

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

IN THE MATTER OF APPLICATIONS )  
78338 THROUGH 78357 FILED TO )  
CHANGE THE POINT OF DIVERSION, )  
PLACE OF USE AND MANNER OF USE OF )  
WATER OF THE TRUCKEE RIVER )  
PREVIOUSLY APPROPRIATED WITHIN )  
THE TRUCKEE CANYON SEGMENT (91), )  
WASHOE COUNTY, NEVADA AND )  
RELATED SECONDARY APPLICATIONS )  
S01, S02 AND S03. )

**RULING**

**#6102**

**GENERAL**

**I.**

Application 78338 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 93.83 acre-feet annually (afa) of water previously appropriated under Permit 74503.<sup>1</sup>

Application 78339 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 52.47 afa of water previously appropriated under Permit 74482.<sup>2</sup>

Application 78340 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 328.32 afa of water previously appropriated under Permit 74481.<sup>3</sup>

Application 78341 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 68.63 afa of water previously appropriated under Permit 73846.<sup>4</sup>

Application 78342 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 728.1 afa of water previously appropriated under Permit 73758.<sup>5</sup>

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<sup>1</sup> File No. 78338, official records in the Office of the State Engineer.

<sup>2</sup> File No. 78339, official records in the Office of the State Engineer.

<sup>3</sup> File No. 78340, official records in the Office of the State Engineer.

<sup>4</sup> File No. 78341, official records in the Office of the State Engineer.

<sup>5</sup> File No. 78342, official records in the Office of the State Engineer.

Application 78343 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 89.33 afa of water previously appropriated under Permit 73704.<sup>6</sup>

Application 78344 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 62.1 afa of water previously appropriated under Permit 73703.<sup>7</sup>

Application 78345 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 104.63 afa of water previously appropriated under Permit 73255.<sup>8</sup>

Application 78346 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 159.3 afa of water previously appropriated under Permit 73245.<sup>9</sup>

Application 78347 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 60.3 afa of water previously appropriated under Permit 73244.<sup>10</sup>

Application 78348 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 590.4 afa of water previously appropriated under Permit 73243.<sup>11</sup>

Application 78349 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 144 afa of water previously appropriated under Permit 73164.<sup>12</sup>

Application 78350 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 307.85 afa of water previously appropriated under Permit 73163.<sup>13</sup>

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<sup>6</sup> File No. 78343, official records in the Office of the State Engineer.

<sup>7</sup> File No. 78344, official records in the Office of the State Engineer.

<sup>8</sup> File No. 78345, official records in the Office of the State Engineer.

<sup>9</sup> File No. 78346, official records in the Office of the State Engineer.

<sup>10</sup> File No. 78347, official records in the Office of the State Engineer.

<sup>11</sup> File No. 78348, official records in the Office of the State Engineer.

<sup>12</sup> File No. 78349, official records in the Office of the State Engineer.

<sup>13</sup> File No. 78350, official records in the Office of the State Engineer.

Application 78351 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 72.36 afa of water previously appropriated under Permit 73162.<sup>14</sup>

Application 78352 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 95.63 afa of water previously appropriated under Permit 73161.<sup>15</sup>

Application 78353 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 180 afa of water previously appropriated under Permit 73142.<sup>16</sup>

Application 78354 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 259.245 afa of water previously appropriated under Permit 70130.<sup>17</sup>

Application 78355 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 795 afa of water previously appropriated under Permit 67449.<sup>18</sup>

Application 78356 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 91.24 afa of water previously appropriated under Permit 63277.<sup>19</sup>

Application 78357 was filed on April 20, 2009, by the City of Fernley to change the point of diversion, place and manner of use of 435.65 afa of water previously appropriated under Permit 61893.<sup>20</sup>

## II.

Applications 78338 through 78357 are referred to as the “primary applications.” The applications indicate the water is to be diverted into storage and used pursuant to secondary permits for beneficial uses allowed under the Truckee River Operating Agreement (TROA). The remarks section of the applications indicate they were filed pursuant to the provisions of NRS § 533.515 in that they seek to add Lake Tahoe, Donner Lake, Prosser Creek Dam (Reservoir), Boca Dam (Reservoir), Stampede Dam (Reservoir) and Derby Dam and the Fernley Water Treatment Facility

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<sup>14</sup> File No. 78351, official records in the Office of the State Engineer.

<sup>15</sup> File No. 78352, official records in the Office of the State Engineer.

<sup>16</sup> File No. 78353, official records in the Office of the State Engineer.

<sup>17</sup> File No. 78354, official records in the Office of the State Engineer.

<sup>18</sup> File No. 78355, official records in the Office of the State Engineer.

<sup>19</sup> File No. 78356, official records in the Office of the State Engineer.

<sup>20</sup> File No. 78357, official records in the Office of the State Engineer.

as additional points of diversion and that the applications were filed as part of the implementation of the operating agreement described in Section 205(a) of Public Law 101-618. The application seeks to add reservoirs in California as points of diversion for storage of the consumptive use portion of the water rights, which is described as 4.5 acre-feet per acre per year, which is the full permitted duty of the water rights the applications seek to change. However, if the consumptive use portion of the water rights is not diverted into storage, the full duty of the water rights is to remain in the Truckee River to be diverted at currently allowed points of diversion for the currently permitted manner of use. The applications state that the current and requested season of use is from January 1<sup>st</sup> to December 31<sup>st</sup>.

### III.

Secondary applications identified as S01 are tied to each primary storage application and were filed for municipal and domestic purposes, and indicate in the remarks section that the water will be diverted to a treatment plant with the finished water being blended with groundwater producing a product meeting the standards required under the Safe Drinking Water Act. The applications indicate that the source of the water is that water stored at Lake Tahoe, Boca, Donner, Stampede, and Prosser Creek Reservoirs, and Derby Dam. The remarks section of the applications provide that alternatively, the surface water may be diverted to a recharge basin for aquifer recharge, storage and recovery, or it may be used for municipal purposes from the Truckee Canal after diversion from Derby Dam.

Secondary applications identified as S02 are tied to each primary storage application and were filed for wildlife purposes, and indicate that the water will be used instream within the Truckee River system from the storage reservoirs to the point of discharge into Pyramid Lake as shown on the map filed under Primary Application 78034.

Secondary applications identified as S03 are tied to each primary storage application and were filed for municipal and domestic purposes, and indicate in the remarks section that the water will be diverted to a treatment plant with the finished water being blended with groundwater producing a product meeting the standards required under the Safe Drinking Water Act. The applications indicate that the source of the water is that water stored at Derby Dam. The remarks section of these applications also provide that alternatively, the surface water may be diverted to a recharge basin for aquifer recharge, storage and recovery, or it may be used for municipal purposes from the Truckee Canal after diversion from Derby Dam.

#### IV.

By Notice dated July 30, 2010, the State Engineer informed the City of Fernley (Fernley) that additional information was needed prior to taking action on the applications and set an administrative hearing for September 21, 2010. The State Engineer requested the Applicant provide additional information on the following topics:

1. Information regarding the right to store water in these upstream reservoirs.
2. Information on the season of use, i.e., the base rights sought to be changed are permitted "as decreed" and the applications were filed for a season of use from January 1<sup>st</sup> through December 31<sup>st</sup>. The State Engineer indicated that it was his understanding that Truckee Division water rights are only permitted for diversion during an irrigation season established by the Federal Water Master of March 15<sup>th</sup> through November 15<sup>th</sup> and requested the Applicant to please provide information on what times of the year the Applicant believes it will be permitted to divert this water into storage.
3. Information on the request to divert the full 4.5 acre-feet annual duty into storage and why this amount should be permitted.
4. Information on how this water will be taken from the river into storage in the upstream reservoirs. For example, when the Truckee Division is in priority is it anticipated this water will be out of the Floriston rates or is it above the Floriston rates?
5. Information on the right to use the Federal facilities for transportation of the water. Evidence as to whether the current infrastructure can transport the water requested. If not, evidence as to whether the City of Fernley has the financial ability and resources to construct any improvements required to transport the water.
6. Information on whether the changes will lessen the efficiency of the irrigation district in its delivery or use of water.
7. Information on whether the changes will affect the cost of water for other holders of water rights in the irrigation district.
8. Information on the status of the construction of a surface water treatment plant required for placing the water to beneficial use.

V.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the applications on September 21, 2010, at Carson City, Nevada, before representatives of the Office of the State Engineer.<sup>21</sup>

**FINDINGS OF FACT**

I.

**RIGHT TO STORE**

Applications 78338 through 78357 (the primary applications) indicate the water is to be diverted into storage and that they were filed pursuant to the provisions of NRS § 533.515 in that they seek to add Lake Tahoe, Donner Lake, Prosser Creek Dam (Reservoir), Boca Dam (Reservoir), Stampede Dam (Reservoir), Derby Dam and the Fernley Water Treatment Facility as additional points of diversion and that the applications were filed as part of the implementation of the operating agreement described in Section 205(a) of Public Law 101-618. They seek to add reservoirs in California as points of diversion for storage of the consumptive use portion of the water rights, described as 4.5 acre-feet per acre per year, which is the full permitted duty of the water rights the applications seek to change. The State Engineer requested the Applicant to provide information regarding its right to store water in these upstream reservoirs.

Testimony and evidence provided indicates that the Truckee-River Operating Agreement (TROA) allows Fernley to store water in upstream reservoirs, subject to an approved storage contract, if the TROA becomes effective.<sup>22</sup> The rights Fernley seeks change under the primary applications all originate from water identified as Claim No. 3 under the *Orr Ditch Decree*.<sup>23</sup> Claim No. 3 water is currently passed through Derby Dam, which is one of the storage reservoirs identified in the primary applications. The TROA was signed by the owners of the reservoirs in which the water will be stored. Additionally, testimony and evidence was presented to show that Fernley has begun the process to negotiate with the U.S. Bureau of Reclamation (BOR) for the use of space in Truckee River Reservoirs and that several meetings were currently scheduled for November and December 2010 to discuss a storage contract.<sup>24</sup>

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<sup>21</sup> Transcript and Exhibits, public administrative hearing September 21, 2010, official records of the Office of the State Engineer.

<sup>22</sup> Transcript, p. 24, Exhibit No. 7.

<sup>23</sup> Final Decree in *United States v. Orr Water Ditch Co.*, In Equity Docket No. A-3 (D. Nevada 1944).

<sup>24</sup> Exhibit No. 3.

The State Engineer finds the TROA, if it becomes effective, provides for the storage contemplated and was signed by the owners of the reservoirs in which the water would be stored. The State Engineer finds Fernley provided evidence and testimony demonstrating that it is moving forward with pursuing the contract for said storage and there is the likelihood of obtaining that contract.

## II. SEASON OF USE

The primary and secondary applications all request a period of use from January 1<sup>st</sup> through December 31<sup>st</sup>. The State Engineer requested the Applicant to provide information on the season of use, because it is his understanding that Truckee Division water rights are only permitted for diversion for irrigation during an irrigation season established by the Federal Water Master of March 15<sup>th</sup> through November 15<sup>th</sup> and requested the Applicant to provide information on what times of the year the Applicant believes it will be permitted to divert this water into storage.

The Applicant at first argued that the State Engineer has already permitted these water rights to be changed to year-round municipal use, that the *Orr Ditch Decree* permits year-round use of municipal water, so long as no other water user is injured, and that the TROA provides for Fernley to use water year round.<sup>25</sup> The TROA provides that to the extent allowed by law that Fernley may establish municipal credit water by utilizing Truckee River Reservoirs to accumulate water from any Donner Lake privately owned stored water made available to Fernley and from any changed diversion rights pursuant to a flexible 12-month schedule, provided that Fernley shall use its best efforts to establish municipal credit water from November through June, which the State Engineer notes is the non-irrigation season, except for that time period from March 15<sup>th</sup> through June.<sup>26</sup>

When questioned about the storage of this water outside of the historical irrigation season, the Applicant's response was that it would like to reserve the right to negotiate the use of water during the non-irrigation season and wants the flexibility to negotiate future exchanges of water if injury is shown.<sup>27</sup>

The primary applications seek to change water right Permit Nos. 74053, 74482, 74481, 73846, 73758, 73704, 73703, 73255, 73245, 73244, 73243, 73164, 73163, 73162, 73161, 73142, 70130, 67449, 63277 and 61893. The State Engineer has permitted other similar applications requesting a change in the season of use. For example, under State Engineer's Ruling No. 4116, as

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<sup>25</sup> Transcript, pp. 8-9.

<sup>26</sup> Exhibit No. 7, pp. 7-24 and 7-25.

<sup>27</sup> Transcript, pp. 29 - 32.

amended by Ruling No. 4116A, Fernley requested a season of use from January 1<sup>st</sup> to December 31<sup>st</sup>, but was permitted as subject to the terms and conditions as set forth in the *Orr Ditch Decree*. Application 61893 requested a season of use from January 1<sup>st</sup> to December 31<sup>st</sup>; but was permitted for a season of use “as decreed” and subject to the terms and conditions as set forth in the *Orr Ditch Decree*. Application 63277 requested a season of use from January 1<sup>st</sup> to December 31<sup>st</sup> and it was also permitted for a season of use “as decreed” and subject to the terms and conditions as set forth in the *Orr Ditch Decree*.

Applications 74503, 74482, 74481, 73846, 73758, 73704, 73703, 73255, 73245, 73244, 73243, 73164, 73163, 73162, 73161, 73142, 70130, and 67449 all applied for a season of use from January 1<sup>st</sup> to December 31<sup>st</sup>; however, none were permitted for year-round use and the State Engineer further clarified the meaning of “as decreed” and “subject to the terms and conditions set forth in the *Orr Ditch Decree*” by the additional limitation that provides that the period of use is limited to the portion of the irrigation season that Truckee River Claim No. 3 would be in priority to receive water.

The Applicant submitted into evidence Exhibit No. 4, for the purpose of showing it has established by agreement a process by which Fernley can request use of the Federal facilities to transport this water. Item 2.D of that agreement provides that “Fernley shall divert water under its acquired Newlands Project water rights at Derby Dam on an irrigation season specified by the operator of the Newlands Project, subject to the Newlands Project OCAP.”

The State Engineer finds Claim No. 3 water under the *Orr Ditch Decree* is not permitted for year-round use for irrigation, but rather use is limited to the irrigation season and the water rights that these primary applications seek to change are not permitted for year-round use, but rather are subject to the terms and conditions as set forth in the *Orr Ditch Decree*, which limits the use of the water to the portion of the irrigation season that Truckee River Claim No. 3 water would be in priority to receive water. The State Engineer finds that an irrigation season has historically been established for Claim No. 3 water and in past rulings the State Engineer has not allowed for an expansion of the season of use beyond the established irrigation season. The State Engineer finds the change applications can be approved under the same condition that the water right being changed was approved, that being the water can be used when Claim No. 3 water is in priority during the irrigation season established by the Federal Water Master.

### III.

#### FULL DUTY CHANGES

The Applicant has requested the right to divert the full 4.5 acre-feet annual duty into storage on the grounds that this water was fully consumptive to the Truckee River as no return flows go back to the Truckee River after the water is used.<sup>28</sup> The Applicant cites to other instances where the State Engineer has allowed Fernley full duty changes.<sup>29</sup>

The State Engineer finds if the changes were limited to a consumptive use figure of 2.5 acre-feet per acre for the historical irrigation use, the non-permitted portion of the water right would revert to the source, the Truckee River, and would not be used within the Truckee Division for irrigation. This water has already been converted to municipal use at full duty and there is no evidence to the contrary that it should not be permitted to be changed for the full duty and there is no evidence that any downstream water right holder is dependent on return flows from municipal use. The State Engineer finds the full duty of the water sought to be changed should be allowed to be changed.

### IV.

#### FLORISTON RATES

The State Engineer requested the Applicant provide information on how this water will be taken from the river into storage in the upstream reservoirs and asked the question that when the Truckee Division is in priority is it anticipated this water will be out of the Floriston rates or is it above the Floriston rates? The Applicant's witness first indicated that through the TROA the water could be taken out of Floriston rates, but also if the natural flow in the Truckee River at Farad is above the Floriston rate, the Applicant could divert water out of that water also.<sup>30</sup>

Exhibit No. 13 indicates that Section 5.A of the TROA governs Floriston Rates and 5.A.3(a) provides :

that to the extent allowed ... the rate of flow in the Truckee River for Floriston Rates or Reduced Floriston Rates, shall be reduced in order to allow for the Establishment Credit Water. In addition, Credit Water may be established, under subsection 7.A.3(a)(1), "through the retention in storage of water which would otherwise have been released from, or through diversion to storage of water, which would otherwise have been passed through, any Truckee River Reservoir, Donner Lake, and Independence Lake to maintain Floriston Rates or Reduced Floriston Rates." ...

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<sup>28</sup> Transcript, pp. 40 - 43.

<sup>29</sup> Exhibit No. 9.

<sup>30</sup> Transcript, pp. 44 - 46.

Thus, Fernley anticipates that Fernley Municipal Credit Water may be accumulated out of Floriston rates. Fernley Municipal Credit Water may also be accumulated above Floriston Rates.”<sup>31</sup>

The State Engineer finds that at times the Applicant intends to divert water from Floriston rates. Certain parties have filed a motion with the decree court to modify or amend the Final *Orr Ditch* Decree requesting the court permit adjustment of the Floriston Rates and to allow for water that would have been released to meet Floriston Rates to be retained for storage. Applications for storage are under consideration in this ruling.

The State Engineer finds that if the decree court does not allow for adjustment of the Floriston Rates, the primary applications under consideration in this ruling would violate the Truckee River Agreement and in turn the *Orr Ditch* Decree. The State Engineer finds since the request for permission to adjust the Floriston Rates is before the decree court, it is worthwhile to have the actual applications that would permit the storage of the water also available for the decree court’s review at the same time. However, at this time any permits issued under the applications under consideration in this ruling are issued under the condition that they become effective when the decree court authorizes amendment of the *Orr Ditch* Decree. Because the question is also before the decree court, the State Engineer finds it timely to rule on the applications and condition them on proof of amendment to the decree.

## V.

### USE OF FEDERAL FACILITIES

The State Engineer requested the Applicant provide information to show it has the right to use the Federal facilities of the Newlands Project for transportation of the water and information to show if the current infrastructure can transport the water requested and if not, information to show whether Fernley has the financial ability and resources to construct any improvements required to transport the water. Fernley entered into evidence an agreement that provides a process for Fernley to follow to request access to the Truckee Canal.<sup>32</sup> This agreement was the result of protests and litigation that were filed in relation to change applications Fernley filed to change water rights acquired in the Newlands Project to municipal use. The agreement provides for the process pursuant to which Fernley will submit to the U.S. Bureau of Reclamation a request in writing for authorization to use the Federal reclamation facilities in the Newlands Project for the delivery of its acquired water rights from Derby Dam to its municipal water

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<sup>31</sup> Exhibit No. 13, p. 5.

<sup>32</sup> Exhibit No. 4.

system and treatment plant. The agreement requires that Fernley's request is to be accompanied by an efficiency study, accounting rules, a draft water conservation and efficiency plan and a construction plan. However, as of the date of the hearing there was no agreement allowing the Applicant to use the federal facilities and the Applicant's witness was unable to provide the State Engineer as to when a contract might be signed.<sup>33</sup>

The State Engineer finds Public Law 101-618 allows for the use of Newlands Project water for municipal use and State Engineer Ruling Nos. 5744 and 5826 permitted the water rights sought to be changed here to be used for municipal use. The State Engineer finds the applications can be granted subject to the Federal Government's approval of use of the federal facilities to transport Newlands Project water.

## VI.

### EFFICIENCY AND COST

The State Engineer requested the Applicant provide information on whether the changes will lessen the efficiency of the irrigation district in its delivery or use of water and whether the changes will affect the cost of water for other holders of water rights in the irrigation district. The Applicant provided testimony to show that since the secondary applications one (SO1) and three (SO3) will take water through the Truckee Canal, the efficiency will not change from the current use. As to secondary number two (SO2), the Applicant asserts that since the State Engineer has already granted temporary changes of its water rights for instream use, the State Engineer must have already determined that instream use will not affect the efficiency.<sup>34</sup> Additionally, the Operating Criteria and Procedures for the Newlands Project do not include an efficiency calculation value for flows in the Truckee Canal itself.<sup>35</sup> The settlement agreement identified as Exhibit No. 4, which is the agreement discussed above as to how Fernley will apply to use the federal facilities, requires the Applicant to prepare an efficiency study, in cooperation with the BOR, on the impact of Fernley's diversions. If the efficiency study discloses potentially significant adverse impacts on Newlands Project efficiency from Fernley's diversion, the BOR and Fernley will develop mutually acceptable measures to mitigate such adverse impacts. "Any such mitigation measures shall also be submitted

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<sup>33</sup> Transcript, pp. 64 - 65.

<sup>34</sup> Transcript, pp. 51 - 55.

<sup>35</sup> Transcript, pp. 55 and 56.

to the Nevada State Engineer with the request that they be incorporated into and made part of any permits issued by the Nevada State Engineer approving applications to transfer Fernley's acquired water rights.<sup>36</sup>

The Applicant provided testimony that Fernley is paying its fees to the Truckee-Carson Irrigation District on Claim No. 3 water it has acquired; therefore, approval of these change applications would not affect the cost of water to other holders of water rights in the Newlands Project.<sup>37</sup> Additionally, the settlement agreement identified as Exhibit No. 4, requires Fernley to pay its proportionate share of Newlands Project operations and maintenance charges and any applicable Newlands Project assessments.

The State Engineer finds Fernley is paying the operation and maintenance costs and has agreed to continue to pay any charges and assessments established by the operators of the facility.

## VII.

### **SURFACE WATER TREATMENT PLANT**

The Applicant provided testimony and evidence that a surface water treatment plant, which is required for placing the water to beneficial use, is part of Fernley's long-term goal and that Fernley has started a series of steps, the first of which is construction of a water treatment plant with the intention of upgrading that facility in the future to treat surface water. The State Engineer finds an upgrade to the treatment plant is well into the planning process.

### **CONCLUSIONS OF LAW**

#### **I.**

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>38</sup>

#### **II.**

The State Engineer is prohibited by law from granting a permit under an application or change application to appropriate the public waters where:<sup>39</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>36</sup> Exhibit No. 4, p. 6.

<sup>37</sup> Transcript, p. 69.

<sup>38</sup> NRS Chapter 533.

<sup>39</sup> NRS § 533.370(5).

### III.

Nevada Revised Statute § 533.370(1)(b) provides that if the proposed use or change is within an irrigation district it cannot adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery of water. The State Engineer concludes that Fernley has provided sufficient evidence that the proposed use will not violate this provision of the water law.

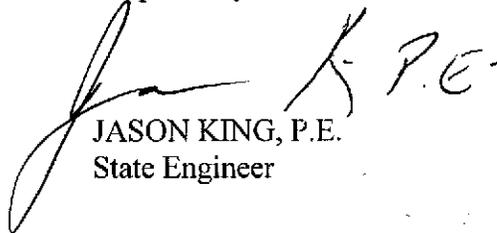
### RULING

Applications 78338 through 78357 and related secondary applications SO1, SO2 and SO3 are hereby granted subject to:

1. Existing rights;
2. No more than 25 percent of any water right can be taken into storage in any one month;
3. Payment of statutory permit fees;
4. Continuation of the payment of the Newlands Project operation and maintenance fees;
5. Diversion only during the irrigation season when Claim No. 3 under the *Orr Ditch* Decree is in priority;
6. Submission of an approved storage contract;
7. Submission of evidence of approval to use the Federal transportation and storage facilities;
8. Continuing jurisdiction of the Federal Water Master;
9. Monthly reporting to the State Engineer and Federal Water Master within ten (10) days of the end of each month, which shall include the amount of water diverted to storage and the amount of water used under each secondary permit; and
10. Consideration of storage and transportation losses as determined by the administrator of the Truckee River Operating Agreement.

Applications 78338 through 78357 and related secondary applications SO1, SO2 and SO3 will be issued and become effective upon submission of proof that the *Orr Ditch* Decree has been amended to permit changes to Floriston rates and the TROA has become effective. The base water rights these change applications seek to change will remain in full force and effect until such time as these change applications become effective.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jason King, P.E.', is written over the typed name and title.

JASON KING, P.E.  
State Engineer

Dated this 3rd day of  
March, 2011.