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

IN THE MATTER OF
APPLICATION NUMBER: 80942
FILED BY: TRI GENERAL IMPROVEMENT DISTRICT
ON: JUNE 29, 2011 TO CHANGE THE
WATERS OF: TRUCKEE RIVER

PROTEST & REQUEST
DENY APPLICATION 80942

FILED
SEP 22 2011
STATE ENGINEER'S OFFICE

COMES NOW: CHURCHILL COUNTY

WHOSE ADDRESS IS: 155 NORTH TAYLOR STREET, SUITE 153, FALLON NV 89406

WHOSE OCCUPATION IS: A POLITICAL SUBDIVISION OF THE STATE OF NEVADA AND PROTESTS THE GRANTING OF APPLICATION NUMBER: 80942 FILED ON: JUNE 29, 2011 BY: TRI GENERAL IMPROVEMENT DISTRICT TO CHANGE THE POINT OF DIVERSION, MANNER OF USE, AND PLACE OF USE OF: CARSON RIVER SITUATED IN: STOREY COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO WIT:

SEE EXHIBIT "A" FOR SUPPORTING PROTEST GROUNDS

THEREFORE, FOR THE FOREGOING REASONS, THE PROTESTANT RESPECTFULLY REQUESTS THAT THE STATE ENGINEER DENY THE APPLICATION WITHOUT A HEARING.

SIGNED:

CHRIS C. MAHANNAH, P.E., AGENT
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804

RECEIVED
2011 SEP 22 PM 4:10
STATE ENGINEER'S OFFICE

STATE OF NEVADA
COUNTY OF WASHOE
SUBSCRIBED AND SWORN TO BEFORE ME THIS 22 DAY OF September, 2011
BY CHRIS C. MAHANNAH

GLORIA K. LANH
NOTARY PUBLIC
STATE OF NEVADA
No. 98-0233-6 My Appt. Exp. Dec. 15, 2014

STATE OF: Nevada
COUNTY OF: Carson City

**$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

# State of Nevada Division of Water Resources
# Request for Notice

In regards to Application/permits numbers: 80942

Please add the following individuals to the mailing list and send copies of all correspondence to the addresses below:

1. **Mr. Brad Goetsch, Manager**
   Churchill County
   155 N. Taylor St, Suite #153
   Fallon, NV 89406

2. **Mr. Craig Mingay, Esq.**
   Churchill County Deputy District attorney
   165 N. Ada Street
   Fallon, NV 89406

3. **Chris C. Mahannah, P.E.**
   Mahannah & Associates, LLC
   P.O. Box 2494
   Reno, NV 89505

I am the agent or representative for Churchill County.

This form accurately reflects the mailing address for the individuals identified above.

Signature: _____

Chris C. Mahannah, P.E., SWRS #976 (Agent)
Mahannah & Associates, LLC
P.O. Box 2494
Reno, NV 89505
(775) 323-1804

RECEIVED
2011 SEP 22 PM 4:10
STATE ENGINEER'S OFFICE

## EXHIBIT "A"

## TRI GID APPLICATIONS 80941 & 80942

Applications 80941 & 80942 seek to change the point of diversion, place of use and manner of use of Decreed Newlands Project Carson Division water rights associated with the Alpine & Orr Ditch Decrees, remove it from the Project to points of diversion upstream and adjacent to the Truckee and Carson rivers to a place of use outside the Newlands Project for municipal purposes. The existing place of use of these water rights is below Lahontan Reservoir in the Carson Division which is served by co-mingled Carson and Truckee waters which are stored and released from Lahontan Reservoir. Some of the arguments below may pertain to one application more than the other, however since these applications seek to split out the Truckee and Carson component of these rights for upstream use, they should be acted upon together.

1. **No Secretary of Interior approval to remove water from Newlands Project:** Water rights in question originate under a federal contract with the Secretary of Interior and cannot be removed from the Newlands Project without concurrence of the Secretary. Such concurrence or authorization has not and is not likely to be obtained especially since the United States through the Bureau of Reclamation is also protesting these applications and requesting they be denied. Pursuant to the Alpine Decree, the United States is entitled to divert and store the entire flow of the Carson River as it reaches Lahontan reservoir for distribution to the individual water right owners within the Newlands Project. Furthermore, the Orr Ditch Decree states that the use of such water upon impoundment in Lahontan Reservoir shall be under such control, disposal and regulation as the United States may make or desire. Clearly such language in both Decrees requires concurrence by the United States to remove water from the Project which has never been done before on the Carson Division.

2. **Deficient Application 80941:** Application 80941 is claiming to change the point of diversion of Claim 3 associated with the Orr Ditch Decree and under item #6 of the application shows Lahontan Dam as the existing point of diversion. Pursuant to the Orr Ditch Decree, the point of diversion for Claim 3 is Derby Dam, not Lahontan Dam, therefore the application should be rejected or returned for correction and re-noticed. Even once properly noticed, the proposed point of diversion is upstream of Derby Dam, outside of the Newlands Project and represents a new water right since it's at a different location having a different timing and amount of water available.

3. **Alpine Decree Violation:** Applications seek full duty transfer at 3.5 acre-feet/acre which violates the Alpine Decree. Alpine Decree states transfers from irrigation use to any other use shall be allowed for the net consumptive use which the Decree set at 2.99 acre-feet/acre for water rights below Lahontan Reservoir. Applications should be rejected for seeking a full duty transfer to municipal purposes.

4. **Co-mingled Rights & Storage Issues:**

   a. Applicants propose a 25/75% split between the Truckee & Carson portion respectively of these rights based upon average conditions. Diversions from the Truckee River to the Truckee and Carson Division's of the Newlands Project are governed by a complex set of rules outlined in the Secretary of Interior's Operating Criteria and Procedures (OCAP). Depending on water year conditions and storage levels in Lahontan Reservoir, diversions from the Truckee to Lahontan Reservoir vary drastically year to year. During extreme drought years, the majority of the Carson Division supply would come from the Truckee and during extreme wet years, no water could be diverted to Lahontan, therefore using an average split would not be appropriate.

   b. During drought years when a full duty entitlement is not available for Carson Division rights, the shortages are shared equally with all water users. This shortage allocation is usually estimated at the beginning of the irrigation season in April based upon current Lahontan storage levels and Truckee and Carson runoff projections. Sometimes this shortage allocation is adjusted up or down as the irrigation season progresses based upon storage levels, supply and demand projections. It would not be possible make these adjustments to the proposed upstream individual diversions on the Truckee and Carson rivers which are seeking a year-round season of diversion with an unknown and undefined demand pattern which would be an expansion of use.

   c. Under the existing rights sought to be changed below Lahontan Reservoir, the water rights were served by co-mingled Truckee and Carson waters stored in Lahontan reservoir which may have been the result of carry over storage from the prior year(s) and TCID's privately owned stored water released from Donner Lake. Diversion above Lahontan would create a new water right in a fully appropriated river system due to a completely different supply scenario.

   d. Applications seek to divert surface water using induction wells adjacent to the Truckee River near Tracy and Lahontan Reservoir near Silver Springs. This is problematic for several reasons:

      i. Induction wells do no immediately draw surface water as a surface water diversion does, nor do they immediately cease drawing surface water once the well is shut off. Depending on aquifer properties, there would be lag times and diversion from aquifer storage before the river or surface water body is captured. This will create diversion timing issues and potential additional losses

from the surface water bodies when the diversions are not in priority to divert.

ii. Application 80942 seeks diversion from an induction well near Silver Springs which is on the very western side of Lahontan Reservoir located on property owned by the State of Nevada – Lahontan State Parks. Applicants have not demonstrated whether they have permission to use this parcel to construct an induction well. Depending on the stage of Lahontan Reservoir, the distance between the induction well and surface water body could vary by several miles thus creating varying depletions from aquifer storage verses surface water capture with time. Accounting for this induction well diversion would require a very well calibrated groundwater model to guide the Federal Water Master and/or Bureau of Reclamation/TCID to regulate diversion amounts and scheduling. Aquifer storage depletions and subsequent refilling from reservoir seepage when reservoir levels rose would need to also be accounted for.

5. **Irrigation District Efficiency:** Pursuant to NRS 533.370 1(b), an application within an irrigation district can not affect the cost of delivery of water for other users or lessen the delivery efficiency of the district in delivery or use of the water. Conveyance losses within the Newlands Project delivery system are relatively constant regardless of the amount of water delivered, therefore removal of water from the Project will tend to lessen delivery efficiency. This will be a small incremental effect given the volume requested in these applications, however these applications would be precedent setting in removing water from the Newlands project and splitting out the Truckee and Carson components which has never been done before and would pave the way for others seeking relatively inexpensive water rights.

   Operation and maintenance fees would also need to continue to be paid to the Truckee Carson Irrigation District (TCID) to avoid increasing the cost to delivery of water to existing water users.

6. **Speculative & Ability to Finance:** Applications are speculative in nature and applicant has demonstrated neither need nor financial ability to construct and operate the project. The place of use for these applications is large and includes approximately 120,000 acres within Storey and Lyon Counties in three hydrographic basins. Subject to a detailed abstract being performed, Applicant currently owns approximately 6,900 acre-feet of surface and groundwater and has 9,000 acre-feet of pending groundwater appropriations for use within this same place of use. Applicant should be required to justify the need based upon development potential within proposed place of use and water rights they already own. Applicant should also be required to demonstrate their financial ability to construct and operate the project and place water to beneficial use. Clearly, these

applications are a test case and speculative to remove water from the Carson Division of the Newlands Project since the applicant can not demonstrate additional need given their current water right portfolio.

7. **Public Interest:** The Newlands Project and Churchill County benefit from having a continuous irrigation project which has many benefits to the public interest and environmental resources. These include:

    a. improved delivery efficiencies
    b. reduced O&M costs
    c. aquifer recharge which Fallon and Churchill rely upon for their municipal and domestic supplies
    d. wetlands
    e. recreation
    f. quality of life
    g. environmental
    h. wildlife
    i. air quality

    Approval of these applications would start the fragmentation process of the Newlands Project and negatively affect the foregoing public interest issues, therefore the applications are detrimental to the public interest.

For the foregoing reasons, these applications constitute new water rights on stream systems which have been Decreed and declared fully appropriated by the State Engineer and/or Decree Court. There is no unappropriated water at the source(s), they will conflict with existing rights and are not in the public interest.

NRS §533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest when there is sufficient information to evaluate the merits of the applications and protests. Clearly, the impacts associated with such precedent setting applications are overwhelming and there is sufficient information provided in this protest and those of others, therefore it is respectfully requested that the State Engineer deny these applications without burdening their office, Protestants and applicants with a costly hearing.