

**IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVEADA**

IN THE MATTER OF PROTESTED )  
APPLICATIONS 56731, 56733, 57274, AND )  
57791 FILED TO CHANGE THE POINT )  
CHANGE THE POINT OF DIVERSION, )  
MANNER OF USE AND PLACE OF USE OF )  
A PORTION OF THE WATERS OF THE )  
TRUCKEE RIVER WITHIN THE TRUCKEE )  
CANYON SEGMENT GROUNDWATER )  
BASIN (91), WASHOE COUNTY, NEVADA. )

**RULING**

**# 5811**

**GENERAL**

**I.**

Application 56731 was filed on September 9, 1991, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.087 cubic feet per second (cfs), not to exceed 21.19 acre-feet annually (afa), a portion of the waters of Truckee River Claim 180.<sup>1</sup> The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated water service area. The proposed point of diversion is described as being located at Truckee Meadows Water Authority's existing water treatment plants.<sup>2</sup> The existing manner of use is for irrigation and stock water.<sup>3</sup>

**II.**

Application 56733 was filed on September 9, 1991, by Westpac Utilities to change the point of diversion, manner of use and place of use of 0.099 cfs, not to exceed 17.86 afa, a portion of the waters of Truckee River Claim 208. The proposed manner of use is for municipal and domestic purposes within Truckee Meadows Water Authority's certificated water service area. The proposed point of diversion is described as being

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<sup>1</sup> Final Decree, *United States of America v. Orr Water Ditch Co. et al.*, Equity (D. Nev. 1944) (hereinafter "*Orr Ditch Decree*").

<sup>2</sup> The points of diversion described in Applications 56731, 56733, 57274, and 57791 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.

<sup>3</sup> File No. 56731, official records in the Office of the State Engineer.

located at Truckee Meadows Water Authority's existing water treatment plants. The existing manner of use is for irrigation and stock water.<sup>4</sup>

### III.

Application 57274 was filed on March 10, 1992, by the City of Reno and Washoe County, by and through Westpac Utilities, to change the point of diversion, manner of use and place of use of 1.034 cfs, not to exceed 221.14 afa, a portion of the waters of Truckee River Claims 229 and 230. The proposed manner of use is for municipal and domestic purposes within Truckee Meadows Water Authority's certificated water service area. The proposed point of diversion is described as being located at Truckee Meadows Water Authority's existing water treatment plants. The existing manner of use is as decreed.<sup>5</sup>

### IV.

Application 57791 was filed on June 24, 1992, by the Cities of Reno and Sparks, Washoe County and Sierra Pacific Power Company, by and through Westpac Utilities, to change the point of diversion, manner of use and place of use of 0.860 cfs, not to exceed 235.98 afa, a portion of the waters of Truckee River Claims 331, 333 and 335/336. The proposed manner of use is for municipal and domestic purposes within Truckee Meadows Water Authority's certificated water service area. The proposed point of diversion is described as being located at Truckee Meadows Water Authority's existing water treatment plants. The existing manner of use is as decreed.<sup>6</sup>

### V.

Applications 56731, 56733, 57274, and 57791 were timely protested by the Truckee Carson Irrigation District ("TCID"). The Protestant requested that the applications be issued subject to the following specific conditions:<sup>3,4,5,6</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

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<sup>4</sup> File No. 56733, official records in the Office of the State Engineer.

<sup>5</sup> File No. 57274, official records in the Office of the State Engineer.

<sup>6</sup> File No. 57791, official records in the Office of the State Engineer.

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 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 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, which presented its case in support of its protests at the

hearing.<sup>7</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 Applications 56731, 56733, 57274, and 57791 are similar to the applications heard at the November 14, 1989, hearing. Additionally, the State Engineer finds the grounds of the protest to Applications 56731, 56733, 57274, and 57791 are similar to the arguments presented by Protestant TCID 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 water 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.<sup>8</sup> It is within the State Engineer's discretion to determine whether a hearing is necessary on a protested application.<sup>9</sup> The State Engineer finds that he has full understanding of the issues involved in Applications 56731, 56733, 57274, and 57791 and that he has already taken evidence at the aforementioned hearing concerning the merits of applications like these and similar to the protests at issue here.

## III.

The Truckee Meadows Water Authority's service area is sewerred 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 Applications 56731, 56733, 57274, and 57791 will not reduce the flow in the Truckee River. The State Engineer further finds that the approval of Applications 56731, 56733, 57274, and 57791 will not conflict with any permitted or decreed downstream water rights.

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<sup>7</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..

<sup>8</sup> *Orr Ditch* Decree, p. 88.

<sup>9</sup> NRS § 533.365(3).

IV.

The State Engineer finds that the priority and period of use of *Orr Ditch* decreed water rights are unaffected under an approved change permit and the regulation of the same is the responsibility of the Federal Water Master.<sup>8</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 these applications will not conflict with existing rights or threaten to be detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this determination.<sup>10</sup>

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:<sup>11</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.

III.

The State Engineer concludes the granting of Applications 56731, 56733, 57274, and 57791 will not conflict with existing rights or threaten to prove detrimental to the public interest.

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<sup>10</sup> NRS chapter 533.

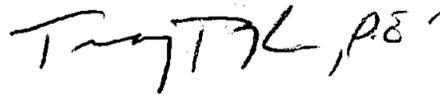
<sup>11</sup> NRS § 533.370(5).

RULING

The protests to Applications 56731, 56733, 57274, and 57791 are hereby overruled and said applications are hereby approved subject to:

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

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/TW/jm

Dated this 10th day of

January, 2008.