

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

**FILED**  
JUL 20 11:33  
STATE ENGINEER

IN THE MATTER OF TEMPORARY CHANGE APPLICATION NUMBER 78506T FILED BY THE BUREAU OF INDIAN AFFAIRS AND THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS	<b>PROTEST AND REQUEST TO DENY TEMPORARY CHANGE APPLICATION 78506T; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365</b>
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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 for the Truckee River, known as the Orr Ditch Decree (U.S. v. Orr Water Ditch Company, Equity A-3-LDG, U.S. District Court Nevada, September 8, 1944), hereby protests the granting of Temporary Change Application Number 78506T (the "Application") filed by the United States as trustee for the Pyramid Lake Paiute Tribe of Indians ("PLIT"), acting through the U.S. Bureau of Indian Affairs and the Pyramid Lake Paiute Tribe of Indians to change the point of diversion, manner of use and place of use of appropriated waters of the Truckee River, situated in Washoe County, State of Nevada, for the following reasons and on the grounds, to wit:

1. On information and belief, the purported water rights arise from a compromise in the Truckee River Agreement, to which TCID is a party, and which is incorporated by reference into

the Orr Ditch Decree, and such rights arise, if at all, based on an express agreement of the parties to the Truckee River Agreement and not otherwise, and granting of the application would violate the compromise reached in the Truckee River Agreement that allowed the Orr Ditch Decree to be entered.

2. Any change to the compromise reached by the parties to the Truckee River Agreement requires the consent of the parties to that agreement, which consent is withheld by TCID.

3. On information and belief, the granting of this Application would injure existing water rights adjudicated in the Orr Ditch Decree, and under the Orr Ditch Decree such a transfer cannot be approved if it will cause injury to an existing right under the decree. Such an injury will occur because initiation of this purported water right is not in accordance with any historic irrigation schedule and is being exercised specifically to interfere with TCID's ability to divert water from the Truckee River at a time when there is insufficient water in the Truckee River to satisfy all rights, thus reducing the total amount of water available to be diverted at Derby Dam to the Newlands Project.

4. On information and belief, the granting of this Application for these purported water rights would violate Public Law 101-618, The Truckee-Carson Pyramid lake Water Settlement Act of 1990 ("the ACT"), including but not limited to section 210(b)(13), because it would impair the remaining vested and decreed rights under the Orr Ditch Decree.

5. The Application is defective in that it effects a permanent transfer by way of the temporary change application process. In State Engineer Ruling 5714, which applied to the second time the identical "temporary" change application was submitted, the State Engineer stated that he will "scrutinize temporary change applications to determine whether or not the use is really temporary and if there are special circumstances warranting use of the temporary change

application process, and if not, the application will be denied. *Repeated filings of the same temporary change may indicate the use is not temporary.*” (Emphasis added.) At the time of this ruling, February 8, 2007, the State Engineer stated that “this is only the second time in a three-year period the Applicant has filed these identical temporary changes.” Now is the third time in just five years that the applicants have filed an essentially identical temporary change application. This constitutes an improper permanent change and is contrary to the public interest.

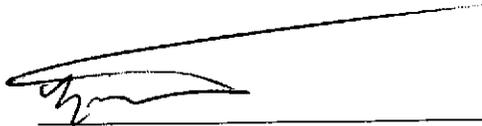
6. The transfer application seeks to transfer water at a time when the Truckee River has inadequate water to satisfy all downstream users. Had the water been diverted on a normal irrigation schedule then its impact on existing water rights would be less than the proposed use. Moreover, the State Engineer should consider allowing only the consumptive use portion of the right to be transferred to lessen the impacts.

7. On information and belief, the PLIT through the United States Fish and Wildlife Service has been storing water in Stampede Reservoir that the Newlands Project would have been entitled to divert but for the limitations placed on the Truckee Canal by the applicant. This water is identified as “Fish Water.” Upon the execution of the proposed transfer, TCID believes that PLIT will stop releasing Fish Water and rely on its temporary transfer applications, thus preventing TCID from diverting water to the Newlands Project. It is TCID’s contention that the water stored by the PLIT in the spring of 2009 in Stampede is water that rightfully should have been allocated to the Newlands Project. In lieu of this temporary transfer, the PLIT should be directed to release sufficient quantities of “Fish Water” to make up for any losses to the Newlands Project.

THEREFORE, TCID respectfully requests 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 16 th day of July 2009.

Respectfully submitted,



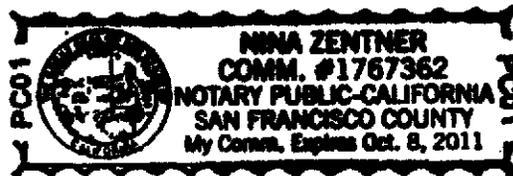
MICHAEL J. VAN ZANDT, ESQ.  
Nevada Bar No. 7199  
NATHAN A. METCALF  
Nevada Bar No. 10404  
Attorney for the Truckee-Carson  
Irrigation District

JURAT

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

Subscribed and sworn to (or affirmed) before me on this 16<sup>th</sup> day of July, 2009  
by Nathan A. Metcalf, personally known to me or proved to me on  
the basis of satisfactory evidence to be the person(s) who appeared before me.

Nina Zentner (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 TEMPORARY CHANGE APPLICATIONS**

**78505T AND 78506T; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365;**

by the method indicated below:

Allen Anspach, Western Regional Director  
Bureau of Indian Affairs  
400 N. 5th Street, 14th Floor  
Phoenix, Arizona 85001

John Jackson, Director of Water Resources  
Pyramid Lake Paiute Tribe of Indians  
P.O. Box 256  
Nixon, Nevada 89424

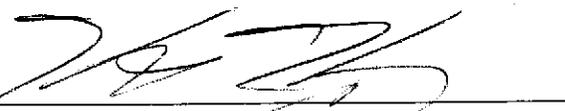
Don Springmeyer  
Wolf Rifkin Shapiro  
3556 East Russell Road, 2nd Floor  
Las Vegas, NV 89120

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 July

17, 2009 in San Francisco, California.

  
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Keith Kiley