

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

IN THE MATTER OF APPLICATION 57900 )  
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 CLAIM 331 )  
WITHIN THE TRUCKEE CANYON SEGMENT )  
(91), WASHOE COUNTY, NEVADA. )

RULING  
**#5938**

GENERAL

I.

Application 57900 was filed on July 27, 1992, by DiLoreto Construction and Development, Inc., later assigned to DiLoreto Construction and Development, Inc. and City of Sparks, to change the point of diversion, manner of use and place of use of 0.429 cubic feet per second (cfs), not to exceed 205.56 acre-feet annually (afa), a portion of the waters of Truckee River Decree Claim No. 331.<sup>1</sup> The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area.<sup>2</sup> The proposed points of diversion are described as being Sierra Pacific Power Company's existing water treatment plants.<sup>3</sup>

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<sup>1</sup> Final Decree, U.S. v. Orr Ditch Water Co., in Equity Docket A-3 (D. Nev. 1944) (Orr Ditch Decree).

<sup>2</sup> File No. 57900, official records in the Office of the State Engineer.

<sup>3</sup> The points of diversion described in Application 57900 are Steamboat Canal, Highland Ditch, Idlewild Treatment Plant and North Truckee Ditch. The Truckee Meadows Water Authority is successor to Sierra Pacific Power Company.

II.

Application 57900 was timely protested by the Truckee Carson Irrigation District (TCID), which requested that the application be issued subject to the following specific conditions:<sup>2</sup>

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 State [sic] of America, the Truckee Carson Irrigation District, the Washoe County 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 proposed place of use of Westpac Utilities' certificated water service area. The two applications below Derby Dam were also protested by the TCID who presented its case in support of its protests at the hearing.<sup>4</sup> 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. The State Engineer finds that Application 57900 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 57900 are similar to the arguments presented by the protestant TCID at the aforementioned hearing.

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<sup>4</sup> 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.

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 changes would not injure the rights of other persons whose rights are fixed by the decree.<sup>5</sup> It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.<sup>6</sup> The State Engineer finds that he has a full understanding of the issues involved in Application 57900 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.

The existing point of diversion under Truckee River Claim No. 331 and the existing return flow to the Truckee River from irrigation under this claim occurs upstream of the Protestant's point of diversion. The Applicant's proposed points of diversion are upstream of the Protestant's point of diversion. Additionally the Truckee Meadows Water Authority's service area is sewered, and treated wastewater is returned to the Truckee River upstream of the Protestant's point of diversion. The State Engineer finds that the change of the full annual duty of water from irrigation to municipal and domestic use as proposed under Application 57900 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Application 57900 will not conflict with any downstream water rights.

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<sup>5</sup> *Orr Ditch Decree*, p. 88

<sup>6</sup> NRS § 533.365(3).

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.<sup>6</sup>

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.<sup>7</sup>

II.

The State Engineer is prohibited by law from granting a permit for an application to change the public waters where:<sup>8</sup>

- 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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<sup>7</sup> NRS chapter 533.

<sup>8</sup> NRS § 533.370(5).

III.

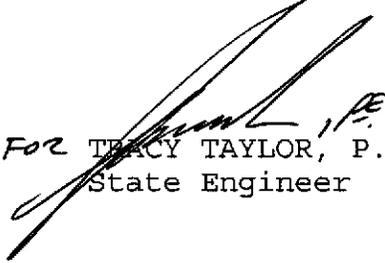
The State Engineer concludes the granting of Application 57900 will not conflict with existing rights or threaten to prove detrimental to the public interest.

RULING

The protest to Application 57900 is hereby overruled and application 57900 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,

  
For TRACY TAYLOR, P.E.  
State Engineer

TT/MJW/jm

Dated this 10th day of  
February, 2009.