FILED
DEC 07 2011
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF
APPLICATION NUMBER: 80943
FILED BY: TRI GENERAL IMPROVEMENT DISTRICT
ON: JUNE 29, 2011 TO CHANGE THE
WATERS OF: TRUCKEE RIVER

PROTEST & REQUEST TO
DENY APPLICATION 80943

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: 80943 FILED ON: JUNE 29, 2011 BY: TRI GENERAL IMPROVEMENT DISTRICT TO CHANGE THE POINT OF DIVERSION, MANNER OF USE, AND PLACE OF USE OF: TRUCKEE 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

2011 DEC -7 AM 11:18

STATE OF NEVADA
COUNTY OF WASHOE
SUBSCRIBED AND SWORN TO BEFORE ME THIS 6TH DAY OF DECEMBER, 2011
BY CHRIS C. MAHANNAH

GAGE LOCKE
Notary Public - Nevada
Washoe County
Comm. No # 10-1853-2
My Comm. Expires April 1, 2014

STATE OF: NEVADA
COUNTY OF: WASHOE

$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: 80943

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
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EXHIBIT "A"

TRI GID APPLICATIONS 80943 & 80944

Applications 80943 & 80944 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.

Churchill County is a member of the Carson Water Subconservancy District (CWSD) which is a bi-state, multi-county organization with responsibility for regional planning of water resources for the Carson River Watershed. Member Counties include: Alpine County, California, Douglas, Carson City, Lyon, Storey and Churchill Counties in Nevada. CWSD's mission is to work within existing governmental frameworks to promote cooperative action for the watershed that crosses both agency and political boundaries. The agency 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, municipal and recreational supplies are dependent upon flows in the Carson and Truckee River reaching and being stored in Lahontan Reservoir. These applications threaten to negatively impact water resources of Churchill and all member Counties of CWSD.

Churchill County requests the applications are denied based upon the following grounds:

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 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. 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 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. Applications should be rejected for seeking a full duty transfer to municipal purposes.

   Application 80944 also seeks to potentially change the point of diversion and place of use from Segment 8 to Segment 7 or no Segment of the Carson River as defined in the Alpine Decree. The U.S. Federal Watermaster and State Engineer has interpreted the Alpine Decree and found that a change between autonomous segments of the Carson River will result in a loss of priority. Application 80943 seeks to remove the Truckee component from the comingled Truckee and Carson sources stored in Lahontan Reservoir to an upstream location adjacent to the Truckee River which should also result in a loss of priority. This loss of priority to a 2011 date on the Truckee & Carson Rivers which have been declared fully appropriated will render these rights unusable.

4. **OCAP Violations:** The applications as filed will violate the Operating Criteria and Procedures (OCAP) which are a complex set of rules imposed on Newlands Project water rights by the Secretary of Interior. It would be difficult or impossible to impose similar OCAP rules on the proposed applications. The use and availability of the water rights sought to be changed have been limited by OCAP provisions, therefore not imposing or attempting to impose OCAP rules on the new applications would constitute a new water right as a result of a different supply scenario.

5. **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 OCAP. Depending on water year conditions and storage levels in Lahontan Reservoir, diversions from the Truckee to Lahontan Reservoir vary drastically year to year and month to

month. 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. If an adjustable split were adopted based on real time or forecasted hydrologic conditions and OCAP limitations, it would result in a very unreliable and variable supply not suitable for issuing will-serve commitments for M&I development. It would also tend to pit Storey & Lyon Counties against each other, having a constantly variable split between the Truckee and Carson components.

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 not 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 80944 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 United States which is

under a management agreement with the State of Nevada. Applicants have not obtained approval for access to this land from either entity and approval us unlikely from the United States since these applications are also being protested by the United States Bureau of Reclamation. Application should be denied on this basis alone.

iii. 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. Furthermore, application 80944 will be diverting varying percentages from two sources, groundwater and surface water depending on aquifer parameters, pumping scenarios and the stage of Lahontan reservoir. An application can only be from one source. Furthermore, the groundwater rights committed in the Churchill Valley Hydrographic Basin 102 are severely over-appropriated and application 80944 would result in a new appropriation of groundwater.

6. **Rights Not Suitable for Municipal Supply:** The applications are not suitable for will-serve purposes to support municipal and industrial development which will require a firm and reliable supply. Without the benefit of comingled storage in Lahontan Reservoir, potential loss of priority, extreme monthly or annual variability in supply available in Storey verses Lyon Counties, these applications are not suitable for a municipal supply. During very dry years, TRI's diversion in Lyon County from the Carson side would be reduced significantly and conversely in very wet years, their diversion in Storey County from the Truckee side could be eliminated altogether assuming OCAP limitations were imposed.

7. **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.

8. **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 and customer base.

   Applicants are continuing to acquire Carson Division water rights which may never be able to put to their requested beneficial use. Recorded deeds thus far total 958.625 afa at a cost of $1.64 million dollars which include waters sought to be transferred under pending applications 80941-80944 and other rights not yet sought for transfer. Some of these transactions have been at more than double the current market rate for Carson Division water rights. Pending applications should be denied as soon as possible to avoid further upset to the water rights market in the Carson Division.

9. **Public Interest:** The Newlands Project, Lyon 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 Fernley, Lyon & Churchill Counties and City of Fallon rely upon for their municipal and domestic supplies
   d. conservation easements
   e. in-stream flows
   f. wetlands
   g. recreation
   h. quality of life
   i. environmental
   j. wildlife
   k. air quality

The Truckee Division and the City of Fernley are entirely dependent upon surface flows being maintained in the Truckee Canal for direct diversion, treatment and use for municipal purposes and resulting groundwater recharge from conveyances losses.

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.