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STATE ENGINEER'S OFFICE

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

IN THE MATTER APPLICATION 79698 FILED BY TRUCKEE MEADOWS WATER AUTHORITY TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF WATERS OF THE TRUCKEE RIVER	**PROTEST AND REQUEST TO REQUIRE FILING OF ADDITIONAL EVIDENCE PURSUANT TO N.R.S. 533.365 OR, IN THE ALTERNATIVE, TO DENY APPLICATION 79698**

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), hereby protests the granting of application 79698 (the "Application") filed by Truckee Meadows Water Authority ("TMWA" or "Applicant"), to change the point of diversion, manner of use and place of use of Truckee River waters. TCID protests the application for the following reasons and on the following grounds, to wit:

1. Every application for a permit to change the place of use must contain such information as is necessary to provide a full understanding of the proposed change. N.R.S. 533.345(1). TMWA's application does not present sufficient information to fully understand its intended purpose and potential impact on downstream water users. For example, in item 15 of the Application, TWMA offers the following as a detailed description of the proposed project and its water usage:

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> The water in this Application is diverted into Steamboat Creek channel which flows into the Truckee River upstream of the Reno-Sparks Wastewater Treatment Plant. The purpose of this water provides return flow water for downstream users. The 415.98 AF

> of creek water replaces 166.39 AF of Truckee River water not returning back to the river. It protects downstream users who are entitled to a water right downstream of the Vista Gauge.

Nowhere in the Application is it explained under what right, if any, the 166.39 acre feet of Truckee River water is used, nor is any reason given in regards to why said water is "not returning back to the river." Under Application No. 70309, from which this Application seeks to make a change in the place of use, the water covered by this Application was already stated to be return flow available for all users downstream from the Vista Gauge. Based upon the information provided by TMWA, it is not clear how the proposed change in place of use is intended to "protect" the availability of downstream return flows more than does the existing arrangement under Application No. 70309. TCID therefore requests that the State Engineer exercise his authority under N.R.S 533.365(3) to order TMWA to revise and clarify its description of the project with additional information so as to provide the full understanding necessary for proper evaluation of the Application.

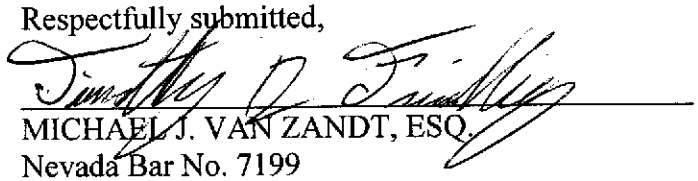
2. The Application appears to conflict with the existing rights of Newlands Project water users. On its face, the Application states that its purpose is to protect the interests water users downstream from Vista Gauge by providing return flow for their use. However, the proposed place of use is described as the portion of the Truckee River system from the Vista Gauge eastward to the river's discharge into Pyramid Lake, as depicted on the map filed with Permit No. 67182. Said map does not appear to include the Newlands Project. As noted above, the Application suffers from vagueness, but based on the description given, TMWA's objective seems to be to create specially earmarked return flows available only for select downstream users. If the intent of the Application is to bypass Derby Dam and prevent diversions into the Truckee Canal, thereby excluding Newlands Project users from the use of otherwise available Truckee River return flows, then that is an injury to existing rights warranting rejection of the Application under N.R.S. 533.370(5). On the other hand, if TMWA's intention is not to exclude diversion of these return flows at Derby Dam by Newlands Project water users, then the Application should make that fact clear. This clarity could be achieved by revising the Application to incorporate language mirroring that used in the Remarks of the underlying Application No. 70309, to wit: "Upon passing the Vista Gauge, the water will be considered return flow and available to downstream users." Accordingly, the Application should either be

denied because it conflicts with the existing rights of downstream users or revised to clearly express that no such conflicts will be created.

TCID therefore respectfully requests that the State Engineer exercise his authority under N.R.S. 533.345(1) and N.R.S 533.365(3) to order submission of additional information necessary to provide a full understanding of TMWA's proposed changes, and recognize TCID's reservation of right to amend its protest in light of any such additional information. In the alternative, TCID requests that the State Engineer exercise his authority under N.R.S. 533.370(5) to deny this Application and refuse to issue a permit because the Application's proposed changes conflict with existing water rights.

Dated this 3rd day of June, 2010.

Respectfully submitted,



MICHAEL J. VAN ZANDT, ESQ.
Nevada Bar No. 7199
TIMOTHY D. FINDLEY, ESQ.
Nevada Bar No. 11567
Attorneys for the Truckee-Carson Irrigation District

JURAT

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO)

Subscribed and sworn to (or affirmed) before me on this 3rd day of June, 2010, by Timothy D. Findley, who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature: _____ (seal)

SARA A. WRIGHT
COMM. #1734119
NOTARY PUBLIC • CALIFORNIA
SAN FRANCISCO COUNTY
Comm. Exp. MARCH 25, 2011

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 REQUIRE FILING OF ADDITIONAL EVIDENCE PURSUANT TO N.R.S. 533.365 OR, IN THE ALTERNATIVE, TO DENY APPLICATION 79698**

by the method indicated below:

Truckee Meadows Water Authority
P.O. Box 30013
Reno, NV 89520

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 June 3, 2010 in San Francisco, California.

Keith Kiley