

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

IN THE MATTER OF APPLICATIONS)
83254, 83296, 83297 AND 83298 FILED TO)
CHANGE THE POINT OF DIVERSION,)
MANNER AND PLACE OF USE OF A)
PORTION OF THE PUBLIC WATERS OF)
THE ORR DITCH DECREE CLAIMS 292,)
302, 383 AND 609, WITHIN THE TRACY)
SEGMENT HYDROGRAPHIC BASIN (83),)
STOREY COUNTY, NEVADA.)

RULING
#6279

GENERAL

I.

Application 83254 was filed on November 15, 2013, by Tahoe Reno Industrial Center, LLC to change the point of diversion, place and manner of use of a portion of water previously appropriated under a portion of Permit 25915, Certificate 9738, which changed the point of diversion and place of use of a portion of Claim 609 of the *Orr Ditch* Decree.¹ The amount requested to be changed is 110.0 acre-feet annually (afa) of water from the Truckee River for municipal purposes. The existing manner of use is irrigation. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 35, T.20N., R.22E., M.D.B.&M. The existing point of diversion is described as being located within the NE¼ SW¼ of Section 17, T.19N., R.19E., M.D.B.&M. (Orr Ditch). The proposed place of use is described as all of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23 and 24, T.18N., R.22E., M.D.B.&M.; all of Sections 1 through 8, portions of Sections 9 and 10, all of Sections 11, 12 and 13, portions of Sections 14 through 17, all of Sections 18 and 19, and portions of Sections 20 and 24, T.18N., R.23E., M.D.B.&M.; all of Sections 1 through 18, a portion of Section 19, all of Sections 20 through 24, portions of Sections 25 and 26, all of Sections 27, 28, 29, 32, 33 and 34, and portions of Sections 35 and 36, T.18N., R.24E., M.D.B.&M.; all of Sections 6 and 7, portions of Sections 18, 19 and 29, all of Section 31, and a portion of Section 32, T.18N., R.25E., M.D.B.&M.; a portion of Section 1, T.19N., R.21E., M.D.B.&M.; all of Sections 1 through 30 and Sections 33 through 36, T.19N., R.22E., M.D.B.&M.; all of Sections 1 through 36, T.19N., R.23E., M.D.B.&M.; all of Sections 6, 7, 18, 19, 30 and 31, T.19N., R.24E., M.D.B.&M.; a portion of

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

Section 36, T.20N., R.21E., M.D.B.&M.; portions of Sections 24, 25, 26, 28, 31, 32, 33, 34 and 35, and all of Section 36, T.20N., R.22E., M.D.B.&M.; portions of Section 13 and Sections 19 through 24 and all of Sections 25 through 36, T.20N., R.23E., M.D.B.&M.; and a portion of Section 18 and all of Sections 19, 30 and 31, T.20N., R.24E., M.D.B.&M. The existing place of use is described as 29.85 acres within portions of the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, T.20N., R.20E., M.D.B.&M.²

II.

Application 83296 was filed on December 6, 2013, by Tahoe Reno Industrial Center LLC to change the point of diversion and place of use of a portion of water previously appropriated under a portion of Permit 65580, which changed the point of diversion, place and manner of use of Permit 12497, Certificate 3363, which changed the point of diversion and place of use of a portion of Permit 11204, Certificate 2873, which changed the point of diversion and place of use of a portion of Claim 383 of the *Orr Ditch Decree*.¹ The amount requested to be changed is 0.75 afa of water from the Truckee River for municipal purposes. The existing manner of use is municipal. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35, T.20N., R.22E., M.D.B.&M. The existing points of diversion are described as being located within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 31, T.19N., R.18E., M.D.B.&M. (Steamboat Canal/Hunter Creek Reservoir); the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, T.19N., R.18E., M.D.B.&M. (Highland Ditch/Highland Reservoir); the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, T.19N., R.19E., M.D.B.&M. (Idlewild Treatment Plant); the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 7, T.19N., R.20E., M.D.B.&M. (North Truckee Ditch/Glendale Treatment Plant); the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, T.19N., R.19E., M.D.B.&M. (Orr Ditch Pump Station/Chalk Bluff Treatment Plant); and the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.19N., R.19E., M.D.B.&M. (Orr Ditch/Chalk Bluff Treatment Plant). The proposed place of use is described as the same as on Application 83254. The existing place of use is the Truckee Meadows Water Authority (TMWA) service area.³

III.

Application 83297 was filed on December 6, 2013, by Tahoe Reno Industrial Center LLC to change the point of diversion and place of use of a portion of water previously appropriated under a portion of Permit 65581, which changed the point of diversion, place and manner of use of Permit 17563, Certificate 5134, which changed the place of use of a portion of Claim 292 of the *Orr Ditch Decree*.¹ The amount requested to be changed is 0.20 afa of water from the

² File No. 83254, official records in the Office of the State Engineer.

³ File No. 83296, official records in the Office of the State Engineer.

Truckee River for municipal purposes. The existing manner of use is municipal. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 35, T.20N., R.22E., M.D.B.&M. The existing points of diversion are described as the same as on Application 83296. The proposed place of use is described as the same as on Application 83296. The existing place of use is the Truckee Meadows Water Authority (TMWA) service area.⁴

IV.

Application 83298 was filed on December 6, 2013, by Tahoe Reno Industrial Center LLC to change the point of diversion and place of use of a portion of water previously appropriated under Permit 65582, which changed the point of diversion, place and manner of use of Permit 25474, Certificate 8132, which changed the place of use of a portion of Claim 302 of the *Orr Ditch Decree*.¹ The amount requested to be changed is 38.00 afa of water from the Truckee River for municipal purposes. The existing manner of use is municipal. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 35, T.20N., R.22E., M.D.B.&M. The existing points of diversion are described as the same as on Application 83296. The proposed place of use is described as the same as on Application 83296. The existing place of use is the Truckee Meadows Water Authority (TMWA) service area.⁵

V.

Application 83254 was timely protested by City of Fernley, Truckee-Carson Irrigation District and Churchill County; Applications 83296, 83297 and 83298 were timely protested by the Truckee-Carson Irrigation District and Churchill County on grounds as summarized below:

- A. The Applicant is seeking to change Truckee River decreed rights that have previously been converted to municipal use (Applications 83296, 83297 and 83298) at full duty and an irrigation right (Application 83254). The Applicant seeks to change the points of diversion from above the Truckee Meadows Water Reclamation Facility (TMWRF) point of return to below this point of return. The Applicant should be limited to the consumptive use fraction of the original decreed rights.

⁴ File No. 83297, official records in the Office of the State Engineer.

⁵ File No. 83298, official records in the Office of the State Engineer.

- B. The diversions proposed by the applications should only be allowed at the new point of diversion when the existing decreed point of diversion is in priority to divert.
- C. Any shortages at the original points of diversion should also be applied at the new point of diversion especially since there are tributary flows and substantial effluent returns to the river between the existing and new points of diversion.
- D. An analysis of transportation losses between the existing and new points of diversion needs to be performed and applied, which will reduce the amount available to divert.
- E. The Applicant is seeking year-round season of use rather than “as decreed” and should only be allowed to divert during the season of use defined each year by the Water Master based upon water availability for that particular year.
- F. The applications seek to divert surface water using an induction well adjacent to the Truckee River near Tracy, which is problematic. Induction wells do not immediately draw surface water as a surface water diversion does; nor do they immediately cease drawing surface water once the well is shut off. Depending on the aquifer properties, there would be lag times and diversion from aquifer storage before the river or surface water body is captured. This will create diversion timing issues and potential additional losses from the surface water bodies when the diversions are not in priority to divert. The Applicant should be required to construct a well calibrated groundwater model to account for and manage surface/groundwater diversion such that they are only occurring when in priority. Aquifer testing and analytic or numeric modeling should be required at the proposed induction well site to determine aquifer properties, “capture” rates and timing such that diversion timings and lags can be administered by the Water Master. An annual monitoring plan approved by the State Engineer should be required to assist the Water Master and State Engineer in managing the diversions and possible administration as necessary.

- G. The Protestant is concerned that the proposed change as requested might increase the amount of water withdrawn from the river that would have been (originally) allowed under the base right. The pumping from the proposed induction well needs to be regulated to a degree that insures the applicant receives only the flows and duty to which they are entitled to receive under the base right at any given time. Increases in diversion rate or duty that was (originally) received under the decreed right would conflict with existing downstream rights, including those owned by the City of Fernley and its citizens.

Therefore, the Protestants request that the State Engineer condition the permit to address the above criteria as stated or deny the application.^{2,3,4,5}

FINDINGS OF FACT

I.

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 Applications 83254, 83296, 83297 and 83298, 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 these matters is not required.

II.

The Applicant is seeking to change Truckee River water originally appropriated under the *Orr Ditch* Decree from points of diversion above the TMWRF point of return to a point of diversion below that point of return. Some of these decreed rights were previously converted to municipal use at full duty because treated effluent was returned to the Truckee River system from the TMWRF, which accounted for the non-consumptive portion of the decreed right. Protestants request that the applications be limited to a consumptive use fraction of the original decreed water right. Accounting for return flows is important to protect downstream water rights on the system. The State Engineer finds that, if the applications are approved, they will be limited to a 2.5 acre-feet per acre calculation to account for lack of return flows.

III.

The applications seek to divert surface water using an induction well adjacent to the Truckee River near Tracy, which the Protestants assert is problematic. They claim that induction wells do not immediately draw surface water as a surface water diversion does and that induction wells do not immediately cease drawing surface water once the well is shut off. Protestants claim that depending on the aquifer properties, there would be lag times and diversion from aquifer storage before the river or surface water body is captured. They assert this will create diversion timing issues and potential additional losses from the surface water bodies when the diversion is not in priority. Protestants want the State Engineer to require the Applicant to construct an analytic or numerical model to account for and manage surface/groundwater diversions such that diversions are only occurring when in priority. The State Engineer does not agree with the Protestants' contention and finds that groundwater modeling or aquifer testing is not needed. The Protestants also assert that an annual monitoring plan approved by the State Engineer should be required to assist the Federal Water Master and State Engineer in managing the diversions and possible administration, as necessary.

The State Engineer finds that, if the applications are approved, a monthly report of the amount of water pumped and the amount of water used will be required and that a monitoring plan is not needed. The State Engineer finds that, if the applications are approved, the Applicant will be required to construct the induction well in accordance with specifications approved by the State Engineer to ensure that Truckee River water is being captured and taken in priority. The State Engineer and Federal Water Master can work in conjunction to ensure the well is being pumped properly to allow time for the water to be captured, along with maintaining the surface source's decreed date of priority.

IV.

Protestants assert that any increase in diversion rate or duty would conflict with existing rights and that diversions should be limited to what the base rights would have been allowed to divert. Protestants also assert that diversions should only be allowed at the new point of diversion when the original decreed points of diversion are in priority, that shortages at the existing points of diversion be applied at the new point of diversion and that the difference in transportation losses be accounted for as a reduced amount available for diversion at the new point of diversion.

The State Engineer finds that there will be no increase to the diversion with the water being taken out at a different location and that the amount of water being diverted will still be subject to regulation by the Federal Water Master. If any permits are issued, there will be a requirement that measuring devices be installed to accurately gage how much water is being diverted from the river via the induction well.

V.

Protestants assert that diversion should be limited to the season of use as defined each year by the Federal Water Master. The State Engineer finds that if any permits are issued, the permits would be limited to the "as decreed" period of use.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁶

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:⁷

- 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.

III.

The applications will be limited to a duty of 2.5 acre-feet per acre to account for return flow, a construction plan for the induction well approved by the State Engineer, and monthly reporting will be required to ensure the capture of Truckee River water in priority, diversion will be limited to the seasonal period of use as decreed; therefore, the State Engineer concludes that the proposed change applications will not conflict with existing rights and will not threaten to prove detrimental to the public interest.

⁶ NRS Chapter 533.

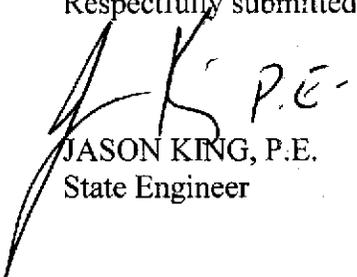
⁷ NRS § 533.370(2).

RULING

The protests to Applications 83254, 83296, 83297 and 83298 are hereby overruled and the applications are granted subject to:

1. Payment of the statutory permit fees;
2. Existing rights;
3. 2.5 acre-feet per acre duty per season;
4. A construction plan for the induction well to be approved by the State Engineer;
5. A monthly pumping and use report; and
6. Continuing jurisdiction by the Federal Water Master.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 4th day of
June, 2014.