

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES**

IN THE MATTER OF CHANGE
APPLICATIONS NOS. 68542 FILED BY
JACKSON TRUST, ARCHIE AND
HAZEL JACKSON, TRUSTEES, TO
CHANGE THE POINT OF DIVERSION,
MANNER OF USE AND PLACE OF USE
OF WATER APPROPRIATED UNDER
THE RECLAMATION ACT OF 1902
FROM THE TRUCKEE DIVISION OF
THE NEWLANDS PROJECT

**PROTEST AND REQUEST TO DENY
APPLICATION 68542; PETITION FOR
HEARING PURSUANT TO NRS 533.345**

COMES NOW THE TRUCKEE-CARSON IRRIGATION DISTRICT ("TCID"), by and through its attorney, a political subdivision of the State of Nevada, organized under Chapter 539 of the Nevada Revised Statutes, whose address is 2666 Harrigan Road, Fallon, Nevada, 89407-1356, with responsibilities under contract to operate and maintain the Newlands Reclamation Project and to deliver water to landowners who have contracted either with the United States or with TCID, and to comply with water rights decrees for water rights appropriated by the United States under the Reclamation Act (43 U.S.C. 371, et seq.), and as a party to the water rights decree of the Truckee River, known as the Orr Ditch Decree (*U.S. v. Orr Water Ditch Co.*, equity A-3-LDG U.S. District Court, Nevada, September 8, 1944), hereby protests the granting of change application 68542 filed by Jackson Trust, Archie and Hazel Jackson, Trustees, to change the point of diversion, manner of use and place of use of appropriated waters of the Truckee River, situated in Churchill County, State of Nevada, for the following reasons and on the grounds, to wit:

1. Section 209(c)(1) of Public Law 101-618 (November 16, 1990) establishes a

ORIGINAL
228

criteria and goals that an average of not less than 75% of actual diversion under applicable operating criteria and procedures shall be delivered to satisfy the exercise of water rights within the Newlands Project for authorized project purposes. The applicant seeks to transfer water rights from 29.9 acres with an entitlement of 4.5 acre feet per acre, for a total annual duty of 134.55 acre feet. The Operating Criteria and Procedures (“OCAP”) also imposes requirements with respect to efficiency improvements with respect to losses in the Truckee Canal involving conveyance efficiency. The granting of this transfer application would adversely impact conveyance efficiency and the ability to achieve the referenced objecting and requirements, which will shift the burden to achieve these objectives on other water right owners within the District, and specifically those on the Truckee Division of the Project. Approval of this transfer will adversely affect the cost of water to other water right owners within the District, lessen the District’s efficiency in its delivery and use of the water, and may result in a decreased amount of water available to other water right owners because of efficiency requirements. Such results are against the public interest, and under N.R.S. 533.370, the State Engineer is required to disapprove an application if the proposed transfer may result in such additional costs or losses.

2. Public Law 101-618 (November 16, 1990), and specifically § 209(b), limits the increase of diversions of the Truckee River water to the Newlands Project. This transfer, if approved, will effectively transfer water from within the Newlands Project to instream flows outside of the Project. Accordingly, unless additional diversions are authorized, other users within the Truckee division of the Project will have to absorb the loss of additional water needed to meet efficiency requirements, particularly when losses due to delivery of water through the system are considered. The approval of this transfer will also adversely limit the amount of

water available for “return flow irrigation” which is encouraged under Alpine, *infra.*, p. 892.

3. Under the Reclamation Act of June 17, 1902, and as decreed in the case of *United States v. Orr Ditch Co.* (“Orr Ditch Decree”), on September 8, 1944, Derby Dam and the Truckee Canal were established for the benefit of the landowners within the Newlands Project for irrigation, generating power, and supplying the inhabitants of cities and towns within the Project, including water for domestic and other purposes. The decreed water rights are appurtenant to the lands within the Project. Under § 209(a) of Public Law 101-618, the Project is to be operated and maintained for the purposes of municipal and water supply in Lyon and Churchill Counties, including the Fallon Indian Reservation, recreation, water quality and any other purpose recognized as beneficial under the laws of the State of Nevada. If this transfer is approved, the public interest will be violated in that the water so transferred will have a negative impact on groundwater sources relied upon by towns and municipalities within the Reclamation Project, will negatively impact flows to the wetlands and may adversely affect water quality.

4. The water rights sought to be transferred in this application are subject to the pre-existing contractual rights and obligations as manifested in water right contracts entered into initially with the United States Bureau of Reclamation or TCID, and which are administered by TCID. The provisions of these contracts provide that the water available to the applicants’ property is an allocable share of available water in any given irrigation year to all of the Project water users. Accordingly, in a water shortage irrigation season, the burden of the loss of the water proposed for transfer will have to be assumed by other users within the Project on a pro rata basis.

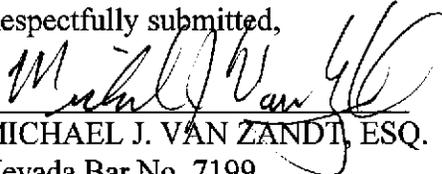
5 The referenced contracts provide for the payment of operation and maintenance

charges, which become a lien upon the water as well as the real property benefitted by the water and provides for the withholding of the delivery of water if the payments are not made. The contract also provides TCID with the right to impose a lien against the property benefitted by the water. In the event that this transfer is approved, the lien rights of TCID will be effectively unenforceable, particularly in view of the fact that the water is being transferred to instream flows for "wildlife," thus depriving the District of the ability to enforce payment of the "O&M" charges, potentially to the detriment of all other users within the Project who will have to assume and pay an increase in those charges . Further, since the proposed transfer is to instream flows, TCID will not have the ability to withhold deliveries of the water in the event of non-payment of the O&M charges. The proposed transfer of the water rights will be detrimental to the interests of the public at large, in violation of N.R.S. 533.370.

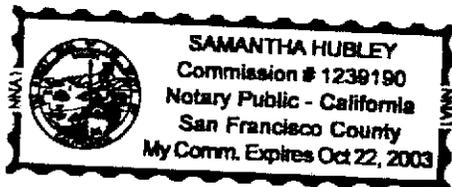
THEREFORE, TCID respectfully requests that the State Engineer hold a hearing on application 68542 and that application 68542 be denied and an order be entered by the State Engineer denying said application.

Dated this 31st day of May, 2002.

Respectfully submitted,


MICHAEL J. VAN ZANDT, ESQ.
Nevada Bar No. 7199
Attorney for the Truckee-Carson
Irrigation District

Subscribed and sworn before me this 31 day of May, 2002.




Samantha Hubley
Notary Public

State of California
County of San Francisco

STATE ENGINEER OFFICE
02 JUN -3 PM 1:48

RECEIVED

1 **PROOF OF SERVICE**

2 *Re: In the Matter of Change Application No. 68542*

3 I am employed in the City and County of San Francisco, California, I am over the age
4 of eighteen years and not a party to the within action; my business address is 221 Main Street,
5 16th Floor, San Francisco, California, 94105. On May 31, 2002, I served the following
6 document(s):

- 7 • **PROTEST AND REQUEST TO DENY APPLICATION 68542; PETITION FOR
8 HEARING PURSUANT TO NRS 533.345**

9 on the parties listed on the attached list through their attorneys of record, by placing a true
10 copy thereof in a sealed envelopes as listed on the attached Service List for service as
11 described below:

12 [A] By First Class Mail - I caused each such envelope, with first-class postage thereon fully
13 prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San
14 Francisco, California, for collection and mailing to the office of the addressee on the
15 date shown herein following ordinary business practices.

16 [B] By Personal Service -- I caused each such envelope to be personally delivered to the
17 addressee by a member of the staff of this law firm on the date last written below.

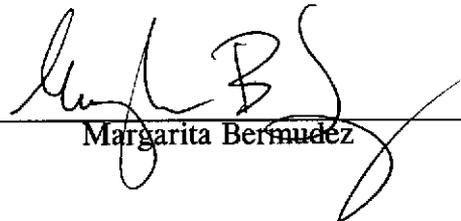
18 [C] By Personal Service - I caused each such envelope to be delivered to a courier
19 employed by Silver Bullet Messenger Service who personally delivered each such
20 envelope to the office of the addressee on the date last written below.

21 [D] By Federal Express -- I caused each such envelope to be delivered to Federal Express
22 Corporation at San Francisco, California, with whom we have a direct billing account
23 to be delivered to the office of the addressee on the next business day.

24 [E] By Facsimile -- I caused such document to be served *via facsimile* electronic equipment
25 transmission (fax) on the parties in this action by transmitting a true copy to the above
26 listed fax numbers.

27 I declare under penalty of perjury that the foregoing is true and correct. Executed on
28 May 31, 2002, at San Francisco, California.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000



Margarita Bermudez

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[A] Jackson Trust
Archie and Hazel Jackson, Trustees
995 Mason Road
Hazen, NV 89408-8803