

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

IN THE MATTER OF APPLICATIONS 55002,)
55003, 55004, 55005, 55006, 55007,)
55008, 55009, 55010 AND 55011, FILED)
TO CHANGE THE POINTS OF DIVERSION,)
MANNERS OF USE AND PLACES OF USE OF)
PORTION OF THE WATERS OF THE TRUCKEE)
RIVER HERETOFORE APPROPRIATED UNDER)
CERTAIN TRUCKEE RIVER DECREED RIGHTS,)
WITHIN THE TRUCKEE MEADOWS, WASHOE)
COUNTY, NEVADA.)

RULING

3875

GENERAL

I.

Application 55002 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 623. The proposed use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 0.45 acres of land within the SE1/4 SW1/4 of Section 17, T.19N., R.21E., M.D.B.&M. The existing point of diversion is represented by Largomarsino - Noce Ditch situated within the NE1/4 SE1/4 of Section 18, T.19N., R.21E., M.D.B.&M.²

Application 55003 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River, appropriated under Truckee River Claim Nos. 625 and 625.5. The proposed use is for municipal and domestic purposes within Sierra

1 Public records of the office of the State Engineer, see respective application file.

2 The United States of America vs. Orr Water Ditch Company, et al. Final Decree, Docket No. A-3 Claim No's. 623, 625, 625.5, 628, 634, 637 and 638.

EXHIBIT

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Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 1.6 acres within the NE1/4 SE1/4 of Section 16, 16.3 acres within the NW1/4 SW1/4, 1.54 acres within the SW1/4 NW1/4 of Section 15 and 27.13 acres within the SE1/4 of Section 2, all within T.19N., R.21E., M.D.B.&M. The existing point of diversion is represented by the Sheep Ranch Ditch situated within the NW1/4 SW1/4 of Section 16, T.19N., R.21E., M.D.B.&M.²

Application 55004 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 625. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 3.56 acres within the SW1/4 NW1/4, 16.1 acres within the SE1/4 NW1/4,, and 5.1 acres within the NE1/4 SW1/4 all within Section 15, T.19N., R.21E., M.D.B.&M. The existing point of diversion is represented by the Sheep Ranch Ditch situated within the NW1/4 SW1/4 of Section 16, T.19N., R.21E., M.D.B.&M.²

Application 55005 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 628. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 13.6 acres within the SW1/4 SW1/4, of Section 28, T.20N., R.22E., M.D.B.&M. The existing point of diversion is represented by the Hill Ditch

situated within the NW1/4 NE1/4 of Section 32, T.20N., R.22E., M.D.B.&M.²

Application 55006 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 628. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of a portion of the decreed place of use under Truckee River Claim 628. The existing point of diversion is represented by the Hill Ditch situated within the NW1/4 NE1/4 of Section 32, T.20N., R.22E., M.D.B.&M.²

On January 7, 1992, Westpac Utilities submitted a letter withdrawing a portion of Application 55006 totaling 11.11 acres and 50.0 acre-feet. Application 55006 now requests to change 6.7253 cfs not to exceed 806.21 acre-feet.¹

Application 55007 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 634. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 77.01 acres within portions of Sections 8, 17 and 18, all of T.20N., R.24E., M.D.B.&M. The existing point of diversion is represented by the Gregory Ditch situated within the SE1/4 SE1/4 of Section 14, T.20N., R.23E., M.D.B.&M.²

Application 55008 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River

heretofore appropriated under Truckee River Claim No. 634. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 77.86 acres within portions of Sections 8, 17 and 18, all of T.20N., R.24E., M.D.B.&M. The existing point of diversion is represented by the Gregory Ditch situated within the SE1/4 SE1/4 of Section 14, T.20N., R.23E., M.D.B.&M.²

Application 55009 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 637. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of 24.35 acres within the SE1/4 of Section 4 and 1.1 acres within the NW1/4 NE1/4 Section 9, all within T.20N., R.24E., M.D.B.&M. The existing point of diversion is represented by the Herman Ditch situated within the NW1/4 NW1/4, Section 17, T.20N., R.24E., M.D.B.&M.²

Application 55010 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 638. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of portions of 7.8 acres within the NE1/4 SW1/4, Section 3, T.20N., R.24E., M.D.B.&M. The existing point of diversion is represented by the

Pierson Ditch situated within the NW1/4 SW1/4, Section 9, T.20N., R.24E., M.D.B.&M.²

Application 55011 was filed on June 27, 1990 by Westpac Utilities to change the point of diversion, manner of use and place of use of a portion of the waters of the Truckee River heretofore appropriated under Truckee River Claim No. 638. The proposed manner of use is for municipal and domestic purposes within Sierra Pacific Power Company's certificated service area. The proposed point of diversion is described as being within the SW1/4 NE1/4, Section 7, T.19N., R.20E., M.D.B.&M.¹ The existing manner and place of use is for the irrigation of portions of 7.8 acres within the NE1/4 SW1/4, Section 3, T.20N., R.24E., M.D.B.&M. The existing point of diversion is represented by the Pierson Ditch situated within the NW1/4 SW1/4, Section 9, T.20N., R.24E., M.D.B.&M.²

II.

Applications 55002 through 55011 were protested on November 27, 1990 by the Truckee Carson Irrigation District (TCID). Protestant requested that the applications be issued subject to the following specific conditions:

1. Assure that lands from which the water rights are transferred do not receive any Truckee River water either inadvertently or directly. A reduction in river flows brought about by either precluding return flows or by "double diversion" as discussed under this condition will damage all downstream users, including the TCID.
2. In the event that "instream minimum flow requirements" in the interest of the "Public Trust" are established in the future on any reach of the Truckee River below the new point of diversion into the Westpac Utility system, the amounts of water required to meet these needs be made up from these application rights that are proposed to be moved upstream.

3. Applicant shall agree to cost share on a pro-rata basis for the modification and/or improvement of the Derby Dam gates and controls such that the flows passing Derby Dam are reduced to the rates and amounts of the remaining downstream diversion rights below the Dam. Under current conditions inherent in the design and condition of the Derby structure, rates of water passing through the gates are in the order of 30 to 50 cubic feet per second.
4. The diversion for the various applications shall be made according to their priority and the period of use shall be as decreed.¹

III.

On August 9, 1991, Gordon H. DePaoli, attorney representing the applicant, submitted a detailed letter addressing the protest of TCID.¹

FINDINGS OF FACT

I.

On November 14, 1989, a public administrative hearing was held by the State Engineer concerning two prior applications to transfer Orr Ditch Decreed water from below Derby Dam in the vicinity of Wadsworth and one prior application to change the point of diversion from below Vista and above Wadsworth to Westpac Utilities water treatment plants for utilization within the place of use of Westpac Utilities' certificated service area. The two applications below Derby Dam were also protested by TCID who presented their case in support of their protest at the hearing. The other application which was not protested was also discussed at the hearing. The State Engineer finds Applications 55002 through 55011, inclusive, are similar to the applications heard at the November 14, 1989 hearing. Additionally, the State Engineer finds the grounds of the protest to Applications 55002 through 55011, inclusive, are very similar to the arguments

presented by protestant TCID at the aforementioned hearing. Future changes were discussed at the hearing and the cumulative effect of such changes was analyzed.³

The Truckee River Decree specifically allows persons who hold rights adjudicated in said decree to change the point of diversion, place and manner of use of these rights as long as they do so in accordance with the Nevada Water Law and such change would not injure the right holder.⁴

The State Engineer finds a hearing is not necessary in his review of these applications since he has a full understanding of the issues involved and has already taken evidence at the aforementioned hearing concerning the merits of similar applications and protests.⁵

III.

The State Engineer finds the approval of any application to change abrogates the permittees authority to use the water right being changed as originally allowed. The enforcement of any change of decreed Truckee River waters falls under the jurisdiction of the Federal Water Master.⁴

IV.

The State Engineer finds that to condition a permit on future hypothetical events outside the control of the permittee is not in the public interest.

V.

The State Engineer has reviewed the evidence presented at the November 14, 1989 hearing concerning the protestants request that the "applicant shall agree to cost share on a pro-rata basis

³ Transcript of Administrative Hearing held November 14, 1989 concerning applications 53092, 53093 and 53369.

⁴ The United States of America vs. Orr Water Ditch Company, et al. Final Decree, Docket A-3, p.88.

⁵ NRS 533.365(3).

for the modification and/or improvement of the Derby Dam gates and controls such that the flows passing Derby Dam are reduced to the rates and amounts of the remaining downstream diversion rights below the Dam," and finds the existing circumstances do not warrant such a condition.³

VI.

The State Engineer finds the priority and period of use of Truckee River Decreed water rights remain the same under a change application and the regulation of the same is the responsibility of the Federal Water Master.

VII.

The State Engineer has reviewed the analysis presented by the applicant at the November 14, 1989 hearing concerning existing rights and finds that the approval of these applications will not conflict with existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the matter described herein.⁶

II.

The State Engineer is prohibited by law from granting a permit to change where:

- A. The proposed use conflicts with existing rights, or
- B. The proposed use threatens to prove detrimental to the public interest.⁷

III.

The State Engineer concludes the granting of Applications 55002 through 55011 will not conflict with existing rights or prove detrimental to the public interest.

⁶ NRS Chapters 533 and 534.

⁷ NRS 533.370.

IV.

The State Engineer concludes that conditions 2 and 3 requested by TCID in their protests are inappropriate at this time and would not be in the public interest.

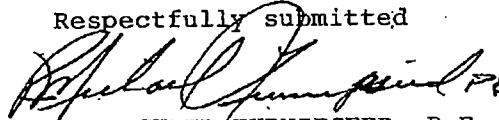
V.

The State Engineer concludes that conditions 1 and 4 of the TCID protest are inherent in the approval of the applications and the enforcement of these conditions is under the continuing jurisdiction of the Federal Water Master.

RULING

Applications 55002 through 55011 are herewith approved upon payment of permit fees and completion of title transfer, subject to existing rights and also subject to the continuing jurisdiction and regulation of the Federal Water Master.

Respectfully submitted


R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/CT/pm

Dated this 9th day of
March, 1992.