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

IN THE MATTER OF APPLICATIONS 78659 AND 79478 FILED TO APPROPRIATE A WATER SOURCE IDENTIFIED AS THE NORTH TRUCKEE DRAIN WITHIN THE TRUCKEE MEADOWS HYDROGRAPHIC BASIN (87) WASHOE COUNTY, NEVADA.	)	**RULING** **#6104**

GENERAL

I.

Application 78659 was filed on June 19, 2009, by the City of Sparks to appropriate 1.22 cubic feet per second (cfs), not to exceed 878 acre-feet annually (afa), of a water source identified as "…'municipal surface and ground water' runoff collected in the North Truckee Drain prior to flowing into the Truckee River for irrigation use within the existing reuse system and place of use" within all or portions of Section 1-17, T.19N., R.20E., M.D.B.&M., all or portions of Sections 6, 7 and 18, T.19N., R21.E., M.D.B.&M., all or portions of Sections 1-4, 9-16, 21-36, T.20N., R.20E., M.D.B.&M., Sections 6, 7, 18 and 19, T.20N., R.21E., M.D.B.&M., all or portions of Section 1, 12, and 13, T.17N., R.19E., M.D.B.&M., portions of Section 4-7 and 18, T.17N., R.20E., M.D.B.&M., portions of Sections 1 and 12, T.18N., R.19E., M.D.B.&M., all or portions of Sections 3-11, 14-17, 20-22, 27-29, and 31-33, T.18N., R.20E., M.D.B.&M., all or portions of Sections 1-4, 7-20, 23, 24 and 29, T.19N., R.18E., M.D.B.&M., all or portions of Sections 1-29 and 32-36, T.19N., R.19E, M.D.B.&M., all or portions of Sections 6-8, 11, 14-23, and 26-35, T.19N., R.20E., M.D.B.&M., all or portions of Sections 1, 2, 12, 35 and 36, T.20N., R.18E., M.D.B.&M., all or portions of Sections 3-10, 14-17, 21-27, 31 and 33-36, T.20N., R.19E., M.D.B.&M., portions of Sections 30 and 31, T.20N., R.20E., M.D.B.&M., a portion of Section 36, T.21N., R18E., M.D.B.&M., and all or portions of Sections 7, 8, 16-21, 28 and 29-33, T.21N., R.19E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 11, T.19N., R.20E., M.D.B.&M.[1] The remarks indicate that a perennial source of runoff associated with urban water uses flows into the North Truckee Drain system under current and future conditions.

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[1] File No. 78659, official records in the Office of the State Engineer.

II.

Application 79478 was filed on February 5, 2010, by the City of Sparks to appropriate 2.00 cfs, not to exceed 878 afa, of a water source identified as the North Truckee Drain, more specifically identified as municipal runoff delivered to residential, commercial and industrial customers flows into the North Truckee Drain, for wildlife use within in the Truckee River. The proposed point of diversion is described as being located within the NE¼ SW¼ of Section 11, T.19N., R.20E., M.D.B.&M.[2] The remarks section of the application indicates that the application proposes a secondary use of water already allocated under surface and groundwater municipal rights, that the water would be collected from the North Truckee Drain, treated, discharged to the Truckee River and retained in the river past all diversions and allowed to flow to Pyramid Lake for wildlife purposes.

III.

Application 78659 and 79478 were timely protested by the Truckee Meadows Water Authority on the following grounds as summarized:

1. There is no unappropriated water in the source as a result of State Engineer's Ruling No. 4683.
2. Water flowing in the North Truckee Drain is not water subject to appropriation under the "secondary" permit process. Runoff water from that water delivered by the Truckee Meadows Water Authority that makes its way to the North Truckee Drain is part of the return flow component that supports Truckee River downstream water rights and must be allowed to return to the river.
3. The proposed use conflicts with existing water rights, including those granted in State Engineer's Ruling No. 4683 in that it seeks to appropriate water that should be returned to the Truckee River.
4. The proposed use threatens to prove detrimental to the public interest in that it is inconsistent with the Truckee River Operating Agreement and it will impede implementation of that Agreement.
5. Application 78569 and Permits 77628 and 77629 are similar as to the source of water but inconsistent in that said Application is requesting to divert water away from the North Truckee Drain and the Truckee River and said water will be

[2] File No. 79478, official records in the Office of the State Engineer.

consumptively used for irrigation purposes. Permits 77628 and 77629 were granted on the condition that all waters were for non-consumptive purposes for flow through the wetlands except for any incidental loss due to evaporation in the wetland on its way to the Truckee River. Permits 77628 and 77629 were also granted on the condition that the permits did not provide any right to surface water from or returning to the Truckee River. The appropriation for a consumptive use would conflict with existing rights.

6. If the source of the water is considered to be groundwater, the State Engineer has established Basin 087 as a designated basin with restrictive uses and there is no unappropriated water in the groundwater basin; thus, it would conflict with existing rights to grant a new appropriation on the source and would be detrimental to the public interest by over allocating the basin.

IV.

Application 78659 was also protested by the Pyramid Lake Paiute Tribe of Indians on the grounds that the Truckee River system is fully appropriated and the granting a permit would conflict with the Tribe's Truckee River surface-water rights under Permits 48061 and 48494 and the granting of the application would threaten to prove detrimental to the public interest by interfering with the implementation of Public Law 101-618 and with the agreements among the signatory parties to the Truckee River Operating Agreement.

V.

Application 79478 was timely protested by the Truckee-Carson Irrigation District (TCID) on the following grounds as summarized:

1. There is no unappropriated water in the source.
2. The TCID has a senior pending application for additional "storm water."
3. No permanent right can be acquired for a specific quantity of drain water.
4. The use of water as proposed under the application will conflict with existing rights as returns flows are relied on by other water right holders.

VI.

Application 79478 was timely protested by Churchill County on the following grounds as summarized:

1. When the Truckee Meadows Water Authority's water rights were converted from agricultural to municipal use they were permitted at full duty with a recognized return flow from the municipal system that would satisfy downstream water right holders.
2. There is no unappropriated water in the Truckee River; therefore, granting the application could conflict with existing rights and thereby threaten to prove detrimental to the public interest.

FINDINGS OF FACT

I.

The State Engineer finds there is no unappropriated surface water in Truckee River and to grant the applied for water would conflict with existing water rights.[3]

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[4]

II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:[5]

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 78659 and 79478 will interfere with existing rights and thereby threaten to prove detrimental to the public interest.

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[3] Final Decree, *U.S. v. Orr Ditch Water Co.*, In Equity A-3 (D.Nev. 1944) and State Engineer's Ruling No. 4683, November 24, 1998, official records in the Office of the State Engineer.
[4] NRS Chapter 533.
[5] NRS § 533.370(5).

RULING

A portion of the protests to Applications 78659 and 79478 are upheld and the applications are hereby denied on the grounds that there is no unappropriated surface water in the source and the use of water as proposed will conflict with existing rights and thereby threaten to prove detrimental to the public interest. No ruling is made on the remaining protest grounds.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 15th day of

March, 2011.