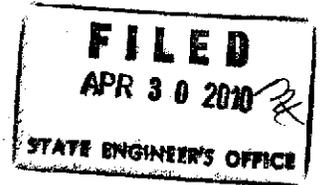


BEFORE THE STATE ENGINEER, STATE OF NEVADA  
DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES, DIVISION OF WATER RESOURCES



IN THE MATTER APPLICATION 79478 FILED BY THE CITY OF SPARKS TO APPROPRIATE WATERS OF THE NORTH TRUCKEE DRAIN	PROTEST AND REQUEST TO DENY APPLICATION 79478
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STATE ENGINEER'S OFFICE

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 79478 (the "Application") filed by the City of Sparks ("Applicant"), to appropriate water from the North Truckee Drain. 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 2.0 cfs of water from the North Truckee Drain, which is a tributary of the Truckee River. Under NRS 533.370(5) the State Engineer shall reject an application where there is no unappropriated water in the proposed source of supply. On November 24, 1998 the Nevada State Engineer entered Ruling No. 4683 granting the Pyramid Lake Paiute Tribe of Indian's ("Tribe") applications 48061 and 48494 for 477,851 acre feet of unappropriated water in the Truckee River. This determination was upheld on appeal by the Nevada Third Judicial District Court, finding that the water right may only be

exercised in years where there is high flows. *See* Decision and Order, Third Judicial District Court of the State of Nevada in and for the County of Churchill, Case No. 25219/25227 (June 13, 2008). In Ruling No. 5972 the State Engineer dealt with a similar application for drain water filed by the City of Reno on Chalk Creek. There, the State Engineer found that:

Applications 48061 and 48494 to appropriate those flows in the river from storm and flood events in excess of the senior water rights. Chalk Creek is a tributary to the Truckee River and was therefore subject to the adjudication of the Truckee River stream system and to Ruling No. 4683. The State Engineer finds that there is no unappropriated water at the source.

Ruling 5972 at p. 4 (emphasis added). Here, Application 79478 should be rejected under NRS 533.370(5) because the Truckee River and its tributaries are fully appropriated.

2. TCID currently has pending senior 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”). *See* Order, Third Judicial District Court of the State of Nevada in and for the County of Churchill, Case No. 25004 (October 15, 2008). 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 to allow further appropriation of Truckee River water.

3. Application 79478 proposes to appropriate 2.00 cfs of “[m]unicipal surface & groundwater runoff flowing into the N. Truckee Drain . . .” However, no permanent right can be acquired for a specific quantity of drain water or to continued access to drain water. *Bidleman v. Short*, 38 Nev. 467, 470 (1945); *Gallio v. Ryan*, 52 Nev. 330, 344-345 (1930); *In Re: Bassett*

*Creek*, 62 Nev. 456, 469-470 (1945); Ruling 829; Ruling 3529; Ruling 5462; *see also* Ruling 5669 at pp. 6-8. Thus, the State Engineer should deny Application 79478.

4. Application 79478 will conflict and interfere with the existing water rights in the Newlands Project vested under Claim No. 3 of the *Orr Ditch Decree*. The Application proposes to collect and treat drain water, applying it as a “secondary use” and discharging it into the Truckee River where it will be “retained in the River past all of the diversions and allowed to flow to Pyramid Lake for wildlife purposes (instream flow).” (emphasis added) Return flows in Truckee Meadows, from both irrigation and municipal use, are relied on by downstream water users in the Newlands Project. The State Engineer in a hearing on November 14, 1989 found that a 50% return flow when converting irrigation rights to municipal use in Truckee Meadows will protect downstream water right owners. Ruling No. 3739; *see also* Ruling 5972 at p. 5 (“these applications were approved for full duty, rather than for only the consumptive use portion of the irrigation, under the reasoning that there would remain return flows to the river under the municipal uses. It is these non-consumptive portions of the upstream rights returning to the river that help serve those rights downstream.”). For over 20 years the State Engineer has relied on these return flows to serve down stream water right owners. *See* Rulings 3875, 4005, 4008, 4009, 4010, 4011, 4449, 4486, 4514, 4582, 4521, 4729, 5811, 5938, and 5972. Here, Application 79478 will interfere and conflict with existing senior vested water rights in violation of NRS 533.370(5) and the *Orr Ditch Decree*.

5. Under NRS 533.365 the State Engineer has discretion to decide whether a hearing is required or if filing of evidence is necessary for a full understanding of the rights involved. The issues related to Applications 79478, as described above, are essentially identical to those raised in the matter of the City of Reno’s Application 77221 to appropriate return flows from

Chalk Creek. In Ruling 5972, without a hearing, the State Engineer denied Application 77221, finding that there was no unappropriated water in the Truckee River and that appropriation of return flows would conflict with existing rights. Here, for the same reasons, the State Engineer should deny Application 79478 without a hearing.

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 Application 79478.

Dated this 29th day of April, 2010.

Respectfully submitted,



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MICHAEL J. VAN ZANDT, ESQ.

Nevada Bar No. 7199

Attorney for the Truckee-Carson Irrigation District

JURAT

STATE OF CALIFORNIA                    )  
  )  
COUNTY OF SAN FRANCISCO            )

Subscribed and sworn to (or affirmed) before me on this 29th day of April, 2010, by Michael J. Van Zandt, who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature:           Joanne Leong                              (seal)



**CERTIFICATE OF SERVICE**

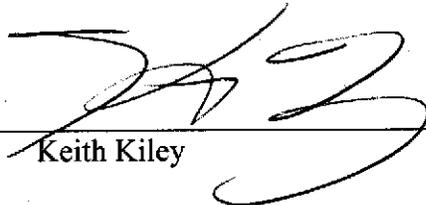
I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years, and that I am not a party to nor interested in this action. On the date stated below, I caused to be served a true and correct copy of the within **PROTEST AND REQUEST TO DENY APPLICATION 79478; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365;** by the method indicated below:

City of Sparks  
Attn: Wayne Seidel  
Public Works Director  
1675 East Prater Way, STE 107  
Sparks, NV 89434

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 April 29, 2010 in San Francisco, California.

  
\_\_\_\_\_  
Keith Kiley