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

FILED
JUL 0 5 2007
STATE ENGINEER'S OFFICE

IN THE MATTER APPLICATION 75621 FILED BY **EAGLE RESERVE** TO APPROPRIATE GROUNDWATER IN THE CHURCHILL VALLEY HYDROGRAPHIC BASIN #102	**PROTEST AND REQUEST TO DENY APPLICATION 75621; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; AND ENVIRONMENTAL STUDY PURSUANT TO N.R.S. 533.368**

ORIGINAL

COMES NOW THE TRUCKEE-CARSON IRRIGATION DISTRICT ("TCID"), by and through its attorneys, organized under Chapter 539 of the Nevada Revised Statutes, whose address is Box 1356, 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), and as a party to the water rights decree of the Carson River, known as the Alpine Decree (*U.S. v. Alpine Land and Reservoir Co.*, Equity D-183-LDG, U.S. District Court, Nevada, October 29, 1980) hereby protests the granting of application 75621 (the "Application") filed by Eagle Reserve ("Applicant"), to appropriate groundwater in Churchill Valley Hydrographic Basin #102 ("Churchill Valley Basin"). TCID protests the application for the following reasons and on the grounds, to wit:

1. The Applicant seeks a new underground appropriation in the Churchill Valley Basin in the amount of 1.50 AFA for commercial purposes to serve a proposed manufacturing, assembly and sales of UBC modular homes. The facility will consist of assembly work areas,

inventory storage, lunch rooms and office space. There are numerous applications, permits and proofs which have been filed on the Churchill Valley Basin which fully appropriate all flows from these sources; therefore, there is no unappropriated groundwater available to appropriate. The State Engineer's hydrographic summary shows approximately 10,818 afa of issued underground permits in Churchill Valley Basin, while the perennial yield of Churchill Valley Basin is estimated by the U.S. Geological Survey at only 1,600 afa. An additional 2,397 afa of underground applications seeking to appropriate groundwater in the Churchill Valley Basin are pending. Finally, the State Engineer's pumpage inventory for 2004 shows 2,359 afa of use, which is 1.5 times the annual recharge estimate.

2. Groundwater aquifers in the Churchill Valley Basin are also intimately connected to surface water sources in the area, most importantly, Lahontan Reservoir and the Carson River. For example, the U.S. Geological Survey water level measurements in the Silver Springs area have fluctuated with the water levels of Lahontan Reservoir in wells several miles from the reservoir. On information and belief, the location of the point of diversion the Application proposes will have the effect of either intercepting more groundwater providing base flow to the reservoir and the river and/or inducing recharge from the reservoir and the river. Further groundwater development will intercept groundwater flowing towards the Carson River and/or Lahontan Reservoir or directly remove water from the Carson River and/or Lahontan Reservoir.

3. All water flowing into Lahontan Reservoir just below the point of diversion was has been adjudicated to the Newlands Project under the Orr Ditch Decree and the Alpine Decree. The Nevada State Engineer has recognized the general premise that surface waters and groundwaters are hydrologically connected, and denied underground applications on the grounds that they will diminish senior decreed surface water flows. *See e.g.* Nevada State Engineer

Ruling #2197, March 1, 1977. The Nevada Supreme Court has also recognized the connection between groundwater and surface water. *See Griffin v. Westergard*, 96 Nev. 627, 629-30 (1980) (holding that "[t]he effect of granting any additional permits in the basin would either deplete the underground reservoir or the water would be replaced by infiltrating surface water from the . . . [r]iver").

4. Under the Orr Ditch Decree and the Alpine Decree, the water right owners in the Newlands Project have decreed water rights to store water in Lahontan Reservoir and decreed water rights to use Carson River water for irrigation, power generation and domestic uses in the Newlands Project. *See U.S. v. Orr Water Ditch Co.*, Equity A-3-LDG, U.S. District Court, Nevada, September 8, 1944; *U.S. v. Alpine Land and Reservoir Co.*, Equity D-183-LDG, U.S. District Court, Nevada, October 29, 1980. Segment 8 of the Alpine Decree provides for storage of the entire flow of the Carson River up to the capacity of Lahontan Reservoir. Claim 3 of the Orr Ditch Decree also adjudicated storage rights in Lahontan Reservoir for the benefit of the Newlands Project water right owners.

5. The Application will conflict and interfere with the existing water rights of water right owners in the Newlands Project. Because the water stored in Lahontan Reservoir and Carson River water are hydrographically linked to the groundwater the Application proposes to appropriate, the Application will draw from and negatively impact water levels in Lahontan Reservoir and the Carson River, water that the Newlands Project is entitled to store in Lahontan Reservoir under the Orr Ditch Decree and the Alpine Decree.

6. By reducing the amount of water in the Carson River and Lahontan Reservoir that the Orr Ditch Decree and Alpine Decree entitle the Newlands Project to store in Lahontan Reservoir, the Application also will result in increased costs of delivery of water to senior water

right holders in the Newlands Project. Because the Application will adversely affect the cost of water for holders of water rights in the Newlands Project, lessen the efficiency of Newlands Project water right holders in their use of water and lessen the efficiency of TCID in its delivery of water, the State Engineer should deny the Application. N.R.S. § 533.370(1)(b).

7. TCID also protests the Application on the grounds that it proposes to appropriate groundwater in a basin that is depleted. The State Engineer has designated the Churchill Valley Basin as such a basin "in need of additional administration" pursuant to N.R.S. § 534.120. *See* Nevada State Engineer Order Number 689, August 23, 1977. Indeed, in keeping with this designation, the State Engineer has denied a series of applications to appropriate groundwater from the Churchill Valley Basin because of the Basin's designated status. *See* Nevada State Engineer Ruling #4604, March 10, 1998; Nevada State Engineer Ruling #5035, August 10, 2001; Nevada State Engineer Ruling #5569, March 1, 2006. The State Engineer should also deny this Application because the groundwater this Application proposes to appropriate would continue to deplete the groundwater in the Churchill Valley Basin, designated pursuant to N.R.S. § 534. 120.

8. The Applicant indicates that the estimated cost of the works is $20,000, and it will require five (5) years to put the water to beneficial use. However, the Application lacks the required detail showing that the Applicant has financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence, pursuant to N.R.S. § 533.370(1)(c). The Applicant has not demonstrated feasibility of beneficial use of the water; therefore, the Application is premature and speculative. Since the full scope of the project is unclear, TCID reserves the right to add or amend this Protest as more information becomes available.

9. If this Application is approved, the public interest will be violated in that there will be a negative impact on ground and surface water sources relied upon by farmers, ranchers, wildlife and other landowners and will negatively impact flows to wetlands, domestic wells and will adversely affect water quality.

10. Due to the fact that the State Engineer designated the Churchill Valley Basin, a hydrological study and environmental study should be conducted pursuant to N.R.S. § 533.368.

11. The proposed Application is detrimental to the public interest for the following reasons, to wit:

a. There is no unappropriated water available for the stated purpose;

b. The water to be appropriated would cause further depletion to the groundwater and continue to place the Churchill Valley Basin in overdraft;

c. The proposed use of the water would have a detrimental effect on wildlife and native vegetation;

d. The proposed use of the water would decrease the efficiency of the Newlands Project and TCID;

e. The proposed pumping of water will increase the costs of the delivery of water in the Newlands Project;

f. The proposed pumping of water will withdraw surface water from the Carson River and Lahontan Reservoir that has been decreed under the Orr Ditch Decree and Alpine Decree;

g. The proposed use of water will prevent the beneficial use of water for irrigation, thus interfere with prior vented and certificated water rights;

h. The proposed use of water will prevent the use of existing water rights for domestic purposes in times of drought;

i. The proposed use of water conflicts with protectable interests in existing domestic wells as set forth in N.R.S. § 533.370(5).

THEREFORE, TCID respectfully requests that the State Engineer request hydrological and environmental impact studies to be conduct pursuant to N.R.S. § 533.368, that the State Engineer hold a hearing on the Application, and that the Application be denied and an order be entered by the State Engineer denying said Application.

//

//

//

//

//

//

//

Dated this 3d day of July, 2007.

Respectfully submitted,

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

State of CALIFORNIA

County of SAN FRANCISCO

Subscribed and sworn to (or affirmed) before me on this 3rd day July, 2007 by MICHAEL J. VAN ZANDT personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public Signature

SAMANTHA HUBLEY
Commission # 1441610
Notary Public - California
San Francisco County
My Comm. Expires Oct 22, 2007

CERTIFICATE OF MAILING

I hereby certify that on July 3, 2007, I served a copy of the attached **Protest and Request to Deny Application 75621; Petition for Hearing Pursuant to N.R.S. 533.365; and Environmental Study Pursuant to N.R.S. 533.368** via United States first class mail, postage pre-paid, on the parties listed below:

Eagle Reserve
4550 Mountain Gate
Reno, NV 89509

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Dated this 3rd day of July, 2007 in San Francisco, California.

Keith Kiley