

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

IN THE MATTER OF APPLICATION)
57900 FILED TO CHANGE THE POINT)
OF DIVERSION, PLACE OF USE AND)
MANNER OF USE OF A PORTION OF)
THE PUBLIC WATERS OF THE ORR)
DITCH DECREE CLAIM 331 WITHIN)
THE TRUCKEE CANYON SEGMENT)
HYDROGRAPHIC BASIN (91), WASHOE)
COUNTY, NEVADA.)

RULING

#6210

GENERAL

I.

Application 57900 was filed on July 27, 1992, by DiLoreto Construction and Development, Inc., later assigned to DiLoreto South Truckee Meadows, Inc. and City of Sparks to change the point of diversion, manner of use and place of use of 0.429 cubic feet per second, not to exceed 205.56 acre-feet annually, a portion of the waters of the Truckee River Decree Claim No. 331. 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 Power Company's existing water treatment plants.

II.

Application 57900 was timely protested on October 7, 1992, by the Truckee Carson Irrigation District requesting that any permit issued be limited to the consumptive use, and with the assurance that lands from which the water rights are transferred do not receive any Truckee River water either inadvertently or directly, that the diversion for the various applications shall be made according to their priority and period of use as decreed, and that the application is subject to the provisions of the *Orr Ditch Decree* and the *Truckee River Agreement* dated July 1, 1935.

III.

On February 10, 2009, the State Engineer issued Ruling No. 5938, which overruled the protest filed by the Truckee Carson Irrigation District and approved Application 57900.

IV.

On May 18, 2012, the United States District Court of the District of Nevada ordered that Ruling No. 5938 be vacated, holding that the State Engineer had violated his duty by failing to

act on the application within one year of the close of the protest period. The Court determined that the proper equitable remedy would be to re-notice Application 57900 and re-open the protest period.

V.

Public notice of Application 57900 was re-published on July 9, 2012, in the Reno Gazette-Journal with the noticing ending on August 2, 2012, and the application become ready for action on September 1, 2012, thus allowing the required time for noticing, along with the additional protest period, to lapse. Neither the Truckee Carson Irrigation District nor any other interested parties filed any protests or amended protests during that time period.

FINDINGS OF FACT

I.

The State Engineer finds based on the fact that the required re-publication has been completed and the fact that no additional or amended protests were submitted to the Office of the State Engineer during the protest period that the final determination under Ruling No. 5938 can be re-instated.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:²

- 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 State Engineer concludes the granting of Application 57900 will not conflict with existing rights or threaten to prove detrimental to the public interest.

¹ NRS Chapter 533.

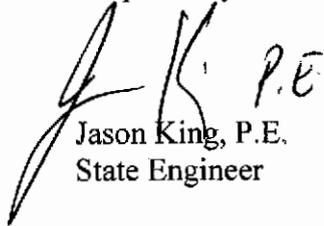
² NRS § 533.370(2).

RULING

The original protest to Application 57900 is overruled, State Engineer's Ruling No. 5938 is reinstated, and Application 57900 is 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,



Jason King, P.E.
State Engineer

Dated this 11th day of
December, 2012.