

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

IN THE MATTER OF APPLICATIONS 56060,)
57013 AND 57194 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)
DECREED RIGHTS WITHIN THE TRUCKEE CANYON)
SEGMENT (91), WASHOE COUNTY, NEVADA.)

RULING

4449

GENERAL

I.

Application 56060 was filed on March 26, 1991, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.122 cubic feet per second (cfs), not to exceed 19.43 acre-feet annually (afa), a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim 524.¹ The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being located at Sierra Pacific Power Company's existing water treatment plants.² The existing manner of use is for irrigation and stockwater purposes.³

¹Final Decree in United States of America v. Orr Water Ditch Co., In Equity Docket No. A-3 (D.Nev.1944) (hereinafter "Orr Ditch").

²The points of diversion described in Applications 56060, 57013 and 57194 are Steamboat Canal, Highland Ditch, Idlewild Treatment Plant, and North Truckee Ditch.

³File No. 56060, official records in the Office of the State Engineer.

II.

Application 57013 was filed on December 18, 1991, by the City of Reno, by and through Westpac Utilities, to change the point of diversion, manner of use and place of use of 3.54 cfs, not to exceed 378.06 afa, a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claims 485 and 489.⁴ The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being Sierra Pacific's existing water treatment plants. The existing manner of use is decreed as irrigation.⁵

III.

Application 57194 was filed on February 19, 1992, by the City of Reno, Washoe County and Sierra Pacific Resources, by and through Westpac Utilities, to change the point of diversion, manner of use and place of use of 0.2495 cfs, not to exceed 55.96 afa, a portion of the waters of the Truckee River heretofore appropriated under Permit 16969, Certificate 5148, which had changed Truckee River Claim 568.⁶ The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being Sierra Pacific Power Company's existing water treatment plants. The existing manner of use is decreed as irrigation.⁷

⁴Orr Ditch Decree.

⁵File No. 57013, official records in the Office of the State Engineer.

⁶Orr Ditch Decree.

⁷File No. 57194, official records in the Office of the State Engineer.

IV.

Application 56060 was timely protested on June 18, 1991, by the Truckee Carson Irrigation District (TCID). Application 57013 was timely protested on March 6, 1992, by the TCID. Application 57194 was timely protested on July 9, 1992, by the TCID. The Protestant requested that the applications be issued subject to the following specific conditions:^{2,4,6}

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 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 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. The other application which was not protested was also discussed at the hearing. Further possible change applications were discussed at the hearing and the cumulative effect of such changes was analyzed.⁸ The State Engineer finds Applications 56060, 57013 and 57194 are similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protests to Applications 56060, 57013 and 57194 are similar to the arguments presented by protestant TCID at the aforementioned hearing.

⁸ Transcript, public administrative hearing before the State Engineer, November 14, 1989, concerning Applications 53092, 53093 and 53369.

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 holders of other water rights.⁹

It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.¹⁰ The State Engineer finds that he has a full understanding of the issues involved in Applications 56060, 57013 and 57194 and that he has already taken evidence at the aforementioned hearing concerning the merits of these applications and protests at issue here.

II.

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 56060, 57013 and 57194 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Applications 56060, 57013 and 57194 will not conflict with any downstream water rights.

III.

The State Engineer finds the priority and period of use of Orr Ditch Decreed water rights remain the same under a change application and the regulation of the same is the responsibility of the Federal Water Master.¹¹

⁹Orr Ditch Decree, at p. 88.

¹⁰NRS 533.365(3).

¹¹Orr Ditch Decree, at p. 87.

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 of the subject matter of this determination.¹²

II.

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

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.¹³

III.

The State Engineer concludes the granting of Applications 56060, 57013 and 57194 will not conflict with existing rights or threaten to prove detrimental to the public interest.

¹²NRS Chapter 533.

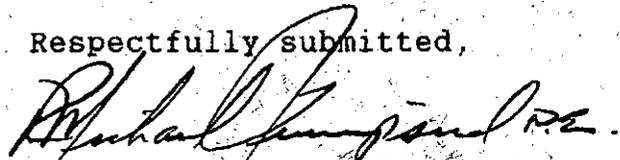
¹³NRS 533.370(3).

RULING

The Protests to Applications 56060, 57013 and 57194 are hereby overruled and said Applications are hereby approved subject to:

1. payment of statutory fees;
2. resolution of title;
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/MJR/ab

Dated this 21st day of
October, 1996.