

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

IN THE MATTER OF APPLICATION 55349 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 350 AND 350A WITHIN THE TRUCKEE)
MEADOWS, WASHOE COUNTY, NEVADA.)

RULING

4008

GENERAL

I.

Application 55349 was filed on October 5, 1990, by Westpac Utilities 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 Claims 350 and 350A. The proposed manner of use is for municipal and domestic purposes within Westpac Utilities certificated service area. The proposed points of diversion are described as being Westpac's existing water treatment plants. The existing manner and place of use is for stockwater and the irrigation of 33.33 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and 35.06 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ all within Section 2, T.20N., R.20E., M.D.B.&M.¹

II.

Application 55349 was timely protested on January 31, 1991 by the Truckee Carson Irrigation District (TCID). Protestant requested that the applications be issued subject to the following specific conditions:¹

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 treatment facilities, including those considered by

¹ Public record in the office of the State Engineer under Application 55349.

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.

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 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 service area. The two applications below Derby Dam were also protested by TCID who presented their case in support of their protest at the hearing. The other application which was not protested was also discussed at the hearing. The State Engineer finds Application 55349 is similar to the applications heard at the November 14, 1989 hearing. Additionally, the State Engineer finds the grounds of the protest to Application 55349 is similar to the arguments presented by

protestant TCID at the aforementioned hearing. Further possible changes were discussed at the hearing and the cumulative effect of such changes was analyzed.²

The Truckee River 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 existing rights as set forth in the decree.³

The State Engineer finds a hearing is not necessary in his review of this application since he has a full understanding of the issues involved and has already taken evidence at the aforementioned hearing concerning the merits of similar applications and protests.⁴

II.

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

III.

The State Engineer finds that to condition a permit on future events as requested in conditions No. 1, 2 and 3 of the protest which are outside the control of the permittee is not in the public interest.

The State Engineer finds that the Westpac service area is also sewered and the wastewater is treated and returned to the Truckee River upstream of the protestant's point of diversion. Therefore,

² Transcript of Administrative Hearing held November 14, 1989 concerning applications 53092, 53093 and 53369.

³ The United States of America vs. Orr Water Ditch Company, et. al. Final Decree, Docket A-3, p.88.

⁴ NRS 533.365(3).

compensation for return flow by changing the water right from irrigation to municipal use is not necessary.

IV.

The State Engineer finds the priority and period of use of Truckee River Decreed water rights remain the same under a change application and the regulation of the same is the responsibility of the Federal Water Master.

V.

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.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.⁵

II.

The State Engineer is prohibited by law from granting a permit to change where:

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.⁶

III.

The State Engineer concludes the granting of Application 55349 would not conflict with existing rights or prove detrimental to the public interest.

⁵ NRS Chapters 533 and 534.

⁶ NRS 533.370.

IV.

The State Engineer concludes that condition 1 requested by TCID in their protest is inappropriate at this time and would not be in the public interest.

V.

The State Engineer concludes that conditions 2, 3 and 4 of the TCID protest are inherent in the approval of the application and the enforcement of these conditions is under the continuing jurisdiction of the Federal Water Master.

RULING

The protest to Application 55349 is hereby overruled and said application is hereby approved subject to:

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

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MB/pm

Dated this 30th day of
June, 1993.