

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

IN THE MATTER OF APPLICATION NUMBER 80942
FILED BY TRI General Improvement District
ON June 29, 20 11, TO APPROPRIATE THE
WATERS OF Carson River



PROTEST

FILED
OCT 24 2011
STATE ENGINEER'S OFFICE

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 80942, filed on June 29, 20 11

by TRI General Improvement District to appropriate the

waters of Carson 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

RECEIVED
2011 OCT 24 PM 2:33
STATE ENGINEER'S OFFICE

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 Turner, AICP
Agent or protestant

FRED 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

775 784-9910
Phone Number

Subscribed and sworn to before me this

24

day of

October 20 2011



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 80942. Fernley incorporates and asserts, in part, protest grounds articulated in Fernley's protest to Application 80941. The City of Fernley also asserts additional grounds specific to the City of Fernley. The grounds for this protest are as follows:

I. GROUNDS COMMON TO BOTH PROTESTS

1. 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. 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.
3. 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.)
4. 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.
5. 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.
6. 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 PROTEST GROUNDS

7. Approval of Application 80942 will 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

RECEIVED
OCT 24 2:32
STRENGTHENED OFFICE

one source of water and divide it into two separate and distinct sources of water. The current source of water for the base water rights is the commingled waters of the Lahontan Reservoir to service lands in the Carson division of the Truckee Carson Irrigation District (TCID). The base right does not allow for direct diversion from the Truckee or Carson Rivers, and such a diversion would constitute a separate and distinct source of water than that currently allocated in the base right.

8. Further, the application seeks to divert surface water by way of an induction well. The applicant has not provided enough information to indicate how efficiently the proposed point of diversion would capture surface water versus aquifer storage water. As the levels of Lahontan Reservoir vary from year to year and season to season, at times the distance of the well to the surface water might be as far as several miles. At times, the induction well may be relying more on groundwater than the surface water represented in the base right.

9. Application 80942 should be denied under NRS 533.370(5).

A. There is no unappropriated water in the proposed source. The proposed change application seeks to change the very nature of the existing water right, resulting in a new appropriation rather than a valid change of an existing right. There is no unappropriated water in the proposed source; the waters of the Truckee and Carson Rivers are fully appropriated.

B. The proposed diversion and use will conflict with existing rights. Fernley owns groundwater rights in basins off the Truckee River and Truckee Canal that are the primary source of the municipal water supply to Fernley. Additionally, the City owns surface water rights off the Truckee River which are incorporated into its water portfolio. 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, which will negatively impact the groundwater supply. Additionally, the removal of water at the proposed point of diversion would impact downstream surface water users by reducing available flows in the irrigation district, storage reservoirs, and diversion structures. Approval of the subject applications would increase the allocated water rights on an already fully appropriated system, thus impacting all other water rights on that system.

10. Granting of such applications would be detrimental to the public interest. By granting the applications, the subject water would be removed from the current irrigation district and historic storage, in essence giving a higher priority to the water right than it is currently allowed. It would provide a preferred use to the applicant, allowing them higher priority and longer season, and removing them from sharing in shortages and costs associated with the irrigation district that controls this water right. Such preferential treatment would not be in the public interest as it would violate NRS 533.037.

RECEIVED
OCT 24 PM 2:32
STATE ENGINEER'S OFFICE

Also, by changing the stored comingled waters into direct diversions off the individual rivers, the nature of the rights will be fundamentally changed from their historic storage use. The proposed manner of use is of higher consumptive use. The proposed points of diversion and manner of use would make less water available in the Lahontan Reservoir as would be available if the base right was unmolested. Allowing such a change would negatively impact wildlife and plants that are reliant on the subject stored waters, in addition to human users. Thus, allowing such a change is not environmentally sound.

Lastly, while the application is not for a large amount of water, it would set a precedent for similar water rights to be fragmented from the district and be removed from the carefully constrained contracts and operating agreements. Such fragmentation will ultimately result in a serious overdraft of the system and devastating harm to all users in the area.

III. CONCLUSION.

The nature of the change requested in Application 80942 would constitute a new appropriation of water on an already fully appropriated system. For various reason stated above, such a change would be detrimental to existing rights, the environment, and public interest. As other requests for new appropriation on the Carson River have been previously denied and in accordance with the grounds set forth in this protest and by others, this application should be denied. For the foregoing reasons, the City of Fernley respectfully requests that the application, and its sister application 80941, be denied in full.

RECEIVED

2011 OCT 24 PM 2:32

STATE ENGINEERS DEPT.