

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

IN THE MATTER OF APPLICATION 57063 FILED)
TO CHANGE THE POINT OF DIVERSION,)
MANNER OF USE AND PLACE OF USE OF A)
PORTION OF THE WATERS OF THE TRUCKEE)
RIVER HERETOFORE APPROPRIATED UNDER)
TRUCKEE RIVER DECREE CLAIMS 474 AND 475)
WITHIN THE TRUCKEE CANYON SEGMENT)
GROUNDWATER BASIN (91), WASHOE COUNTY,)
NEVADA.)

RULING

4625

GENERAL

I.

Application 57063 was filed on December 31, 1991, by the City of Reno, the City of Sparks, Washoe County, and the Airport Authority of Washoe County to change the point of diversion, manner of use and place of use of 2.478 cubic feet per second, not to exceed 397.79 acre feet annually, a portion of the waters of the Truckee River heretofore appropriated under Orr Ditch Decree Claim¹ 474 and 475.² The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed points of diversion are described as being Sierra Pacific's existing water treatment plants. The existing manner of use is as decreed.

II.

Application 57063 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. 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

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

² File No. 57063, official records in the office of the State Engineer.

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 diversions 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 States of America, the Truckee-Carson Irrigation District, the Washoe County Water 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 prior applications to transfer Orr Ditch Decreed water rights from below Derby Dam in the vicinity of Wadsworth. Additionally, 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 was also considered. The prior applications below Derby Dam were also protested by TCID who presented their case in support of their protests. Possible change applications were also discussed at the hearing and the cumulative effects of such changes was analyzed. The State Engineer finds that Application 57063 is similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Application 57063 are similar to the arguments presented by TCID at the aforementioned hearing.

II.

The Orr Ditch Decree specifically allows persons who hold Truckee River water rights adjudicated in said Decree to change the point of diversion, place and/or manner of use of those rights, as long as they do so in accordance with the Nevada Water Law, and such changes would not injure the rights of other persons whose rights are fixed by the Decree. It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.³ The State Engineer finds that he has a full understanding of the issues involved regarding Application 57063 and that he has already taken evidence at the aforementioned hearing concerning the merits of a similar application and protest.

³ NRS § 533.365(3).

III.

The Sierra Pacific Power Company's service area is sewerred 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 57063 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Application 57063 will not conflict with any existing downstream water rights.

IV.

The State Engineer finds the approval of any application to change abrogates the permittee's authority to use the water right being changed as originally allowed. The enforcement of any change of Decreed Truckee River waters falls under the jurisdiction of the Federal Water Master.⁴

V.

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 above is the responsibility of the Federal Water Master.

VI.

The State Engineer finds the enforcement of the provisions of the Truckee River Agreement is the responsibility of the Federal Water Master.

⁴ Orr Ditch Decree at 88.

VII.

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 Truckee River water rights nor threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.⁵

II.

The State Engineer is prohibited by law from granting a permit under a change application to appropriate the public waters where:⁶

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes the granting of Application 57063 will not conflict with existing rights or threaten to prove detrimental to the public interest.

⁵ NRS Chapter 533.

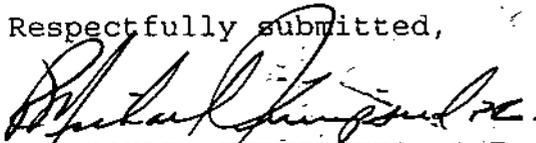
⁶ NRS § 533.370(3).

RULING

The protest to Application 57063 is overruled and said application is hereby 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,



R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MLN/cl

Dated this 22nd day of
April, 1998.