

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

IN THE MATTER OF APPLICATIONS 62488-S01)
AND 62488-S02 FILED TO APPROPRIATE THE)
PUBLIC WATERS OF HOWARD'S CREEK/SOUTH)
TRUCKEE MEADOWS EFFLUENT RESERVOIR HELD)
UNDER PRIMARY PERMIT 62488 WITHIN THE)
TRUCKEE MEADOWS GROUNDWATER BASIN (87),)
WASHOE COUNTY, NEVADA.)

RULING

4574

GENERAL

I.

Application 62488-S01 was filed on July 23, 1997, by Washoe County to appropriate 2.0 cubic feet per second (cfs), not to exceed 330 acre-feet annually (afa), of water from Howard's Creek through the South Truckee Meadows Effluent Reservoir in the Truckee Meadows Groundwater Basin for golf course irrigation purposes within the E $\frac{1}{2}$ and the E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 19, T.18N., R.20E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, T.18N., R.20E., M.D.B. & M.¹

II.

Application 62488-S02 was filed on July 23, 1997, by Washoe County to appropriate 5.0 cfs, not to exceed 800 afa, of water from Howard's Creek through the South Truckee Meadows Effluent Reservoir in the Truckee Meadows Groundwater Basin for golf course irrigation purposes within portions of the SW $\frac{1}{4}$, portions of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and portions of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 3; portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, portions of the NE $\frac{1}{4}$, and the SE $\frac{1}{4}$, of Section 10; Section 14; the E $\frac{1}{2}$

¹ File No. 62488-S01, official records in the office of the State Engineer.

of Section 15; the E½ of Section 22; Section 23; the W½ of Section 24; the N½ of Section 26; the NE¼, the NW¼ SE¼ and the S½ SE¼ of Section 27, all within T.18N., R.19E., M.D.B.&M. The point of diversion is described as being located within the SE¼ NW¼ of Section 4, T.18N., R.20E., M.D.B.&M.²

III.

Applications 62488-S01 and 62488-S02 were timely protested by Churchill County and the City of Fallon on August 21, 1997, on the following grounds:^{1,2}

1) The application seeks to appropriate the full duties of water originally appurtenant to certain lands, being 4 AF per acre, rather than the consumptive use portion duties of water, being 2.5 AF per acre, for a portion of the water rights whose place of use was changed to storage under Permit 62488, and accordingly, the application seeks to appropriate a greater amount of water than is available at the proposed source of supply.

2) The application, if granted, would conflict with existing water rights previously adjudicated in the *Orr Ditch Decree* for the reason that historic return flows from Permit 62488's water rights' original place of use are a recognized component of the waters determined under the *Orr Ditch Decree* as available for downstream diversion to the owners of water rights, including Churchill County (the City of Fallon), within the Newlands Project under Claim 3 of the *Orr Ditch Decree*.

3) The application, if granted, would be detrimental to the public interest because it would reduce water available to supply existing water rights upon lands within the aquifer recharge acres (areas) for the City of Fallon's municipal water supply system and consequently deplete the groundwater supply from which Churchill County's (the City of Fallon's) appropriated Nevada water rights rely to supply its residents' drinking water.

² File No. 62488-S02, official records in the office of the State Engineer.

4) The application, if granted, would present a hazard and danger to the health, safety and welfare of the residents of Churchill County (the City of Fallon) and the surrounding community at large because it would jeopardize many thousands of Nevada residents' drinking water supply and would ipso facto be detrimental to the public interest.

5) The application, if granted, would be contrary to and violate the federal law, identified as Title II, Public Law 101-618, *The Truckee-Carson Pyramid Lake Water Settlement Act*, because it would in a defacto way attempt to "create" new water rights over and about those adjudicated in the *Orr Ditch Decree* and thus reduce waters appropriated under the *Orr Ditch Decree* for diversion to the Newlands Project under Claim 3 to serve existing water rights, including those owned by Churchill County (and the City of Fallon).

6) The application, if granted, would violate the federal Endangered Species Act, 16 U.S.C. § 1531 et seq., because it would attempt to effect a defacto "creation" of new water rights over and above those adjudicated in the *Orr Ditch Decree* and accordingly reduce waters flowing downriver which enhance protected species and their habitats in the Lahontan Valley area and the Pyramid Lake area.

FINDINGS OF FACT

I.

Application 62488 was filed on October 1, 1996, by Washoe County to change the point of diversion, manner and place of use of 9.243 cfs, not to exceed 1476.74 afa, a portion of the waters previously appropriated from Howard's Creek and used for quasi-municipal purposes under Permit 41662, for storage in the South Truckee Meadows Effluent Reservoir.³ The application was filed as the "Primary Permit for Storage" under the provisions of Nevada Revised Statute § 533.440.

Application 62488 was timely protested by the Truckee Carson Irrigation District ("TCID") on the grounds that the applicant had

³ File No. 62488, official records in the office of the State Engineer.

indicated that the application intended to be a "Primary Permit for Storage" with the actual beneficial use of the water to be determined under the secondary permits, and that since the secondary applications are not published as defined in NRS § 533.440(1), the protestant wanted to reserve the right to amend or add to its protest when the use was defined under the secondary applications. The protestant's concern was that the proposed use may reduce the historical return flows off the lands where the water was previously used.³ The TCID withdrew its protest to Application 62488 subject to the conditions that Washoe County provide the TCID with notice of any secondary applications filed against the primary application, and that it would have 30 days from the receipt of such notice to file protests regarding any secondary applications.

The State Engineer finds that Permit 62488 was issued by the State Engineer on May 16, 1997, subject to the terms and conditions imposed in the *Orr Ditch Decree* and with the understanding that no other rights on the source would be affected by the change proposed under the application.

II.

The State Engineer finds that the TCID was noticed by Washoe County of the filing of the secondary applications and no protest was filed by the TCID.^{1,2}

III.

After the issuance of Permit 62488 questions arose as the State Engineer's rationale for allowing the change of Howard Creek water at full duty. By letters dated July 23, 1997, and August 15, 1997, the State Engineer explained that when Howard's Creek water was previously changed by Application 41662 to quasi-municipal use at the full duty, the application was protested and a hearing held in 1981. In the referenced letters, the State Engineer explained that if there ever was any return flow it was always used on the Double Diamond Ranch part in the NE $\frac{1}{4}$ of Section 9 and part in the

SE¼ of Section 4 and other places included in Claim No. 730 of the Truckee River Decree in an amount not to exceed 328.3 acres. Further, the fact that there is a gain in Steamboat Creek directly east of this historic use could be attributable to several factors, including, the fact that they are not now irrigating to the full extent of the claim, it could be based on an unusually high water year, it could be based on a normal high water table, and it could be based on the many flowing wells that flow free to the surface on the Double Diamond Ranch. The State Engineer finds that pursuant to that letter he stated that his prior decision would stand and would not be further reviewed until there could be shown by conclusive evidence that there is a depletive effect on Steamboat Creek by virtue of the change applications (the letter also addressed Applications 62536 and 62489) that would not otherwise have been there under the traditional irrigation claims under the Truckee River Decree.

IV.

The State Engineer finds that the right to appropriate the water has previously been granted under the primary Permit 62488. The secondary applications only seek to identify the beneficial use to which the water will be put. The State Engineer further finds that the granting of Permit 62488 was not appealed to district court under the provisions of Nevada Revised Statute § 533.450; therefore, any of the protest issues as to the changing of the full duty as opposed to the consumptive use are final.

V.

The State Engineer finds that he has yet to be presented with conclusive evidence that there is a depletive effect on Steamboat Creek by virtue of the original change Application 62488 that would not otherwise have been there under the traditional irrigation claims under the Truckee River Decree. The State Engineer further finds without that evidence the other aspects of the protests need not be considered.

VI.

Nevada Revised Statute § 533.440 provides:

1. All applications for reservoir permits shall be subject to the provisions of NRS 533.324 to 533.435, inclusive, except for those sections wherein proof of beneficial use is required to be filed. The person or persons proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for a permit, to be known as the secondary permit, in compliance with the provisions of NRS 533.324 to 533.435, inclusive, except that no notice of such application shall be published.

2. The application shall refer to the reservoir for a supply of water and shall be shown by documentary evidence that an agreement has been entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir to impound enough water for the purpose set forth in the application.

The State Engineer finds that the holder of the primary Permit 62488 and the secondary Applications 62488-S01 and 62488-S02 are both Washoe County; therefore, there is compliance with the provisions of Nevada Revised Statute § 533.440(2).

CONCLUSIONS OF LAW

I.

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

II.

The State Engineer concludes that protestants' issues as to the changing of the full duty as opposed to the consumptive use were final upon the granting of primary Permit 62488, no appeal was taken from that decision and it will not be reconsidered at this time.

⁴ NRS Chapter 533.

III.

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

1. the proposed use conflicts with existing rights, or
2. the proposed use threatens to prove detrimental to the public interest.

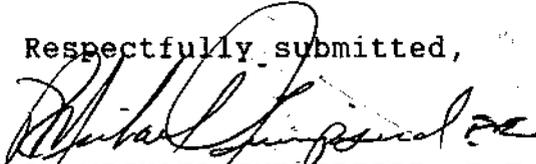
The State Engineer concludes there is no information to support the protestant's claims; therefore granting the permits will not conflict with existing rights or prove detrimental to the public interest.

RULING

The protests to Applications 62488-S01 and 62488-S02 are hereby overruled and the subject applications are granted subject to:

1. existing rights; and
2. payment of the statutory fees.

Respectfully submitted,


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/SJT/ab

Dated this 13th day of
October, 1997.

⁵ NRS 533.370(3).