

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

IN THE MATTER OF APPLICATION 57934 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 CLAIMS 52½, 62, 78, AND)
81/82 WITHIN THE TRUCKEE CANYON)
SEGMENT (91), WASHOE COUNTY, NEVADA.)

RULING

4729

GENERAL

I.

Application 57934 was filed on August 5, 1992, by the City of Reno, City of Sparks, Washoe County, and Lands of Sierra, Inc., to change the point of diversion, manner of use and place of use of 1.981 cubic feet per second (cfs), not to exceed 463.31 acre-feet annually, a portion of the waters of the Truckee River heretofore appropriated under Orr Ditch Decree Claims 52½, 62, 78, and 81/82.¹ 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.²

III.

Application 57934 was timely protested by the Truckee Carson Irrigation District ("TCID") which requested that the application be issued subject to the following specific conditions:²

1. Limit the application to the consumptive use amount leaving the remaining amount in the

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

² File No. 57934, official records in the office of the State Engineer.

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.

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. Further possible change applications were discussed at the hearing, and the cumulative effect of such changes was analyzed. The State Engineer finds that Application 57934 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 57934 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.³ The State Engineer finds that he has a full understanding of the issues involved in Application 57934 and that he has already taken evidence at the aforementioned hearing concerning the merits of applications like this one and of protests similar to the protest 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 57934 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Application 57934 will not conflict with any downstream water rights.

IV.

The State Engineer finds that the approval of any change application abrogates the permittee's authority to use the water right being changed as originally allowed. The enforcement of any change of Decreed Truckee River waters falls under the jurisdiction of the Federal Water Master.⁴

V.

The State Engineer finds the priority and period of use of Truckee River Decreed water rights remain the same under a change

³ NRS § 533.365(3).

⁴ Orr Ditch Decree at 88.

application and the regulation of the same is the responsibility of the Federal Water Master.

VI.

The State Engineer finds the provisions of the Truckee River Agreement and the regulation of the same is the responsibility of the Federal Water Master.

VII.

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

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate the public waters where:⁶

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

⁵ NRS Chapter 533.

⁶ NRS § 533.370(3).

III.

The State Engineer concludes the granting of Application 57934 will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 57934 is hereby overruled and Application 57934 is approved subject to:

1. proof of ownership;
2. payment of statutory permit fees;
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/MLN/cl

Dated this 6th day of

May, 1999.