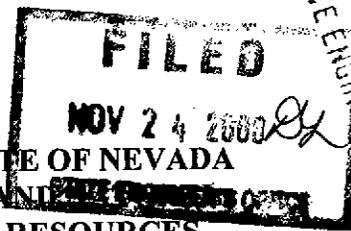


BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND
RESOURCES, DIVISION OF WATER RESOURCES



STATE ENGINEER'S OFFICE
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IN THE MATTER APPLICATION 77221 FILED BY
THE CITY OF RENO TO APPROPRIATE WATERS
OF CHALK CREEK

PROTEST AND REQUEST TO
DENY APPLICATION 77221;
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.365;

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), hereby protests the granting of application 77221 (the "Application") filed by the City of Reno ("Applicant"), to appropriate water from Chalk Creek. TCID protests the application for the following reasons and on the grounds, to wit:

1. The Applicant seeks a new appropriation in the amount of 1.0 second foot of water from Chalk Creek, which is a tributary of the Truckee River. The State Engineer shall reject an application where there is no unappropriated water in the proposed source of supply. NRS 533.370(5). According to the Application, water contributing to the flow in Chalk Creek is "storm water flowing over impervious surfaces." See Application Attachment A. On November 24, 1998 the Nevada State Engineer entered State Engineer's Ruling 4683 granting the Pyramid Lake Paiute Tribe of Indian's ("Tribe") applications 48061 and 48494 for 477,851 acre feet of

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unappropriated water in the Truckee River. This determination was upheld on appeal by the Nevada Third Judicial District Court, finding that the water sought by the Tribe was storm waters available only in certain years.¹ TCID's currently has pending a competing application 9330 to appropriate 100,000 acre-feet annually of the unappropriated water of the Truckee River for use in the Newlands Project. Application 9330, which was rejected by the State Engineer in Ruling No. 4659, has been remanded back to the State Engineer by the Third Judicial District Court (Case No. 25004) to conduct further hearings in consideration of the Truckee River Operating Agreement ("TROA"). The Truckee River and its tributaries are fully appropriated, and there are senior pending applications for additional "storm water." It would prove detrimental to the public interest and injure existing water rights to allow further appropriation of Truckee River water.

2. The Applicant claims that irrigation and over watering has contributed to making the flow in Chalk Creek continuous. *See* Application, Attachment A. Surplus water consisting of water not consumed by irrigation and water running from irrigated grounds constitutes "waste water." *Gallio v. Ryan*, 52 Nev. 330, 344 (1930). No permanent right to can be acquired to waste water by appropriation, therefore the Application must be denied. *Id.* at 344-345.

3. The Application will conflict and interfere with the existing water rights of water right owners in the Newlands Project. Return flows from water use in Truckee Meadows, both irrigation and municipal use, are relied on by down stream water users in the Newlands Project. Application 77221 will interfere and conflict with existing senior vested water rights in violation of NRS 533.370(5) and the Orr Ditch Decree.

¹ The City of Fallon has appealed this determination before the Nevada Supreme Court (Case No. 52329).

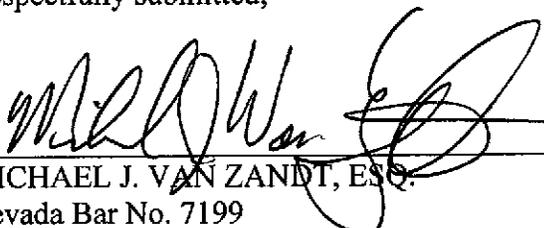
4. The waters sought under Application 77221 are already appropriated under the *Orr Ditch Decree*, and the Applicant may not make a second appropriation of the return flows.

5. The purpose of Application 77221 is unclear. It states that the "City is exploring ways in which flows from this creek can be treated to mitigate the loading to the Truckee river." Thus, it appears the purpose is for treatment of water and release back to the river without consumption. However, the Application proposes to divert water for municipal use indicating a place of beneficial use in Truckee Meadows (*see* accompanying map 71606). To the extent that the Application contemplates a municipal consumptive use of this water, it will conflict with existing rights and threaten to prove detrimental to the public interest as discussed above. If the Application is approved, it should be issued subject to the specific condition that there be no consumptive use of the water, and the diversion and use of water shall be for the sole purpose of treatment, after which the water shall be returned to the source or the Truckee River at the confluence of Chalk Creek and the Truckee River.

THEREFORE, TCID respectfully requests that the State Engineer summarily deny the Application or in the alternative request that the State Engineer hold a hearing on the Application.

Dated this 21st day of November, 2008.

Respectfully submitted,

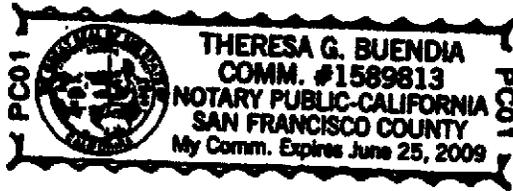

MICHAEL J. VAN ZANDT, ESQ.
Nevada Bar No. 7199
Attorney for the Truckee-Carson Irrigation District

JURAT

STATE OF *California*)
COUNTY OF) ss:
SAN FRANCISCO)

Subscribed and sworn to (or affirmed) before me on this 21st day of November, 20 08
by Michael J. Van Zandt, personally known to me or proved to me on
the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature] (Notary Seal)



CERTIFICATE OF SERVICE

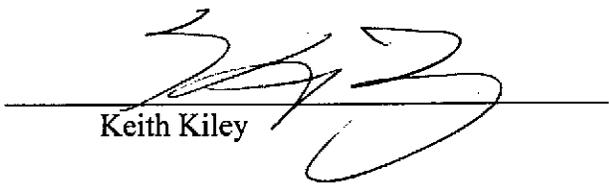
I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years, and that I am not a party to nor interested in this action. On the date stated below, I caused to be served a true and correct copy of the within **PROTEST AND REQUEST TO DENY APPLICATION 77221; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365;** by the method indicated below:

City of Reno
Elaine Terri Svetich
1 E. First Street, City Hall, 8th Floor
Reno, NV 89501

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

and addressed to the following parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2008 in San Francisco, California.



Keith Kiley