr Water Ditch Co. Decree in 1944 because the water sought to be appropriated was not adjudicated in the Orr Ditch case.
2. The State Engineer should delay any consideration of Application No. 54574, [54575, 54576, 54577, 54578, 54579, 54580, 54581, 54582], until the Pyramid Lake Paiute Tribe's reserved water rights claim to the waters of the Truckee River that were not adjudicated in the Orr Ditch case and are not the subject of water rights permits granted by the State Engineer are finally resolved.
3. The water sought to be appropriated is the subject of prior Application Nos. 48061 and 48494 filed by the Pyramid Lake Paiute Tribe with the Nevada State Engineer. Application No. 54574 [54575, 54576, 54577, 54578, 54579, 54580, 54581, 54582] should not be considered until the State Engineer acts on Application Nos. 48061 and 48494.
4. Granting or approving Application 54574 [54575, 54576, 54577, 54578, 54579, 54580, 54581, 54582] would conflict with and tend to impair the value of the Pyramid Lake Tribe's existing rights to waters of the Truckee River because the Tribe is entitled to the use of all the waters of the Truckee River which are not subject to valid, vested, and perfected rights.
5. Granting or approving Application No. 54574 [54575, 54576, 54577, 54578, 54579, 54580, 54581, 54582] would be detrimental to

¹⁰ File Nos. 54574 through 54582, official records in the Office of the State Engineer.

the public welfare in that it would: (i) be likely to jeopardize the continued existence of Pyramid Lake's two principal fish, the endangered cui-ui and the threatened Lahontan cutthroat trout; (ii) prevent or interfere with the conservation of those endangered and threatened species; (iii) take or harm those threatened and endangered species; (iv) adversely affect the recreational value of Pyramid Lake; (v) interfere with the purposes for which the Pyramid Lake Indian Reservation was established; and (vi) significantly and adversely affect the quality of the environment in both California and Nevada.

6. The water sought to be appropriated has been and is being put to beneficial use by the Pyramid Lake Paiute Tribe for the benefit of the Pyramid Lake fishery. The Pyramid Lake Tribe's beneficial use of the water sought to be appropriated long predates Nevada's admission to the Union.

The Pyramid Lake Paiute Tribe of Indians will be adversely affected if Application No. 54574 [54575, 54576, 54577, 54578, 54579, 54580, 54581, 54582] is granted because (i) it will result in greater diversions of Truckee River water away from Pyramid Lake to the detriment of the threatened and endangered species inhabiting Pyramid Lake; and (ii) it will impair, conflict and interfere with the Tribe's remaining reserved right to the waters from the Truckee River that are needed to maintain, restore and preserve the Pyramid Lake fishery and to fulfill the purposes of the Pyramid Lake Indian Reservation.

The PLPT requested the State Engineer to deny Applications 54574 through 54582, inclusive.

XII.

Westpac, protested Application 54574 on the following grounds:¹¹

1. As set forth in the Orr Ditch Decree, in addition to 1,340 AF appropriated from Evans Creek, there is a right to divert 35.4 cfs to keep Wheeler Reservoir filled to its capacity of 948 AF. The average annual runoff of Evans Creek is 1,640 AF.
2. The water sought to be appropriated is the subject of prior Application 47047 filed by Sierra Pacific Power Company. Application No. 54574 should not be considered until State Engineer acts on Application No. 47047.

Westpac requested the State Engineer to deny Application 54574.

¹¹ File No. 54574, official records in the Office of the State Engineer.

XIII.

Westpac protested Applications 54575 (Dry Creek), 54576 (Alum Creek), 54578 (unnamed creek), and 54579 (unnamed creek) on the following grounds:¹²

The waters of Dry Creek, [Alum and the two unnamed creeks], tributary to the Truckee River, are fully appropriated as evidenced in the Final Decree, in the District Court of the United States in and for the District of Nevada in Equity, Docket No. A3. This proposed diversion will adversely affect all existing water right holders defined in the Decree including Westpac Utilities. The diversion of waters of Dry Creek [Alum and the two unnamed creeks] by an entity other than an existing water right owner is not in the public interest. There exists no firm assurance of water for future needs of existing water right owners.

Westpac requested the State Engineer to deny Applications 54575, 54576, 54578 and 54579.

XIV.

Westpac protested Application 54577 on the following grounds:⁴

1. The waters of Hunter Creek are fully appropriated. The waters of Hunter Creek, tributary to the Truckee River, were adjudicated in the Orr Ditch Decree. In 1981 the State Engineer granted Westpac Utilities the right to divert its Hunter Creek Orr Ditch right at multiple points of diversion including diversion from the Truckee River downstream of its confluence with Hunter Creek. Westpac's Orr Ditch Hunter Creek right totals 9,873 AF per annum. Hunter Creek water year average flow is 6,600 AF. The minimum water year flow was 2,970 AF in 1988.
2. The water sought to be appropriated is the subject of prior Application 47047 filed by Sierra Pacific Power Company. Application No. 54577 should not be considered until the State Engineer acts on Application No. 47047.
3. Granting or approving Application No. 54577 would jeopardize ongoing negotiations between the States of Nevada and California, the United States, the Tribe, and Westpac to resolve outstanding litigation on the Truckee River including negotiations regarding the remaining unappropriated waters. If the allocation of waters between the states are not finalized, the water supply for Nevada from the Truckee and Carson Rivers could be jeopardized.

Westpac requested the State Engineer to deny Application 54577.

¹² File Nos. 54575, 54576, 54578 and 54579, official records in the Office of the State Engineer.

XV.

Westpac protested Application 54580 on the following grounds:⁷

1. Thomas Creek is fully appropriated. As set forth in the Orr Ditch Decree, over 5,000 AF of Thomas Creek has been appropriated in addition to several thousand acre-feet of supplemental rights to Thomas Creek water. The average flow of Thomas Creek is 3,100 AF.
2. The water sought to be appropriated is the subject of prior Application No. 47047 filed by Sierra Pacific Power Company. Application No. 54580 should not be considered until State Engineer acts on Application 47047.

Westpac requested the State Engineer to deny Application No. 54580.

XVI.

Westpac protested Application 54581 on the following grounds:⁸

1. The waters of Whites Creek, tributary to the Truckee River, are fully appropriated as evidenced in the Final Decree, in the District Court of the United States in and for the District of Nevada in Equity, Docket No. A3. As set forth in the Orr Ditch Decree, 4,142 AF of Whites Creek flow is appropriated which is approximately the average flow of Whites Creek.
2. The water sought to be appropriated is the subject of prior Application 47047 filed by Sierra Pacific Power Company. Application No. 54581 should not be considered until State Engineer acts on Application No. 47047.

Westpac requested the State Engineer to deny Application No. 54581.

XVII.

Westpac protested Application 54582 on the following grounds:⁹

1. The waters of Galena Creek, tributary to the Truckee River, are fully appropriated as evidenced in the Final Decree, in the District Court of the United States in and for the District of Nevada in Equity, Docket No. A3. This proposed diversion will adversely affect all existing water right holders defined in the Decree including Westpac Utilities.
2. The water sought to be appropriated is the subject of prior Application 47047 filed by Sierra Pacific Power Company. Application No. 54582 should not be considered until State Engineer acts on Application No. 47047.

Westpac requested the State Engineer to deny Application No. 54582.

XVIII.

The TCID protested Applications 54574 through 54582, inclusive, on the following grounds:¹⁰

This application, if granted, will tend to adversely affect and reduce downstream surface water rights. Streams tributary to the Truckee River, via Steamboat Creek, contribute to the water supply and adjudicated water rights of downstream users.

The TCID requested the State Engineer to deny Applications 54574 through 54582, inclusive.

XIX.

The BOR protested Applications 54574 through 54582, inclusive, on the following grounds:¹⁰

The rights of the United States to store water in and divert water from Lake Tahoe and the Truckee River were affirmed by: (1) Decree of June 4, 1915, in the District Court of the United States, Northern District of California, Second Division, in the case of The United States of America versus The Truckee River General Electric Company; and (2) Truckee River Final Decree entered September 8, 1944, in the case of United States of America versus Orr Water Ditch Company, et al.

The flows at the proposed points of diversion are tributary to the Truckee River and are subject to the existing rights of the United States and others. Diversions of these flows may reduce the water supply available to the United States and others.

The BOR requested that the State Engineer deny Applications 54574 through 54582, inclusive.

XX.

The Caughlin Creek Development Company, the Caughlin Ranch Partnership, the Caughlin Ranch Homeowner Association and the Juniper Trails Development Company protested Application 54576 on the following grounds:³

1. Alum Creek waters are subject to the Truckee River Decree.
2. This application appears to be for water rights speculation.
3. Applicant does not have facilities to measure or store storm runoff.
4. Approval of this application would open the door for future water rights speculation on all creeks in Nevada.

The Caughlin Creek Development Company, the Caughlin Ranch Partnership, the Caughlin Ranch Homeowner Association and the Juniper Trails Development Company requested that the State Engineer deny Application 54576.

XXI.

Louis Damonte on behalf of the Damonte Ranch protested Application 54581 on the following grounds:¹³

The undersigned owns one-half (1/2) of the waters of Whites Creek and any taking by the County would reduce Protestant's water for irrigation purposes.

Damonte Ranch requested that the State Engineer deny Application 54581.

FINDINGS OF FACT

I.

Washoe County filed Applications 54574 through 54582, inclusive, for the unappropriated water and storm runoff potential from Evans, Whites, Galena, Dry, Alum, Hunter, Thomas and two unnamed creeks within the Truckee Meadows, Truckee Canyon Segment and Pleasant Valley Hydrographic Basins.¹⁴ All of the creeks filed on by Washoe County originate along the eastern slopes of the Carson Range of the Sierra Nevada Mountains.

Steamboat Creek is the major drainage in the southwest portion of the Truckee River System. Evans, Whites and Galena Creeks are three of the largest tributaries to Steamboat Creek, which is tributary to the Truckee River, and all of these drainages were adjudicated in the Orr Ditch Decree.¹⁵

The Hunter Creek drainage flows in a northerly direction to its confluence with the Truckee River in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.19N., R.19E., M.D.B.&M. The confluences of the two unnamed streams with the Truckee River, that are filed under Applications 54578 and 54579, are located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15 and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, T.19N., R.18E., M.D.B.&M., respectively.

¹³ File No. 54581 official records in the Office of the State Engineer.

¹⁴ File Nos. 54574 through 54582, inclusive, official records in the Office of the State Engineer.

¹⁵ Final Decree, U.S. v. Orr Water Ditch Co., In Equity Docket No. A-3 (D. Nev. 1944).

Dry Creek flows in a northeasterly direction into Boynton Slough, which in turn flows into Steamboat Creek and then into the Truckee River.

The State Engineer finds that each of the water sources applied for under Applications 54574 through 54582, inclusive, is tributary to the Truckee River.

II.

During further review of Applications 54574 through 54582, the State Engineer, as provided by NRS § 533.375, which gives him the authority to ask for additional information prior to taking action on an application, requested that Washoe County answer several questions regarding Applications 54574 through 54582, inclusive, if they were still interested in pursuing them. The State Engineer requested Washoe County to describe and identify:

- (1) any hydrologic studies which could quantify the available water resources;
- (2) the means by which the water would be collected, treated and distributed;
- (3) the amount of time to place the waters to beneficial use and;
- (4) if these sources of water were included in Washoe County's 1995-2015 regional water plan.

Washoe County responded June 4, 2001, in which they indicated that they were considering two possible scenarios, (1) to construct a surface water treatment plant, or (2) to establish a recharge, storage and recovery facility to provide water for future growth in the South Truckee Meadows area.

Included with the letter was a packet of information provided by Washoe County including an outline of a scope of services from Eco-Logic, a consulting firm retained by Washoe County to develop a surface water treatment facility plan for the South Truckee Meadows; an outline of a report on water availability from some of the sources applied for under Applications 54574 through 54582, inclusive; a monthly water, wastewater and water reuse projection for ten years based on water use and supply for the period between 1987 and 1997; a draft of a scope of work for the assessment of instream flows for Whites and Thomas Creeks; six tables representing various water supply scenarios; proposed process for ranking twelve water supply scenarios for the South Truckee Facility Plan; and a sample of a table to be used in the ranking process.

The information provided consisted of outlines of possible work to be performed and processes to be used in ranking alternatives but did not provide specific reports or

studies of stream flows or analysis of possible water rights to be acquired to meet future demand from any of the sources proposed under Applications 54574 through 54582, inclusive.

The State Engineer finds that the information provided by Washoe County addresses some of the alternatives associated with Whites and Thomas Creeks in terms of developing recharge strategies or treating surface waters with the expansion of the South Truckee Meadows Water Treatment Facility. There was some mention of Galena and Browns Creeks concerning potential adverse impacts to Washoe Lake. The packet of information outlined scopes of work to be performed by various entities, but nowhere did it address the issue of what existing water rights would be used or how they would be acquired.

The State Engineer finds that in the 13 years that have passed since the filing of Applications 54574 through 54582, Washoe County has done little in the way of developing or initiating a resource plan specific to the surface waters applied for under Applications 54574 through 54582, inclusive, and that the submitted information provided no substantial evidence as to the reliability of the water sources or to the impacts on existing water rights.

III.

Application 9330, was filed September 9, 1930, and amended on March 9, 1931, by the TCID to appropriate 1,500 cfs, not to exceed 100,000 acre-feet annually, of water from the Truckee River and its tributaries for storage in Lahontan Reservoir. The water is to be used for domestic purposes and the irrigation of land within the Newlands Reclamation Project. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.20N., R.23E., M.D.B.&M.¹⁶

This application was filed to obtain the right to store water from the Truckee River in Lahontan Reservoir in addition and supplemental to all of the water rights then owned, held or acquired by the United States from the Truckee River and its tributaries. The water sought would be used in the same manner and distributed through the same system of works, which serviced the Newlands Reclamation Project, at the time of the filing.

¹⁶ File No. 9330, official records in the Office of the State Engineer.

The State Engineer held a public administrative hearing on May 31 through June 2, 1994, in the matter of Applications 9330, 20998, 22541, 22542, 47047, 47121, 47209, 47264, 48061, and 48494. All of these applications requested new appropriations of water from the Truckee River and its tributaries.

The State Engineer summarily denied Application 9330 on May 31, 1994, on the grounds that the United States would not grant TCID the use of federal facilities to convey any additional water from the Truckee River to Lahontan Reservoir nor allow additional storage or distribution from Lahontan Reservoir. Based on this the State Engineer found that TCID would not be able to place the water applied for to its intended beneficial use.¹⁷

The State Engineer's initial ruling on Application 9330, after appeal, was remanded to the State Engineer to conduct further hearings.

The hearing on remand was held between January 31 and February 2, 1996. State Engineer's Ruling on Remand No. 4659, dated August 14, 1998, concluded that because the applicant did not control or have access to the facilities to store and distribute the water applied for that they could not place the water to beneficial use. The State Engineer further concluded that the approval of Application 9330 would negate decades of work by California and Nevada on the apportionment of the Truckee River and would be detrimental to the public interest. Based on these conclusions the State Engineer denied Application 9330.

On September 1 and September 11, 1998, Corkill¹⁸ and the TCID¹⁹ and the City of Fallon²⁰ filed respective petitions for judicial review and stay of State Engineer Ruling No. 4659. The State Engineer finds that on September 3, 1998, a stay was granted by Judge Blake, of the Third Judicial Court on Application 9330.

¹⁷ State Engineer's Ruling No. 4117, May 31, 1994, official records in the Office of the State Engineer.

¹⁸ Petition for Judicial Review, Notice of Appeal and Request for Stay of Ruling on Remand No. 4659 by State Engineer, Corkill Bros. Inc., a Nevada Corporation v. R. Michael Turnipseed, State Engineer, 3rd Judicial District Court, State of Nevada, September 1, 1998, Case No. 24980.

¹⁹ Notice of Appeal of Application No. 9330, Truckee Carson Irrigation District v. R. Michael Turnipseed, Nevada State Engineer, 3rd Judicial District Court, State of Nevada, September 11, 1998, Case No. 25004.

²⁰ Petition for Judicial Review and Notice of Appeal, City of Fallon v. R. Michael Turnipseed, State Engineer, 3rd Judicial District Court, State of Nevada, September 11, 1998, Case No. 25006.

IV.

On November 24, 1998, State Engineer's Ruling No. 4683 was issued denying Applications 47047, 47121, 47209, and 47264 on the grounds that to grant permits under the applications would prove detrimental to the public interest by taking water away from Pyramid Lake that is critical to the long term survival of the threatened and endangered species of fish in the lake. State Engineer's Ruling No. 4683 also rejected the protests of the Washoe County Conservation District, TCID, the Cities of Reno and Sparks, SPPC and Washoe County and approved Applications 48061 and 48494.

With the State Engineer's approval and issuance of permits to appropriate under Applications 48061 and 48494 the Truckee River and its tributaries will be fully appropriated and all other applications for new appropriations will be denied on the grounds that there is no unappropriated water at the source.

The State Engineer finds that on December 17 and 18, 1998, the TCID and Corkill filed petitions for judicial review and request for stay of State Engineer's Ruling No. 4683, respectively. The State Engineer finds that the Third Judicial District Court issued a stay on the issuance of Permits 48061 and 48494. The State Engineer finds that the stay on the denial of Application 9330 and approval of Applications 48061 and 48494 in effect maintain the status quo of the river, in that all the unappropriated waters flow to Pyramid Lake.

V.

In the material submitted by Washoe County in response to the State Engineer's request for more information pages 9-11 to 9-13 of Washoe County's "1995-2015 Washoe County Comprehensive Regional Water Management Plan, Evaluation of Alternatives," was included.²¹ Under subsection 9.5 titled South Truckee Meadows Water Supply Integration, there is no direct mention of the specific sources of water being sought under Applications 54574 through 54582, inclusive. The plan calls for the delivery of 4,600 acre-feet of direct Truckee River water and the continued development of the South Truckee Meadows groundwater resources. The plan calls for the flows from tributaries to be used to satisfy return flow requirements for the use of Truckee River water in the South Truckee Meadows.

²¹ File No. 54574, official records in the Office of the State Engineer.

The State Engineer finds that there is no specific project for the water being sought under Application 54574 through 54582, inclusive, other than to be used for return flow credits for use of Truckee River water, which is already occurring under present conditions.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²²

II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:²³

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

All of the subject applications request appropriation from surface water sources that have been found to be tributary to the Truckee River. While the court has yet to determine the fate of Applications 9330, 48061 and 48494, a success by either side, will effectively remove any unappropriated water from the Truckee River and its tributaries, including those associated with the subject applications.

The State Engineer concludes that the resolution of the pending legal action involving Applications 9330, 48061 and 48494 will leave no unappropriated water to be appropriated under the subject applications.

IV.

Washoe County's "1995 – 2015, Washoe County Comprehensive Regional Water Management Plan, Evaluation of Alternatives" call for the tributary water in the South Truckee Meadows to be used for return flow credit for the use of direct Truckee River

²² NRS chapter 533.

²³ NRS § 533.370(3).

water. The State Engineer concludes that the waters sought under Applications 54574 through 54582, inclusive, are presently contributing to the flows of the Truckee River and by issuing new appropriation from these sources will not augment those contributions.

V.

The State Engineer concludes that to approve additional appropriations from the Truckee River or its tributaries would adversely affect existing decreed and permitted water rights, which appropriate water from this source.

RULING

The State Engineer hereby denies Applications 54574, 54575, 54576, 54577, 54578, 54579, 54580, 54581 and 54582, inclusive, on the grounds that there is no unappropriated water at the source and to grant permits under these applications would impair existing rights and would threaten to prove detrimental to the public interest. No ruling is made on the merits of the protests.

Respectfully Submitted,



HUGH RICCI, P.E.
State Engineer

HR/KH/jm

Dated this 29th day of
October, 2003.