

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

IN THE MATTER OF APPLICATION)
53373 FILED TO CHANGE THE POINT)
OF DIVERSION, MANNER AND PLACE)
OF USE OF A PORTION OF THE)
PUBLIC WATERS OF THE TRUCKEE)
RIVER PREVIOUSLY APPROPRIATED)
UNDER TRUCKEE RIVER CLAIM)
(DTR) 219, WITHIN THE TRUCKEE)
CANYON SEGMENT HYDROGRAPHIC)
BASIN (91), WASHOE COUNTY,)
NEVADA.)

RULING

#5879

GENERAL

I.

Application 53373 was filed on June 9, 1989, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.73 cubic feet per second, not to exceed 85.06 acre-feet annually of a portion of the waters of the Truckee River heretofore appropriated under Orr Ditch Decree¹ Claim No. 219. The proposed manner of use is for municipal and domestic purposes within the Sierra Pacific Power Company's certificated service area. The proposed points of diversion are described as being Sierra Pacific Power Company's existing water treatment plants.² The existing manner of use is for irrigation and stockwater.³

II.

Application 53373 was timely protested by the Truckee Carson Irrigation District (TCID). The Protestant requested that the application be issued subject to the following specific condition:³

¹ Final Decree, *US v. Orr Ditch Water Co., et al.*, in Equity Docket A-# (D. Nev. 1944) (hereinafter "*Orr Ditch Decree*").

² The points of diversion described in Application 53373 are Steamboat Canal, Highland Ditch, Idlewild Treatment Plant, and North Truckee Ditch. Westpac Utilities was the water division of Sierra Pacific Power Company. This municipal water system is now operated by the Truckee Meadows Water Authority.

³ File No. 53373, official records in the Office of the State Engineer.

Applicant to provide written assurance that only the consumptive use portion of the water rights are to be transferred since it is the intent of the Reno/Sparks Treatment Facility not to return treated effluent to the Truckee River but to divert the effluent for land application.

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.⁴ Further possible change applications were discussed at the hearing and the cumulative effect of such changes were analyzed. The State Engineer finds that Application 53373 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 53373 are similar, in part, to the arguments presented by the Protestant 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.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 53373 and that he has already received evidence at the aforementioned hearing concerning the merits of applications like this and of protests similar to the protest at issue here.

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.

⁵ *Orr Ditch* Decree, p.88.

⁶ NRS § 533.365(3).

III.

The 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 at Derby Dam. The State Engineer finds that the change of the full duty of water from irrigation to municipal use as proposed under Application 53373 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Application 53373 will not conflict with any permitted or decreed downstream water rights.

IV.

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 or threaten to be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this determination.⁷

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:⁸

- 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.

III.

The State Engineer concludes the granting of Application 53373 will not conflict with existing rights or threaten to prove detrimental to the public interest.

⁷ NRS chapter 533.

⁸ NRS § 533.370 (5).

RULING

The protest to Application 53373 is hereby overruled and the application is approved subject to:

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

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/MM/jm

Dated this 8th day of

August, 2008.