

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

FILED
NOV 18 2011
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 80943
FILED BY TRI General Improvement District
ON June 29, 20 11

PROTEST

Comes now Carson Water Subconservancy District
Printed or typed name of protestant
whose post office address is 777 E. William St., Suite 110A, Carson City, NV 89701
Street No. or PO Box, City, State and ZIP Code
whose occupation is subconservancy district and protests the granting
of Application Number 80943, filed on June 29, 20 11
by TRI General Improvement District for the
waters of Truckee River situated in Storey
an underground source 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 Attached Exhibit 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 Edwin James
Agent or protestant
Edwin James, General Manager
Printed or typed name, if agent
Address 777 E. William St., Suite 110A
Street No. or PO Box
Carson City, NV 89701
City, State and ZIP Code
775-887-7456
Phone Number
edjames@cwsd.org
E-mail

Subscribed and sworn to before me this 4 day of November, 20 11

TONI M. LEFFLER
NOTARY PUBLIC
STATE OF NEVADA
No. 99-58147-3 My Appt. Exp. Sept. 13, 2015

Toni M. Leffler
Notary Public
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.

EXHIBIT "A"

TRI GID APPLICATION 80943

Application 80943 seeks 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 and Orr Ditch Decrees, and remove it from the Newlands Project to a point of diversion upstream and adjacent to the Truckee River. The existing place of use of the 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. The applicant, TRI GID, proposes to divert water out of the Truckee River through an induction well.

The Carson Water Subconservancy District (CWSD) is a bi-state, multi-county organization with responsibility for regional planning of water resources for the Carson River Watershed. Our member counties include Alpine County, California, and Douglas, Carson City, Lyon, Storey, and Churchill Counties in Nevada. Our mission is to work within existing governmental frameworks to promote cooperative action for the watershed that crosses both agency and political boundaries. The CWSD strives to involve all counties and communities within the watershed in the efforts to preserve the water resources within the Carson River Watershed. Impacts to water resources within individual member Counties affect all members by virtue of the connection through the Carson River. Churchill County's existing and future agricultural and municipal water supplies are dependent upon flows in the Carson and Truckee Rivers and storage in Lahontan Reservoir. Additional, in 1999 the Nevada Legislators passed AB 380 which the United States, State of Nevada, and Sierra Pacific Power Company (now the Truckee Meadows Water Authority) pledged up to \$16 million to purchase and retire water rights in the Newlands Project. The goal of the AB 380 was to increase water flows into Pyramid Lake. This application, if not administered appropriately, could negate the efforts of AB 380 and threaten to negatively impact the water resources of Churchill and all member Counties of CWSD.

The Carson Water Subconservancy District is an owner of several water rights in the Carson River Watershed. Below is a list of concerns pertaining to Application 80943.

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. 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. Such language in both Decrees clearly 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 80943:** Application 80943 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.
3. **Alpine Decree Violation:** The Application seeks full duty transfer at 4.5 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. To protect other water users in the Newlands Project and not violate the Alpine Decree, the applicants can only ask that 2.99 acre-feet/acre be transferred with the remaining 1.51 acre-foot/acre staying with the Newlands Project.
4. **Co-mingled Rights & Storage Issues:**
 - a. Applicants propose a 25/75% split of these rights between the Truckee & Carson portion, respectively, based upon average conditions. Diversions from the Truckee River to the Truckee and Carson Divisions 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; 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 to 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.
 - c. During wet years the entire water needs below Lahontan Reservoir are met from the Carson River. During these years no water is diverted from the Truckee River. Allowing the applicants to divert water on the Truckee River during wet years will be an expansion of use and could reduce flows into Pyramid Lake.

5. **Irrigation District Efficiency:** Pursuant to NRS 533.370 1(b), an application within an irrigation district cannot 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 this application. 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. **Expansion of Use:** The application is proposing to take an irrigation water right which can only be used during the irrigation season and to use the water year round.
7. **Public Interest:** The Newlands Project and Churchill County receive many benefits to the public interest and environmental resources from having a continuous irrigation project. 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. enhanced wetlands;
 - e. increased recreational opportunities;
 - f. enhanced quality of life;
 - g. improved environment;
 - h. wildlife habitat; and
 - i. improved air quality.

Approval of this application would start the fragmentation process of the Newlands Project and negatively affect the foregoing public interest issues; therefore the application is detrimental to 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 application and protest. Clearly, the impacts associated with such a precedent setting application are overwhelming and there is sufficient information provided in this application, protest, and State Engineers records; therefore, it is respectfully requested that the State Engineer summarily deny this application.