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

IN THE MATTER OF APPLICATION 58186 FILED TO CHANGE THE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF A PORTION OF THE PUBLIC WATERS OF THE TRUCKEE RIVER HERETOFORE APPROPRIATED UNDER TRUCKEE RIVER DECREE CLAIMS 448, 452, 459, 476, 477, 478 AND 479 WITHIN THE TRUCKEE CANYON SEGMENT (91), WASHOE COUNTY, NEVADA.	)	**RULING** **#5812**

GENERAL

I.

Application 58186 was filed on October 8, 1992, by the City of Reno, City of Sparks, Washoe County and Sierra Pacific Power Company, by and through Westpac Utilities to change the point of diversion, manner of use and place of use of 14.876 cubic feet per second, not to exceed 576.24 acre-feet annually (afa), a portion of the waters of Truckee River Decree Claims 448, 452, 459, 476, 477, 478 and 479.[1] The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area.[2] The proposed points of diversion are described as being Sierra Pacific Power Company's existing water treatment plants.[3]

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

[2] The points of diversion described in Application 58186 are Steamboat Canal, Highland Ditch, Idlewild Treatment Plant and North Truckee Ditch. The Truckee Meadows Water Authority is successor to Sierra Pacific Power Company of which Westpac Utilities is a division.

[3] File No. 58186, official records in the Office of the State Engineer.

II.

Application 58186 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. The application should be limited to the consumptive use amount thereby leaving the remaining amount in the Truckee River to meet downstream water rights, which rely on these return flows. This condition shall be met when the removal of wastewater is applied to land, wildlife areas or other sites and to uses where return flow 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, for example, 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 these as well as other processes of disposing of wastewater essentially remove the water from the Truckee River, thereby precluding the historical return flows that make up downstream rights, including that of 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 TCID.

3. The diversion for the various applications shall be made according to their priority and the period of use will 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.
5. This transfer does not include the provision or right to storage of such water rights nor does it include uses other than M & I. Therefore, this change in use, if approved, shall be limited to M & I use in the Truckee Meadows and no other uses without further application to and permit and from the Nevada State Engineer.

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 on prior application to change the point of diversion from below Vista and above Wadsworth to Westpac Utilities' water treatment plants for utilization within the proposed 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.[4] The other application,

[4] Transcript, public administrative hearing before the State Engineer, November 14, 1989, concerning Applications 53092, 53093 and 53369, official records in the Office of the State Engineer.

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. The State Engineer finds that Application 58186 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 58186 are similar to the arguments presented by the 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, manner and place of use of these water rights as long as they do so in accordance with the Nevada Water Law and that such change would not injure the rights of other persons whose rights are fixed by the decree.[5] It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.[6] The State Engineer finds that he has a full understanding of the issues involved in Application 58186 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.

Truckee Meadows Water Authority'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 and domestic use as proposed under Application 58186 will not reduce the flow in the Truckee River. The State Engineer further finds

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[5] *Orr Ditch* Decree, p.88.
[6] NRS § 533.365(3).

that the approval of Application 58186 will not conflict with any downstream water rights.

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.[7]

V.

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 subject matter of this determination.[8]

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:[9]

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.

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[7] *Orr Ditch* Decree, p. 88.
[8] NRS chapter 533.
[9] NRS § 533.370(5).

III.

The State Engineer concludes the granting of Application 58186 will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 58186 is hereby overruled and Application 58186 is 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,

TRACY TAYLOR, P.E.
State Engineer

TT/MJW/jm

Dated this 10th day of

January, 2008.