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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF NEVADA**

5 UNITED STATES OF AMERICA,) In Equity 3:73-cv-00003-MMD
6 Plaintiffs,)
7 ORR WATER DITCH CO., et al.,) **ORDER RECOGNIZING AND**
8 Defendants.) **CONFIRMING CHANGES IN**
9) **POINT OF DIVERSION, PLACE OF**
) **USE AND MANNER OF USE OF**
) **DECREEED WATER RIGHT**

10 The Petition of Truckee Meadows Water Authority (“TMWA”) For an
11 Order Recognizing and Confirming Changes In Point of Diversion, Place of Use and Manner of
12 Use of Decreed Water Right was filed herein on June 25, 2021 (ECF 1844) (the “Petition”).

13 The Court approved a Notice of Petition and required that it be published in the Reno
14 Gazette Journal and Sierra Sun once a week for four consecutive weeks. ECF 1846; ECF 1847.

15 The Court further ordered that, if no objections to the Petition were filed on or before a
16 date which was no later than thirty (30) days after the last publication of the Notice of Petition, the
17 Court in its discretion may enter an order based upon the facts set forth in the Petition.

18 The Court having considered the Petition and the Proofs of Publication of the Notice of
19 Petition (ECF 1855; ECF 1856) and being fully advised finds and concludes as follows:
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- 21 1. Notice of the Petition has been given as required by the Court.
22 2. No Objections to the Petition have been filed.
23 3. By deed dated December 21, 2017, TMWA is the owner of and successor-in-
24 interest to Sierra Pacific Power Company with respect to the water right designated as Orr Ditch
25 Decree Claim No. 5, a portion of which water right is sought to be changed by the Petition.
26 4. The Court has jurisdiction over the Petition.
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1 5. Orr Ditch Decree Claim No. 5 recognizes California appropriative water rights
2 established in 1899 and 1906 under California law. Because the water rights are not established
3 under California's 1914 Water Commission Act or the California Water Code, changes to them
4 are not subject to the jurisdiction of the California State Water Resources Control Board.

5 6. Orr Ditch Decree Claim No. 5 provides that TMWA is entitled and allowed to divert
6 water from the Truckee River through the Farad Power Flume, which has an intake, or point of
7 diversion, on the north bank of the Truckee River in the S 1/2 of Lot 6 in the NW 1/4 of Section
8 30, T. 18 N., R. 18 E. TMWA may divert 325 cubic feet of water per second, after transportation
9 loss, to the wheel of the Farad hydroelectric power plant, with a priority of the year 1899. TMWA
10 may divert an additional 75 cubic feet of water per second, after transportation loss, to the wheel
11 of the Farad hydroelectric power plant, with a priority of the year 1906.

12 7. On January 1, 1997, a flood destroyed the Farad diversion facility, and that facility
13 has not been, and will not be, rebuilt.

14 8. In applicable part, the General Provisions of the Orr Ditch Decree provide:

15 Persons whose rights are adjudicated hereby, their successors or assigns, shall be
16 entitled to change, in the manner provided by law the point of diversion and the
17 place, means, manner or purpose of use of the waters to which they are so entitled
18 or of any part thereof, so far as they may do so without injury to the rights of other
19 persons whose rights are fixed by this decree.

20 Orr Ditch Decree at 88.

21 9. Pursuant to a Petition filed herein by Sierra Pacific Power Company on December
22 27, 2001, this Court, on March 14, 2002, entered an order with respect to Claim No. 5 as follows:

23 Petitioner has temporarily changed the manner and place of use of water
24 rights for hydroelectric power to instream use from the original point of diversion
25 to the point of discharge back to the Truckee River at the Farad power plant for the
26 benefit of fish, wildlife, and recreation, until such time as Petitioner's replacement
27 diversion facility can be completed or until Petitioner uses the water for an
28 alternative beneficial use. Sierra Pacific Power Company implemented a change
in the manner and place of use after January 1, 1997, when flood conditions

1 destroyed the Farad Dam diversion. Petitioner is in the process of rebuilding the
2 diversion facility and will continue to put water to beneficial use as instream flows.

3 This Order shall be effective immediately and shall be effective until such
4 time as the Farad diversion facility is rebuilt or until Petitioner uses the water rights
at an alternative location.

5 Dkt. 424.

6 NOW, THEREFORE, it is hereby ordered that:

7 1. A change in point of diversion, place of use and manner of use is approved from
8 the 1899 portion of the Claim No. 5 water right of 325 cubic feet of water per second, to be
9 diverted at the point of diversion for Claim No. 6, the Fleish Power Ditch and Flume, which has
10 its intake, or point of diversion, on the east bank of the Truckee River in the SE ¼ of the SE ¼ of
11 Section 19, T. 19 N., R. 18 E., M.D.M., to deliver, after transportation loss, to the wheel of the
12 Fleish Hydro-Electric Power Plant, 50 cubic feet of water per second for hydro-electric power
13 generation, in addition to the 327 cubic feet of water per second allowed under Orr Ditch Decree
14 Claim No. 6;

15 2. A change in point of diversion, place of use and manner of use is approved from
16 the 1899 portion of the Claim No. 5 water right of 325 cubic feet per second, to be diverted at the
17 existing point of diversion for the Highland Ditch which is described in Orr Ditch Decree Claim
18 No. 98 as on the north bank of the Truckee River in the SW ¼ of SE ¼ of Section 9, T.19 N., R.
19 18 E., M.D.M., to deliver after transportation loss, to a new hydro-electric power plant, the
20 “Highland Canal Hydroelectric Project,” located within the NE 1/4 of the SE 1/4 of Section 17,
21 T. 19 N., R. 19 E., M.D.M., 100 cubic feet of water per second, for hydro-electric power
22 generation and after such use for discharge back to the Truckee River within the NE 1/4 of the
23 SE 1/4 of Section 17, T. 19 N., R. 19 E., M.D.M.
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1 3. The remainder of the 1899 portion of the water right of 325 cubic feet per second
2 of Claim No. 5 of approximately 175 cubic feet of water per second shall continue to be used for
3 instream use from the original point of diversion to the point of discharge back to the Truckee
4 River at the former Farad Power Plant for the benefit of fish, wildlife, and recreation; as provided
5 in the Order of March 14, 2002; and
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7 4. The full amount of seventy-five (75) cubic feet of water per second, with a priority
8 of the year 1906 under Claim No. 5, shall continue to be used for instream uses from the original
9 point of diversion to the point of discharge back to the Truckee River at the former Farad Power
10 Plant for the benefit of fish, wildlife, and recreation, as provided in the Order of March 14, 2002.
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12 Dated this 26th day of August, 2021.

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15 UNITED STATES DISTRICT JUDGE
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