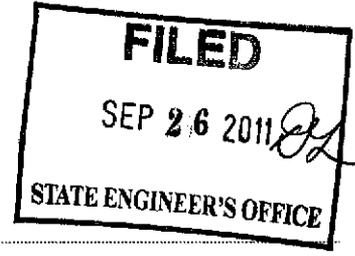


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 80941
FILED BY TRI General Improvement District
ON June 29, 20 11, TO APPROPRIATE THE
WATERS OF Truckee River



PROTEST



Comes now City of Fernley

Printed or typed name of protestant

whose post office address is 595 Silver Lace Blvd, Fernley, NV 89408

Street No. or PO Box, City, State and ZIP Code

whose occupation is political subdivision of the State of Nevada and protests the granting

of Application Number 80941, filed on June 29, 20 11

by TRI General Improvement District to appropriate the

waters of Truckee River situated in Lyon

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment A

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Fred R. Turner

Agent or protestant

Fred R. Turner

Printed or typed name, if agent

Address

595 Silver lace Blvd

Street No. or PO Box

Fernley Nv 89408

City, State and ZIP Code

775 784-9802

Phone Number

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Subscribed and sworn to before me this 26 day of September, 20 11



Kathryn Bennett
Notary Public

State of Nevada

County of Lyon

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment A

The City of Fernley ("Fernley") files this protest to Application Number 80941. The City of Fernley's joins, adopts, and incorporates into this protest, the protest grounds articulated by the United States. The City of Fernley also asserts additional protests specific to the City of Fernley. The grounds for this protest are as follows:

I. JOINED GROUNDS FOR PROTEST

1. The applicant has purchased Carson Division rights essentially for stored water in Lahontan Reservoir, yet it purports to be entitled to direct diversion of Truckee River water on an annual basis. With respect to the Carson Division of the Newlands Project, the United States' rights to Truckee River water are supplemental and are only exercised in the event storage targets in Lahontan Reservoir (representing the needs of the Carson Division as a whole) are not met by Carson River inflow as required under OCAP, and all other rules and regulations determining Truckee River diversions are met. There is no cause to grant rights to use Truckee River water on an annual basis to a water right holder in the Carson Division. The application can, and should, be summarily denied on that basis.

The applications propose to separate the diversion of water between the Truckee and Carson Rivers based on the supposed long-term historic average supplies to the Carson Division of the Project. The data and underlying assumptions for the division of the water supplies were not provided. The actual division of the sources of water to Carson Division Project water rights in any given year are generally weighted more, or entirely, from the Carson River. Only in extremely dry years in the Carson River basin would the Carson Division receive more Truckee River water than Carson River water. Creating a fixed division of these water rights based on a long-term average, in any given year, would adversely impact either the Carson River or the Truckee River downstream of the diversion points depending on the actual supply for that year.

2. The applicant has purchased Carson Division rights to water supplied from storage in Lahontan Reservoir, and has identified the source of the water in its application as the Truckee River. The applicant proposes to move the diversion point approximately 3 miles upstream from Derby Dam. As stated above, a Carson Division right cannot be satisfied with an annual right to use Truckee River water. However, even if it could, the water subject to the change application should retain its character as rights to Project water, or should be considered an application for a new direct diversion from the Truckee River. A change application cannot transform rights to water conveyed and stored by Project facilities, which are derivative of the United States' right to directly divert flow of both of the Carson and Truckee Rivers, into an independent direct diversion right. The applications can, and should, be summarily denied on that basis.

3. The change application is really an application to obtain a new direct diversion off the Truckee River, yet the Truckee River is fully appropriated in Nevada, and should be denied on that basis.

4. If this is an application to change the place of use, point of diversion, and manner of use of Project water, essentially the stored waters in Lahontan Reservoir, the application has incorrectly

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identified the source of the water as the Truckee River, and should be denied on that basis. In the alternative, the applicant should be required to abide by all commitments and obligations applicable to its predecessors in interest and cannot use a change application to expand on the rights it has purchased. An example of the original rights granted to the stored waters of Lahontan, as well as a contract with the TCID to secure operation and maintenance fees are attached hereto as Attachments 1 and 2. In addition, the applicant would only be allowed to divert Truckee River water in those years when such diversion would be authorized under OCAP, and would only be allowed to divert in such quantities as the original Carson Division water right holder (minus any water due to a change in manner of use (water duty)).

5. Assuming the application is for a change in the diversion point, place of use and manner of use of the stored waters in Lahontan Reservoir, the application will adversely affect the cost of water for other holders of water rights in the district, contrary to NRS 533.370 1(b), and should be denied on that basis.

6. Assuming the application is for a change to the use of the stored waters in Lahontan Reservoir, the application will impair the rights of other Newlands Project water right holders and should be denied on that basis.

A. The applications propose to move the point of diversion for these water rights to a location upstream of the existing point of diversion for the remainder of the Newlands Project water rights. During a year when all needs cannot be met on the river systems, this would allow the applicants to divert Truckee River water before it reaches Derby Dam, essentially providing for a higher priority right than the remaining Newlands Project water rights, causing increased impacts to the Newlands Project water rights. For this reason, the applications should be rejected. At a minimum, the applications should be required to be placed subject to the determination of shortage allocations by the United States and/or its operations and maintenance contractor for the Newlands Project (currently TCID).

B. The applications propose to change the season of use from the normal traditional irrigation season to a year-round season with no limitations. This will allow the applicants to potentially supply their water right much earlier (or later) in the year than the remaining Project water rights. In water short years, allocations to Project water rights are not normally determined until just before the beginning of the irrigation season based on predicted supply conditions from snowmelt runoff, and often change during the course of the season to reflect actual water supply conditions resulting from the snowmelt runoff. By taking water before (or after) the traditional irrigation season with no oversight, limitation, or regulation by the United States or TCID, the applicants may have the ability to take advantage of more of the supply of water in a water short year, thus avoiding sharing equally in shortage conditions with the other water rights of the Newlands Project. This will have the effect of further lessening the water supply available to other water rights of the Project, causing increased shortage to those rights. For these reasons, the applications should be rejected. At a minimum, the applications should be required to be placed subject to any and all shortage allocations or other

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allocation restrictions put in place by the United States and/or its operations and maintenance contractor for the Project (currently TCID).

7. Assuming the application is for a change to the use of the stored waters in Lahontan Reservoir, the application will increase diversions from the Truckee River, contrary to Public Law 101-618 Section 209(b), and should be denied on that basis. (See, *e.g.*, Paragraphs A. and B., above.)

8. Assuming the application is for a change to the use of the stored waters in Lahontan Reservoir, the application proposes to use Newlands Project water for M&I purposes in Storey County, Nevada, contrary to Public Law 101-618 Section 209(a)(1)(B) which authorizes M&I use only in Lyon and Churchill Counties, and should be denied on that basis.

9. The application would change water used for irrigation purposes to municipal purposes, yet the application purports to be entitled to the full duty as used for irrigation. Under the Alpine U.S. Bureau of Reclamation Protest Grounds Decree, applicants may not transfer a full agricultural water duty from irrigation to a different purpose or manner of use. The applicant is not entitled to the full duty of the water as used for irrigation purposes and should be denied on that basis.

10. The United States holds an interest in the title to the water proposed to be changed in Application Number 80941, yet the applicant has not shown any approval by the United States to change the water use as described in the application, and should be denied on that basis.

II. ADDITIONAL GROUNDS FOR PROTEST

11. Approval of Application 80941 would violate NRS 533.330. NRS 533.330 limits water rights to one source for one purpose. The proposed application is one of two applications seeking to take one source of water and divide it into two separate and distinct sources of water as described above in protest ground number 1.

12. The proposed diversion and use would conflict with existing rights. The City of Fernley owns Groundwater rights in basins off the Truckee River that are the primary source of the municipal water supply to the City of Fernley. Additionally, the City of Fernley owns surface water rights off the Truckee River which are incorporated into its water portfolio.

The proposed diversion is far upstream from the historic point of diversion of the existing appropriation of the base right, and is upstream of the rights held by the City of Fernley and other water users in the irrigation district. By granting the applications, the subject water would be removed from the current irrigation district and conveyance structures. Such a change in the point of diversion would reduce the historic groundwater recharge in the basins containing the irrigation district diversion structures, and negatively impact the groundwater supply.

Additionally, the removal of water at the proposed point of diversion would impact downstream surface water users, such as the City of Fernley, by reducing available flows in the irrigation district and diversion structures as discussed above. Approval of the subject applications would

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increase the allocated water rights on an already fully appropriated system, thus impacting all other water rights on that system as well. Being that approval of the subject application would be a detriment to existing water rights owners in the area, it should be denied.

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