

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

IN THE MATTER OF APPLICATIONS 84356 )  
AND 84357 AND RELATED SECONDARY )  
APPLICATIONS, FILED TO CHANGE THE )  
POINT OF DIVERSION, PLACE AND )  
MANNER OF USE OF A PORTION OF THE )  
PUBLIC WATERS AS APPROPRIATED )  
UNDER PERMITS 48061, CERTIFICATE )  
19467; AND PERMIT 48494, CERTIFICATE )  
19468; WITHIN THE PYRAMID LAKE )  
VALLEY HYDROGRAPHIC BASIN (81), )  
WASHOE COUNTY, NEVADA. )

**RULING**  
**#6318**

**GENERAL**

**I.**

Application 84356 was filed on September 16, 2014, by the Pyramid Lake Paiute Tribe to change the point of diversion, place and manner of use of 3,000 cubic feet per second (cfs), not to exceed 477,851 acre-feet, of water from the Truckee River previously appropriated under Permit 48061, Certificate 19467.<sup>1</sup> The proposed manner of use is for storage purposes. The existing manner of use is recreation. The existing point of diversion is located within the SW¼ SE¼ of Section 17 (projected), T.23N., R.23E., M.D.B.&M. The proposed points of diversion are located within Lake Tahoe situated within the NE¼ NW¼ of Section 7, T.15N., R.17E., M.D.B.&M., Donner Lake situated in the SE¼ NE¼ of Section 18, T.17N., R.16E., M.D.B.&M., Prosser Creek Dam (Reservoir) situated in the NW¼ SW¼ of Section 30, T.18N., R.17E., M.D.B.&M., Boca Dam (Reservoir) situated in the SE¼ SW¼ of Section 21, T.18N., R.17E., M.D.B.&M., Stampede Dam (Reservoir) situated in the NW¼ NW¼ of Section 28, T.19N., R.17E., M.D.B.&M., and Independence Lake Dam situated in the NW¼ SW¼ of Section 35, T.19N., R.15E., M.D.B.&M. The existing places of use are described as being the Truckee River downstream of Derby Dam, including the Marble Bluff Dam, the Pyramid Lake Fishway and Pyramid Lake within Section 19, the N½ of Section 20, Section 21, Section 22, the N½ of

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<sup>1</sup> Permits 48061 and 48494 appropriated to the Tribe the remaining waters of the Truckee River not covered by the *Orr Ditch Decree*. Although the water was appropriated to the Tribe, these permits are commonly referred to as the Tribe's "unappropriated water" so as to distinguish it from the Tribe's water rights under Claims 1 and 2 of the *Orr Ditch Decree*. The Tribe's unappropriated water rights are referred to in that manner throughout this Ruling.

Section 23, the SE $\frac{1}{4}$  of Section 14, and the S $\frac{1}{2}$  of Section 13, all within T.20N., R.23E.; Section 18, the NW $\frac{1}{4}$  of Section 17, the S $\frac{1}{2}$  of Section 8, Section 9, the SE $\frac{1}{4}$  of Section 4, and the W $\frac{1}{2}$  of Section 3, all within T.20N., R.24E.; the SW $\frac{1}{4}$  of Section 34, the E $\frac{1}{2}$  of Section 33, the SE $\frac{1}{4}$  of Section 28, Section 27, the E $\frac{1}{2}$  of Section 22, Section 15, Section 16, the S $\frac{1}{2}$  of Section 9, the E $\frac{1}{2}$  of Section 8, and Section 5, all within T.21N., R.24E.; the W $\frac{1}{2}$  of Section 32, the E $\frac{1}{2}$  of Section 31, the SW $\frac{1}{4}$  of Section 29, Section 30, the W $\frac{1}{2}$  of Section 19, the W $\frac{1}{2}$  of Section 18, the SW $\frac{1}{4}$  of Section 7, and the SW $\frac{1}{4}$  of Section 6, all within T.22N., R.24E.; the E $\frac{1}{2}$  of Section 13, the E $\frac{1}{2}$  of Section 12 and Section 1, all within T.22N., R.23E.; Section 36, the SW $\frac{1}{4}$  of Section 25, Section 26, the SW $\frac{1}{4}$  of Section 23, Section 22, the NE $\frac{1}{4}$  of Section 21, Section 15, Section 16 and unsurveyed portions of Section 17, all within T.23N., R.23E., M.D.B.&M. and all of Pyramid Lake within the unsurveyed portions of T.23N., R.23E.; T.23N., R.22E.; T.24N., R.21E.; T.24N., R.22E.; T.24N., R.23E.; T.25N., R.20E.; T.25N., R.21E.; T.25N., R.22E.; T.26N., R.20E.; T.26N., R.21E.; T.26N., R.22E.; T.27N., R.21E.; and T.27N., R.22E., M.D.B.&M. The proposed places of use for water stored under this Application will be in system reservoirs.<sup>2</sup>

## II.

Application 84357 was filed on September 16, 2014, by the Pyramid Lake Paiute Tribe to change the point of diversion, place and manner of use of 3,000 cfs, not to exceed 477,851 acre-feet of water from the Truckee River previously appropriated under Permit 48494, Certificate 19468. The proposed manner of use is storage purposes. The existing manner of use is recreation. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.23N., R.23E., M.D.B.&M. The proposed points of diversion are the same as those described under Application 84356. The existing places of use are the same as those described under Application 84356. The proposed places of use for water stored under this Application will be in system reservoirs.<sup>3</sup>

Applications 84356 and 84357 were filed pursuant to NRS § 533.440, and are hereby referred to as the "Primary Applications."

## III.

Pursuant to NRS § 533.440, two sets of secondary applications (Secondary Applications) were filed under the Primary Applications discussed above. Applications 84356S01 and 84357S01 (S01 Applications) were filed for wildlife purposes, and the proposed place of use is

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<sup>2</sup> File No. 84356, official records in the Office of the State Engineer.

<sup>3</sup> File No. 84357, official records in the Office of the State Engineer.

identified as being within the Truckee River system extending from the reservoirs described in the Primary Applications to the point of discharge into Pyramid Lake.

Applications 84356S02 and 84357S02 (S02 Applications) were filed for power generation (non-consumptive use). The proposed place of use is described as the Farad Hydroelectric Generation Plant, SE¼ of Section 12, T.18N., R.17E., M.D.B.&M.; the Fleish Hydroelectric Generation Plant, NE¼ SE¼ of Section 30, T.19N., R.18E., M.D.B.&M.; the Verdi Hydroelectric Generation Plant, SE¼ of Section 8, T.19N., R.18E., M.D.B.&M.; and the Washoe Hydroelectric Generation Plant, SW¼ SW¼ of Section 14, T.19N., R.18E., M.D.B.&M. In Exhibit "D" to the Applications, the Applicant states that the secondary use for power generation is a non-consumptive use that will be incidental to the use of water released under the other secondary permits for wildlife.

#### IV.

Applications 84356 and 84357 were timely protested by the Pyramid Lake Paiute Tribal Membership and the Northern Paiute Nation on grounds as summarized below:<sup>2,3</sup>

1. The Applicant is seeking to change Truckee River water that was previously appropriated for recreational use and allowed to flow downstream and inlet to the Pyramid Lake under Permit 48061, Certificate 19467; and Permit 48494, Certificate 19468. If the change applications are approved, Protestants will lose their foreign sovereignty for management of this water along with the accountability of exact amounts being stored.
2. The applications were improperly filed and did not follow the constitutional requirements of the Pyramid Lake Paiute Tribe and these changes were not supported by a vast majority of the actual tribal members who feel their will was misrepresented by their legal counsel, Don Springmeyer, and the engineering firm, Stetson Engineering, in filing the applications.
3. Since the Tribe can only claim excess water after all other water rights under the *Orr Ditch* Decree are satisfied, the allowance for storage of this water would be detrimental and cause injury to existing water right owners due to the storage and release being done out of priority, along with causing harm to the Pyramid Lake and its fisheries.
4. The original waters were allowed to be appropriated for the benefit of Pyramid Lake, being for maintenance of the endangered species which reside in its waters. Also, all applications violate the *Public Trust Doctrine* as their approval would

deprive the endangered species living in Pyramid Lake of their dedicated water source.

5. Both Protestants also included letters to the California Appellate Court concerning Decision 1651 of the California Water Control Board, and the Northern Paiute Nation included a letter concerning intratribal disputes and alleged mismanagement of tribal monies and resources.

V.

Applications 84356 and 84357 were timely protested by the Truckee-Carson Irrigation District (TCID) on grounds as summarized below:<sup>2,3</sup>

1. The water rights are derived from Applications 48061 and 48494, which are based on all excess water flowing in the Truckee River to Pyramid Lake. Since all other water rights in the *Orr Ditch* Decree must be satisfied before the Tribe can claim “excess water,” this water cannot be stored to the detriment of other water right owners with a senior priority.
2. The applications will cause injury to existing water rights by storing water out of priority.
3. The applications are not in the public interest because the water rights were appropriated for the benefit of Pyramid Lake and its fisheries and not for upstream storage or for other purposes such as power generation.
4. The applications involve the use of the water for multiple purposes from multiple sources in violation of NRS § 533.330.
5. The applications violate the public trust doctrine because it deprives endangered and threatened species of water dedicated to recovery of those species.
6. The applications require storage of water in Stampede Reservoir, which has no capacity for additional storage.
7. The State of California has approved an additional new appropriation of 100,500 acre-feet of water to be stored in Stampede Reservoir by the U.S. Bureau of Reclamation (BOR), and the subject applications would prevent the ability of the BOR to store such water in Stampede Reservoir.
8. The applications fail to provide evidence of the sufficient capacity in the named reservoirs or the existence of agreements for the storage of water, as required by NRS § 533.440(2). There is no evidence of an agreement with the U.S., or with TCID for Donner Lake, Lake Tahoe or Boca Reservoir.

9. The applications are defective because there is no information provided regarding the releases and the use of the stored water and thus the potential injury or impacts cannot be ascertained.
10. The Applicant has not demonstrated that the proposed water can be stored in the reservoirs without displacing water that would otherwise be stored to the benefit of the Newlands project.
11. The Applicant has provided no evidence of a permanent water right to store the subject water under California law. The Applicant proposes to divert water from a point in which they have no right or control. Water right change petitions submitted to the California State Water Resources Control Board by the United States/TMWA/Washoe County Water Conservation District storage in the system reservoirs do not include storage of the Applicant's water rights. Thus, the Applications are premature and speculative.
12. All Washoe Project reservoirs, including Prosser and Stampede Reservoirs, must also be operated based on Floriston rates. The operation of these reservoirs would also be altered to the detriment of TCID under the proposed change applications.

### **FINDINGS OF FACT**

#### **I.**

Nevada Revised Statute § 533.365(4) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. The State Engineer finds that in the case of protested Applications 84356 and 84357, there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on these matters is not required.

#### **II.**

### **BACKGROUND: THE SETTLEMENT ACT AND TROA<sup>4</sup>**

Section 205(a)(1) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Title II, Public Law 101-618, 32 Stat. 3294, 3306 (Settlement Act), required the Secretary of the Interior to negotiate what would become the Truckee River Operating Agreement (TROA) with the State of Nevada, and the State of California (after consultation with other designated

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<sup>4</sup> The following background discussion is borrowed largely from the background section of the *Order Denying Judicial Review* (Docket #29), *U.S. v. Orr Water Ditch Co.*, Case No. 3:73-cv-00028-LDG (In Re: State Engineer Ruling No. 6035).

parties). Section 205(a)(2) required that the Operating Agreement would provide for the operation of the Truckee River reservoirs and would ensure that the reservoirs would be operated to meet five purposes, including that the water stored and released would satisfy the exercise of water rights in conformance with the *Orr Ditch Decree*. TROA was negotiated among the interested parties and was signed on September 8, 2008.<sup>5</sup>

Section 205(a)(4) of the Settlement Act required that TROA be submitted to the U.S. District Court of Nevada (sitting as the *Orr Ditch* court) “for approval of any necessary modifications in the provisions of the *Orr Ditch* decree.” TROA was submitted to the District Court for approval of the modifications necessary to the *Orr Ditch* Decree in a separate proceeding seeking amendment of the Decree. The proposed amendment sought modifications to the Decree that would incorporate the TROA into the *Orr Ditch* Decree, and would supercede portions of the Truckee River Agreement already incorporated into the Decree. The State Engineer finds that on September 30, 2014, the Court granted the moving parties’ *Amended Motion to Alter or Amend the 1944 Final Decree*,<sup>6</sup> and on the same date, the Court entered an *Order Modifying the Final Decree Entered in This Case in 1944*.<sup>7,8</sup>

### III.

#### THE TRIBE’S UNAPPROPRIATED WATER UNDER PERMITS 48061 AND 48494, AND TROA

The Applicant seeks to change Truckee River water that was previously appropriated for recreational use<sup>9</sup> and allowed to flow downstream to the inlet at Pyramid Lake under Permit 48061, Certificate 19467; and Permit 48494, Certificate 19468. Permits 48061 and 48494 were approved by State Engineer Ruling No. 4683. In that Ruling, the State Engineer recognized that the Settlement Act provided that TROA could not enter into effect until the Tribe’s claim to the remaining waters of the Truckee River, not subject to vested or perfected rights, had finally been

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<sup>5</sup> The full text of the Agreement is available at [http://www.troa.net/documents/TROA\\_Sep2008/troa\\_final\\_09-08\\_full.pdf](http://www.troa.net/documents/TROA_Sep2008/troa_final_09-08_full.pdf)

<sup>6</sup> *U.S. v. The Orr Water Ditch Co.*, Sub-File No. 3:73-cv-00031-LDG (Docket #1575).

<sup>7</sup> *U.S. v. The Orr Water Ditch Co.*, Case No. 3:73-cv-00003-LDG (Docket #1512).

<sup>8</sup> The Order granting the amendments to the Decree and the *Order Modifying the Decree* are currently on appeal to the Ninth Circuit.

<sup>9</sup> The full description of the recreation manner of use included: the natural spawning of Lahontan cutthroat trout and cui-ui in the Truckee River below Derby Dam, to fulfill the purposes of the establishment of the Pyramid Lake Indian Reservation, to provide sustenance for the members of the Tribe, to prevent the loss of and to conserve the endangered cui-ui and threatened Lahontan cutthroat trout, for operation of Marble Bluff Dam and Pyramid Lake Fishway in support of the fishery, and to maintain Pyramid Lake at a stable level.

resolved to the satisfaction of the State and the Tribe. Hence, the State Engineer's ruling on the Tribe's claim to the unappropriated water, allowed TROA to be implemented if and when an agreement was reached.

The Tribal Members assert their unappropriated water is not under TROA, nor do they want it to be under TROA.<sup>10</sup> The Applicant filed an Answer to the protests, which included the Tribal Council meeting minutes from June 6, 2008. The meeting minutes of that meeting reflect that at a special election held May 31, 2008, where the question on the ballot was "*Should the Pyramid Lake Paiute Tribe approve and sign the Truckee River Operating Agreement (TROA), and implement TROA subject to the conditions stated in Public Law 101-618 and in TROA?*" Of the 217 voters, 182 voted yes. On June 6, 2008, the Tribal Council certified the special election results, and thereafter, the Tribe signed on to TROA. TROA specifically references the Tribe's unappropriated water rights Permits 48061 and 48494.<sup>11</sup> As well, Paragraph 12 of the Order Modifying the *Orr Ditch* Decree confirmed and incorporated Permits 48061 and 48494 into the Decree. Furthermore, the Tribe filed the pending change applications consistent with TROA § 7.A.4(b)(1), which envisioned the Tribe's filing the change applications to change the unappropriated water rights to allow the water to be stored. The State Engineer finds that the Tribe gave authority to be a signatory to TROA, that the Tribe's unappropriated water rights are under TROA, and that TROA contemplated the filing of the instant change applications so that the unappropriated water could be stored and released pursuant to secondary permits.

#### IV.

#### **THE TRIBE'S AUTHORITY TO FILE APPLICATIONS 84356 AND 84357**

The Tribal Members and Northern Paiute Nation claim that the applications were improperly filed because the constitutional requirements of the Tribe were not followed for obtaining authority to file such applications. Protestants assert that the change applications are not supported by a vast majority of the actual tribal members who feel their will was misrepresented by their legal counsel and the retained engineering consultant. They assert that

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<sup>10</sup> But for this narrow issue which was raised in the letters to the California Appellate Court concerning Decision 1651 of the California Water Resource Control Board, the State Engineer declines to consider the remainder of the content of Protestants' letters, which paraphrase testimony and arguments raised before administrative and judicial tribunals of another state. Because the question of whether the Tribe's unappropriated water is under TROA bears on the analysis in this Ruling, the State Engineer will address it here.

<sup>11</sup> TROA §1.E.1.

the prior Chairman of the Tribe gave consent to storage of the Tribe's unappropriated water, yet he had no authority to consent to such storage of the Tribe's waters.

In the Tribe's Answer to the protests, minutes of the Tribal Council meeting held August 20, 2014, were included where the issue of filing change applications for storage was placed on the agenda and voted upon.<sup>2,3</sup> The vote of the Tribal Council to approve storage permit applications was 5 votes for, and 3 opposed, thus the motion to file the applications carried. The State Engineer finds the evidence suggests the Tribe, through its Tribal Council, had authority to file Applications 84356 and 84357.

## V.

### **THE TRIBE'S SOVEREIGN CONTROL OVER ITS WATER RIGHTS AND ACCOUNTING THEREOF**

The Tribal Members and Northern Paiute Nation assert that if change applications are approved, they will lose their foreign sovereignty for management of this water along with the accountability of exact amounts being stored. Section 2.B.5 of TROA addresses immunities of sovereigns, and states that by virtue of Pyramid Tribe's intervention as plaintiff in the action leading to the *Orr Ditch* Decree, that the Tribe acknowledged, and the *Orr Ditch* Court found and declared, that the Tribe is not immune from and is subject to the jurisdiction of the *Orr Ditch* Court over petitions filed against it concerning disputes arising under the *Orr Ditch* Decree, including petitions filed against the Tribe for declaratory and prospective injunctive relief for disputes arising under TROA. The State Engineer finds the Tribe does not have foreign sovereignty for the management of these waters. The water rights were granted under State law and then incorporated into the *Orr Ditch* Decree, which is under the jurisdiction of the federal court and will be administered by the Federal Watermaster pursuant to the Decree. To the extent any sovereign immunity has been waived, the signatory parties to TROA already recognized the limit of any sovereign immunity in the Agreement. Thus, the State Engineer finds that merely changing the unappropriated water rights from instream to storage does not waive any additional immunity by the State Engineer's approval of the pending change applications.

Next, these Protestants also contend that if the applications are approved, the amount of unappropriated water stored is virtually unquantifiable. Article III of TROA sets forth the accounting system under TROA. Section 3.A.1 requires that the Administrator consult with signatory parties, including the Tribe, in developing a water accounting system, including procedures for reconciliation of records, which is adequate to account for the water according to

the Agreement. The Administrator is required to prepare daily, monthly, annual and ten-year reports documenting the operation of the Truckee River system.

The State Engineer finds that the Tribe will be consulted during the development of the water accounting system required by TROA, and that the Tribe will have access to no less than daily reports concerning the operation of the Truckee River System. Accordingly, the State Engineer finds that the amount of unappropriated water being stored is quantifiable through the accounting system to be developed.

## VI.

### ISSUES OVER WHICH THE STATE ENGINEER LACKS JURISDICTION

A large part of the Northern Paiute Nation and Tribal Members' protests consist of allegations which amount to intratribal disputes over authority, the Tribe's constitutional procedures, representation by legal counsel and the Tribe's expert witness, and allegations of serious misconduct in the management of public funds and tribal resources. These allegations are outside the jurisdiction of the State Engineer and are not germane to the issue of what action should be taken on the pending water applications.<sup>12</sup> Accordingly, the State Engineer finds these protest issues are dismissed.

## VII.

### PRIORITY ISSUES AND IMPACTS TO EXISTING RIGHTS

All Protestants claim that since the Tribe can only claim excess water after all other water rights under the *Orr Ditch* Decree are satisfied, the allowance for storage of this water would be detrimental and cause injury to existing water right owners due to the storage and release can be done out of priority, along with causing harm to the Pyramid Lake and its fisheries.

The Tribe's unappropriated water rights are the most junior rights on the system.<sup>13</sup> Consequently, the Tribe would have the right to store its water only after all rights on the system have been satisfied, and not out of priority as Protestants assert. The priorities to be served are

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<sup>12</sup> Indeed, legal authorities fully support that intratribal disputes and tribal governance are subject to the tribal exhaustion doctrine, requiring that these types of intertribal issues be first brought to tribal court. *See, e.g., Las Vegas Tribe of Paiute Indians v. Phebus*, Case No. 2:13-cv-02000-RCJ-CWH (D. Nev. March 24, 2014) (holding the federal court could assume jurisdiction because tribal remedies had been exhausted). What's more, even if these Protestants exhausted their tribal remedies first, these issues properly belong in the federal courts, which have unique and specialized knowledge concerning matters of tribal governance. *See generally*, Deborah F. Buchman, *Construction and Application of the Tribal Exhaustion Doctrine*, 186 A.L.R. Fed. 71 (2003).

<sup>13</sup> *See* State Engineer's Ruling No. 4683; and *see Order Amending Decree* ¶ 14 (declaring the Truckee River and tributaries fully appropriated).

determined by the Federal Watermaster, who administers the Decree. Further, releases or exchanges are determined by the Agreement; however, Section 1.C of the Agreement specifically provides that the Agreement shall not impair vested or perfected rights. To that end, even if a water right owner claimed impacts to their rights, TROA lays out a dispute resolution process, which includes authority for the TROA Administrator to make whole any owner not receiving the amount of water to which they are entitled. The State Engineer finds no support for the claim that the Tribe will be storing water out of priority, or that the Tribe's releases of water will injure existing rights.

### VIII.

#### **WHETHER STORING THE TRIBE'S WATER IS CONTRARY TO THE PURPOSE OF FISH MAINTENANCE**

Protestants claim that the original unappropriated water rights were allowed to be appropriated for the benefit of Pyramid Lake, being for maintenance of the endangered species that reside in its waters. They assert the Applications violate the *Public Trust Doctrine* as their approval would deprive these species of their dedicated water source. As well, TCID states that the applications are not in the public interest because the water rights were appropriated for the benefit of Pyramid Lake and its fisheries and not for upstream storage or for other purposes such as power generation.

While the Primary Applications are for storage, the S1 Applications are for wildlife purposes and the S2 applications are for power generation (non-consumptive use). The S1 Applications state that the water released for wildlife purposes will be used in the Truckee River system from the existing reservoirs to Pyramid Lake. The design of the Primary Applications is that the stored water can be released at the call of the Tribe. As discussed above, this gives the Tribe greater control over its waters, with it, greater ability to tailor water releases for the health and welfare of threatened and endangered species when necessary. The State Engineer finds that the Primary Applications are not inconsistent with maintenance of the endangered species or that the change applications will deprive the species of their dedicated water source.

The S2 Applications state that the use for power generation is a non-consumptive use which will be incidental to water released for wildlife purposes. The water diverted for power generation will be returned back to the river at the plant location. The State Engineer finds the releases for power generation are intended to be exercised *at the same time* when the water is released for wildlife - not in the alternative to wildlife. Thus, the State Engineer finds that the S2 Applications for power generation are not inconsistent with fish maintenance, because the use is

non-consumptive and the water will only exist in the river because there has been a release for wildlife purposes.

## IX.

### WHETHER THE APPLICATIONS VIOLATE NRS § 533.330

TCID asserts that the applications involve the use of the water for multiple purposes from multiple sources in violation of NRS § 533.330. Nevada Revised Statute § 533.330 states that “[N]o application shall be for the water of more than one source to be used for more than one purpose; but individual domestic use may be included in any application with the other use named.”

Two Primary Applications were filed and two sets of Secondary Applications were filed under each Primary Application. That water may be stored under one application and subsequently beneficially used for other purposes under secondary applications is specifically sanctioned by NRS § 533.440. Indeed, each Primary Application and each Secondary Application only identify one manner of use per application. There are not multiple manners of use *per application*, as the Protestant suggests. The State Engineer finds that the filing of a primary application with multiple secondary applications does not violate NRS § 533.330, as each application only identifies one manner of use.

## X.

### CAPACITY AND DISPLACEMENT CONCERNS

TCID asserts numerous protest grounds concerning capacity and displacement in the reservoirs, and the lack of agreements on the part of the Tribe to store the water in system reservoirs. As stated above, these permits are the most junior on the system; thus, the remaining capacity in the reservoirs will be known, and hence if capacity exists, at such time water under the Tribe’s most junior water rights would be diverted to storage. Further, TROA addresses potential displacement and how any such displacement would be treated under the Agreement. As already stated previously, the Decree Court has approved the Agreement; thus, the State Engineer finds that this issue has already been addressed by the Decree Court.

With respect to TCID’s protest that the Tribe does not have the necessary agreements to store this water in the project reservoirs, the State Engineer’s conditioning the granting of the Primary Applications upon the Tribe acquiring such agreements allows the Primary Applications to be approved.

**XI.**

**ALTERED FLORISTON RATES**

TCID contends that all Washoe Project reservoirs, including Prosser and Stampede, must also be operated based on Floriston rates and it claims that operation of these reservoirs would also be altered to the detriment of TCID under the proposed change applications.

Article Five of TROA addresses the operations of the Floriston Rate and Reduced Floriston Rates. Inasmuch as the operation of the reservoirs and maintenance of Floriston Rates is addressed through the Agreement, as approved by the Decree Court, the State Engineer finds that this issue has already been ruled upon by the Decree Court.

**CONCLUSIONS OF LAW**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>14</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>15</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 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 that the use of the water under these change applications does not threaten to prove detrimental to the public interest where the evidence suggests the Tribe had authority to file the applications, and because the applications were specifically contemplated under TROA.

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<sup>14</sup> NRS Chapter 533.

<sup>15</sup> NRS § 533.370(2).

**IV.**

The State Engineer concludes that the use of the water under these change applications does not threaten to prove detrimental to the public interest because the applications do not waive any additional sovereign immunity, other than that already recognized by TROA, to which the Tribe is a signatory. Further, the State Engineer concludes that the Agreement sets out a detailed accounting system, which will provide the Tribe no less than a daily accounting of; therefore, it is not impossible to quantify the amount of the Tribe's stored waters.

**V.**

The Tribe's rights are the most junior on the system and any water stored under these rights can only be made in priority; therefore, the State Engineer concludes the applications will not conflict with existing rights and will not threaten to prove detrimental to the public interest. Further, the State Engineer concludes that storage and secondary releases for wildlife purposes supports river flows for the health and maintenance of fish species; therefore, the applications are not inconsistent with the original purpose of the Tribe's unappropriated water. Moreover, secondary use for non-consumptive power generation is likewise not inconsistent because that use coincides with releases for wildlife purposes, not in the alternative to wildlife purposes.

**VI.**

The State Engineer concludes that the Primary and Secondary Applications do not violate NRS § 533.330 because each application only identifies one manner of use.

**VII.**

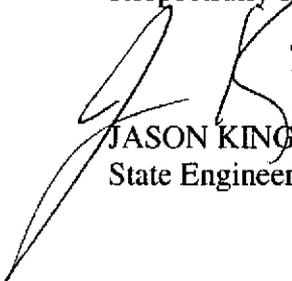
The State Engineer concludes that the applications do not threaten to prove detrimental to the public interest for capacity, displacement and Floriston rate concerns. Finally, the State Engineer upholds the protest ground identifying the Tribe's necessity of acquiring any applicable agreements for storage in the system reservoirs; however, the State Engineer concludes that the lack of any such agreements does not threaten to prove detrimental to the public interest, because the permits can be conditioned on the Tribe obtaining such agreements.

**RULING**

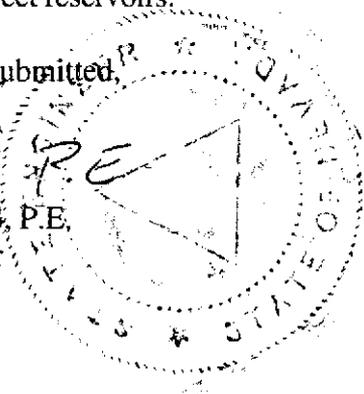
Applications 84356 and 84357 and their associated Secondary Applications are granted subject to:

1. Payment of the statutory permit fees;
2. Existing rights;
3. Continuing jurisdiction by the Federal Water Master; and
4. Obtaining required agreements for storage in project reservoirs.

Respectfully submitted,



JASON KING, P.E.  
State Engineer



Dated this 27th day of  
May, 2015.