

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

IN THE MATTER OF APPLICATION )  
85507 FILED TO CHANGE THE POINT )  
OF DIVERSION AND PLACE OF USE OF )  
THE SURFACE WATER PREVIOUSLY )  
APPROPRIATED UNDER PERMIT 82927 )  
WITHIN THE TRACY SEGMENT )  
HYDROGRAPHIC BASIN (83), STOREY )  
COUNTY, NEVADA. )

**RULING**  
**#6350**

**GENERAL**

**I.**

Application 85507 was filed on October 6, 2015, by TRI General Improvement District to change the point of diversion and place of use of 3.1439 cubic feet per second, not to exceed 898.73 acre-feet of water, previously appropriated under Permit 82927 from the Truckee River for municipal purposes. Permit 82927 previously changed the point of diversion, place and manner of use of a portion of water appropriated under Claims 346 and 347 of the *Orr Ditch Decree*.<sup>1,2</sup> The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, T.20N., R.22E., M.D.B.&M. The existing points of diversion are described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.19N., R.18E., M.D.B.&M., (Steamboat Canal); SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, T.19N., R.18E., M.D.B.&M., (Katz Ditch); SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T.19N., R.18E., M.D.B.&M., (Highland Ditch); NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T.19N., R.19E., M.D.B.&M., (Orr Ditch); NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 17, T.19N., R.19E., M.D.B.&M., (Orr Ditch Pump Station); SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 10, T.19N., R.19E., M.D.B.&M., (Idlewild Treatment Plant); SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T.19N., R.20E., M.D.B.&M., (North Truckee Ditch); and W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 16, T.19N., R.20E., M.D.B.&M., (Washoe County Hidden Valley Induction Well #4). The existing places of use are within the service area of the Applicant, specifically described in Exhibit "B" to the application. The proposed places of use are described as being all of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23 and 24, T.18N., R.22E., M.D.B.&M.; all of Sections 1 through 8, portions of Sections 9 and 10, all of Sections 11, 12, and 13, portions of

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<sup>1</sup> File No. 85507, official records in the Office of the State Engineer.

<sup>2</sup> Final Decree in *United States v. Orr Water Ditch Co., et al.* In Equity Docket No. A-3 (D. Nev. 1944).

Sections 14 through 17, all of Sections 18 and 19, and portions of Sections 20 and 24, T.18N., R.23E., M.D.B.&M.; all of Sections 1 through 18, a portion of Section 19, all of Sections 20 through 24, portions of Sections 25 and 26, all of Sections 27, 28, 29, 32, 33 and 34, and portions of Sections 35 and 36, T.18N., R.24E., M.D.B.&M.; all of Sections 6 and 7, portions of Sections 18, 19, 29 and 32, all of Section 31, T.18N., R.25E., M.D.B.&M.; a portion of Section 1, T.19N., R.21E., M.D.B.&M.; all of Sections 1 through 30 and Sections 33 through 36, T.19N., R.22E., M.D.B.&M.; all of Sections 1 through 36, T.19N., R.23E., M.D.B.&M.; all of Sections 6, 7, 18, 19, 30 and 31, T.19N., R.24E., M.D.B.&M.; a portion of Section 36, T.20N., R.21E., M.D.B.&M.; portions of Sections 24, 25, 26, 28, 31, 32, 33, 34 and 35, and all of Section 36, T.20N., R.22E., M.D.B.&M.; a portion of Section 13 and portions of Sections 19 through 24, and all of Sections 25 through 36, T.20N., R.23E., M.D.B.&M.; a portion of Section 18, and all of Sections 19, 30 and 31, T.20N., R.24E., M.D.B.&M.

## II.

Application 85507 was timely protested by the Bureau of Reclamation on grounds that the Applicant is seeking to change Truckee River decreed rights that have previously been converted to municipal use at full duty. Due to the Applicant treating and using their generated effluent water, there is no return flow back to the Truckee River. The applicant should be limited to the consumptive use fraction of the original decreed rights. The Protestant requested that the State Engineer condition the permit to address the protest issue as stated, or deny the application.<sup>1</sup>

### 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 Application 85507, 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.

The Applicant seeks to change Truckee River water previously appropriated under the *Orr Ditch* Decree. Some of these decreed rights were previously converted to irrigation or municipal use at full duty because treated effluent was returned to the Truckee River system to

account for the non-consumptive portion of the decreed right. In this instance, the Applicant is treating and using its generated effluent water, and as a result, there is no return flow back to the Truckee River system. Under Question #16 of the Application, the Applicant stated it intended to use Permits 70925 and 80855 to offset the consumptive use under Application 85507, whereas prior permits approved by the State Engineer along the Truckee River corridor for recreational, wildlife and storage uses have all had consumptive use calculations applied directly to the permit. While not impossible for the Applicant to use two other permits to satisfy the reductive portion, doing so imposes greater tracking liability on both the Federal Water Master's office and the State Engineer's office, and does not maintain the established practice by the State Engineer of limiting the duty of the changed water right to account for lack of return flows. Prior to filing the Application, the Applicant, through its agent, was encouraged not to use the two other permits to offset the reduction to encourage the consistent treatment of this Application with others along the Truckee River corridor.<sup>1</sup> At that time, the agent acknowledged the reasons behind the consumptive use application and was not expected to request using the other two permits to account for the lack of return flow. The State Engineer finds that practice of approving prior applications along the Truckee River corridor has been to limit the duty to 2.5 acre-feet per acre to account for lack of return flows, and that this application is similar, and will therefore be treated similarly by having a limited duty applied rather than using other permits to offset the reduction.

### **CONCLUSIONS OF LAW**

#### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>3</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>4</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

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<sup>3</sup> NRS Chapter 533.

<sup>4</sup> NRS § 533.370(2).

D. the proposed use or change threatens to prove detrimental to the public interest.

**III.**

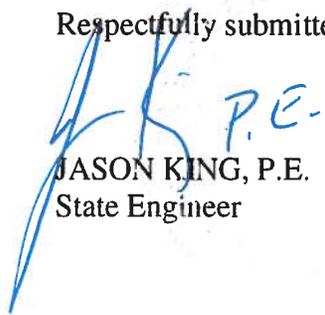
Application 85507 will be limited to a duty of 2.5 acre-feet per acre to account for the lack of return flow and an approved construction plan for the induction well will be required to ensure the capture of Truckee River water in priority; therefore, the State Engineer concludes that the proposed change application will not conflict with existing rights and will not threaten to prove detrimental to the public interest.

**RULING**

The protest to Application 85507 is hereby upheld and the application granted subject to:

1. Payment of the statutory permit fees;
2. Existing rights;
3. 2.5 acre-feet per acre duty;
4. Continuing jurisdiction by the Federal Water Master; and
5. An approved construction plan for the induction well.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 20<sup>th</sup> day of  
July, 2016.