

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

IN THE MATTER OF APPLICATIONS 48061)
AND 48494 FILED TO APPROPRIATE THE)
WATERS OF THE TRUCKEE RIVER AND ITS)
TRIBUTARIES, PYRAMID LAKE VALLEY)
HYDROGRAPHIC BASIN (081), WASHOE)
COUNTY, NEVADA.)

RULING ON REMAND

#4683 A

GENERAL

I.

By Order Supplementing the Record and Remanding to State Engineer, dated May 23, 2006, the Third Judicial District Court In and For Churchill County remanded to the State Engineer Applications 48061 and 48494, which were the subject of State Engineer's Ruling No. 4683. In that ruling, the State Engineer granted to the Pyramid Lake Paiute Tribe of Indians a water right to the unappropriated water of the Truckee River and its tributaries. During the pendency of the appeal of that ruling, the Petitioner Truckee-Carson Irrigation District filed a Motion to Supplement the Record arguing that the draft Truckee River Operating Agreement, which was not available at the time the State Engineer made his decision on Applications 48061 and 48494, is intended to take precedence over the Truckee River Agreement of 1935; therefore, the evidence is material and should be taken into consideration. The Third Judicial District Court remanded the applications to the State Engineer to determine if new or modified findings or decisions are appropriate based on this evidence.

FINDINGS OF FACT

I.

Upon review of the briefs filed in the Third Judicial District Court, the State Engineer finds the argument raised by the Truckee-Carson Irrigation District is that the Truckee River Operating Agreement contemplates that the water rights permitted under Applications 48061 and 48494 are to be stored in Sierra Nevada reservoirs and traded back and forth as drought protection for the Truckee Meadows and that operating the Truckee River in this manner could impact the water right of the Truckee-Carson Irrigation District under Claim No. 3 of the *Orr Ditch* Decree. The State Engineer finds Permits 48061 and 48494 only authorize the use of the unappropriated water for

EXHIBIT

tabbles

231

instream/*in situ* use in the Truckee River. Applications 48061 and 48494 did not seek authorization for storage in upstream reservoirs, are not permits for the storage of water in upstream reservoirs, and cannot be used for storage under the permits at issue here. The State Engineer finds he did not and does not have before him applications for storage of water in upstream reservoirs. Thus, whether or not such storage is contemplated in the Truckee-River Operating Agreement was not relevant at the time of the original decision and is not currently relevant to the decision on the applications. Applications 48061 and 48494 did not request use of the water for storage and do not even today present an issue of the storage of water. The State Engineer finds that at this time to answer the question as to what the State Engineer would do if the applications were before him requesting authorization of the use of this water in storage would be in the form of an advisory opinion and improper.

CONCLUSIONS

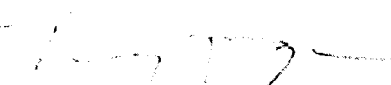
I.

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

RULING

The issue of the storage and exchange contemplated under the Truckee River Operating Agreement is not relevant to the State Engineer's decision on Applications 48061 and 48494 since the applications were not filed for storage in upstream reservoirs and cannot be used in that manner under the current permits.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

TT/SJT/jm

Dated this 26th day of
October 2006

¹ NRS chapter 533.