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

IN THE MATTER OF APPLICATION 80672 FILED TO CHANGE THE PLACE OF USE AND MANNER OF USE OF A PORTION OF THE PUBLIC WATERS OF THE ORR DITCH DECREE CLAIMS 702, 703, 704, AND 705, WITHIN THE TRUCKEE MEADOWS HYDROGRAPHIC BASIN (87), WASHOE COUNTY, NEVADA.	)	**RULING** **#6171**

GENERAL

I.

Application 80672 was filed on March 9, 2011, by the Damonte Family Limited Partnership to change the place of use and manner of use of a portion of water previously appropriated under the *Orr Ditch* Decree,[1] specifically a portion of Claims 702, 703, 704 and 705 amounting to 3.0661 cubic feet per second and not to exceed 492.77 acre-feet of water from Steamboat Creek for in-stream flow purposes. The existing manner of use is "as decreed." The existing point of diversion is described as being located within the NW¼ SE¼ of Section 33, T.18N., R.20E., M.D.B.&M., formally known as the Chandler Ditch. The proposed place of use is described as Steamboat Creek between the point of diversion and the Vista Gauge on the Truckee River. The Applicant indicates that upon passing the Vista Gauge, the water will be considered return flow.

II.

Application 80672 was timely protested by Churchill County on grounds as summarized below:

1. When wholesale Truckee River water is delivered to the South Truckee Meadows for municipal and industrial use and the effluent is not returned to the Truckee River, the loss of the return flow component to the Truckee River is made up from in-stream flow changes like the one proposed by this application. Washoe County requires that for every acre-foot dedicated for residential use, which is not sewered back to the Truckee River, that 0.50 acre-foot be dedicated for in-stream flow to make up for the loss of return flow.

[1] Final Decree, *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

Nearly all Truckee River changes of decreed claims to municipal and industrial use were approved by the State Engineer at full duty with no consumptive use reduction because on average approximately one-half of the diverted water was returned to the river as effluent, thus protecting downstream rights. The Protestant indicates that it has no real objection to the changes to in-stream flow; however, its concern is with the accounting for those Truckee River dedications not sewered back to the Truckee River and maintaining the quantity of water that historically made up return flows as they are needed to protect downstream rights.

2. The State Engineer has been inconsistent with the duty approved on change applications in that some have been approved at full duty and others at a consumptive use restricted to 2.5/4.0 acre-feet per acre. The changes sought here have existing places of use immediately adjacent to the Steamboat Creek wherein there would have been return flows to the creek either by direct tail water runoff and/or deep percolation to the shallow groundwater table, which feeds the gaining creek. A consumptive use reduction of less than or no more than 2.5 acre-feet per acre should be applied to this application or if approved at full duty as previously done, the State Engineer should not allow the non-consumptive portion to be counted as return flows when accounting for the loss of return flows from the Truckee River rights not sewered back to the river.

3. Downstream rights should be assured the same reliability of return flows as a municipal and industrial demand; therefore, an appropriate drought factor reduction should be applied to each Claim in addition to the consumptive use reduction or accounting. An independent water supply analysis should be performed by the State Engineer or designated representative to arrive at technically sound drought factors to be applied to each claim.

4. The claims sought to be changed to in-stream flow under this application are also supported by supplemental Washoe Lake storage claims and associated shares. This application should be denied unless companion storage claims are also changed to in-stream flow use.

5. Previous in-stream flow permits have been conditioned with the requirement of providing a monitoring plan approved by the State Engineer and that no return flow credit water for subdivision will be approved from the permit until data supporting the use has been approved by the State Engineer. There is no apparent accounting of all the Truckee

River full duty changes for the South Truckee Meadows and a corresponding return flow accounting of these tributary in-stream flow changes to keep the downstream rights whole. Any permit issued should be conditioned upon a monitoring plan, data collection, and analysis, which can be managed in real time to ensure return flow requirements are being met.

Therefore, the Protestant requests that the State Engineer condition the permit to address the above criteria as stated or deny the application.

FINDINGS OF FACT

I.

The Protestant asserts that when wholesale Truckee River water is delivered to the South Truckee Meadows for municipal and industrial use and the effluent is not returned to the Truckee River that there is a loss of the return flow component to the Truckee River and that change applications, such as the one under consideration here, are made to provide in-stream flow to make up for that lost return flow component. It asserts that Washoe County requires that for every acre-foot of Truckee River Water dedicated for residential use, which is not sewered back to the river, that 0.50 acre-foot be dedicated for in-stream flow to make up for the loss of return flow. The Protestant argues that for change applications of Truckee River decreed rights from irrigation to municipal and industrial use, nearly all were approved by the State Engineer at full duty with no consumptive use reduction, because on average approximately one-half of the diverted water was returned to the Truckee River as effluent, thus protecting downstream rights. The Protestant indicates that it has no real objection to the changes to in-stream flow such as the one under consideration here; however, the Protestant is concerned with the accounting or lack of accounting for those Truckee River dedications that are not sewered back to the Truckee River and thus have no return flow that will maintain the quantity of water that historically made up return flows as they are needed to protect downstream rights.

The State Engineer finds this issue irrelevant to Application 80672. Application 80672 was filed for in-stream flow credit purposes and is not yet or may never be dedicated for residential use in the South Truckee Meadows. The State Engineer finds the protest issue of supply and return flow analysis is not applicable at this time.

II.

The Protestant contends that the State Engineer has been inconsistent with the duty approved on change applications in that some have been approved at full duty and others at a consumptive use restricted to 2.5/4.0 acre-feet per acre. The State Engineer finds the consumptive use issue is addressed under each individual application and different applications may raise different issues that warrant different decisions. Further, this issue is completely irrelevant to Application 80672.

III.

The Protestant asserts that the changes sought here have existing places of use immediately adjacent to the Steamboat Creek wherein there would have been return flows to the creek either by direct tail water runoff and/or deep percolation to the shallow groundwater table, which feeds the gaining segments of the creek and asserts that a consumptive use reduction of less than or no more than 2.5 acre-feet per acre should be applied to this application. If approved at full duty, as previously done, the State Engineer should not allow the non-consumptive portion to be counted as a return flow when accounting for the loss of return flows from the Truckee River rights not sewered back to the river. The State Engineer finds this issue is irrelevant to this application. This is not an application for use of the water for residential development. This is an application for in-stream flow credits. The State Engineer finds that when an in-stream flow permit is issued at full duty not only is the historic return flow in the river, but also the portion of the water that had been consumptively used under the existing water right.

IV.

The Protestant asserts that downstream rights should be assured the same reliability of return flows as under municipal and industrial demand; therefore, an appropriate drought factor reduction should be applied to each claim in addition to the consumptive use reduction or accounting and asserts that an independent water supply analysis should be performed to arrive at technically sound drought factors to be applied to each claim. The State Engineer finds again that this protest issue is irrelevant to the in-stream flow credit application under consideration here. This is an application for in-stream flow credits only.

V.

The Protestant asserts that the claims sought to be changed to in-stream flow under this application are also supported by supplemental Washoe Lake storage claims and associated shares. The Protestant requests that the application should be denied unless companion storage

claims are also changed to in-stream flow use. The State Engineer finds that the supplemental storage rights can no longer be used at the existing place of use.

VI.

The Protestant asserts that previous in-stream flow permits have been conditioned with the requirement of providing a monitoring plan approved by the State Engineer and that no return flow credit water for subdivision will be approved from the permit until data supporting the use has been approved by the State Engineer. The State Engineer finds that monitoring and other data collection will be required as a permit term if these return flow credits will be dedicated for municipal uses.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[2]

II.

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that in the case of protested Application 80672, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

III.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:[3]

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 protectable 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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[2] NRS Chapter 533.
[3] NRS § 533.370(2).

IV.

The State Engineer concludes there is no issue as to water availability as this is a change of existing water rights that are in good standing.

V.

The State Engineer concludes that the use of the water in-stream will not conflict with existing rights or protectable interests in existing domestic wells as all the water will be used for in-stream flow and not consumptively used.

VI.

The State Engineer concludes there is no information that the proposed use of the water will threaten to prove detrimental to the public interest.

RULING

The protest to Application 80672 is hereby overruled and the application granted subject to:

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

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 30th day of

April, 2012.