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

IN THE MATTER OF APPLICATION NUMBER 80943
FILED BY TRI GENERAL IMPROVEMENT DISTRICT
ON JUNE 29, 20 11

PROTEST

FILED
DEC 09 2011
STATE ENGINEER'S OFFICE

Comes now CITY OF FALLON
Printed or typed name of protestant

whose post office address is 55 WEST WILLIAMS AVENUE, FALLON, NEVADA 89406
Street No. or PO Box, City, State and ZIP Code

whose occupation is A POLITICAL SUBDIVISION OF THE STATE OF NEVADA 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 EXHIBIT "A" FOR SUPPORTING PROTEST GROUNDS

THEREFORE the Protestant requests that the application be DENIED WITHOUT HEARING
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 Ken Tedford, Jr.
Agent or protestant

KEN TEDFORD, JR.
Printed or typed name, if agent

Address 55 WEST WILLIAMS AVENUE
Street No. or PO Box

FALLON, NEVADA 89406
City, State and ZIP Code

(775)423-1951
Phone Number

spdadmin@aiinc.com
E-mail

2011 DEC -9 PM 3:34
STATE ENGINEER

Subscribed and sworn to before me this 9th day of DECEMBER, 20 11

VALERIE SWIRCZEK
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 03-80262-4 - Expires February 25, 2015

Valerie Swirczek
Notary Public

State of NEVADA
County of CHURCHILL

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

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 ("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.

The City of Fallon requests Applications 80943 and 80944 ("Applications") be 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 the 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:** The Applications seek full duty transfer at 4.5 acre-feet/acre which violates the Alpine Decree. The 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. The 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 have interpreted the Alpine Decree to find 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 Applications would constitute a new water right as a result of a different supply scenario.

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

    a. The 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 Divisions of the Newlands Project are governed by the 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 Truckee 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.

    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 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 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 is unlikely from the United States since these applications are also being protested by the United States Bureau of Reclamation. Application 80944 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 arguably may be "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 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 lessen delivery efficiency. Although this could be considered 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 similar applications.

   TCID Operation and Maintenance fees also need collected to legally ensure payment to the TCID to avoid increasing the cost to delivery of water to existing water users.

8. **Speculative and Ability to Finance:** The Applications are speculative in nature and the 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, the 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 speculative and constitute a test case on the legality of removing water from the Carson Division of the Newlands Project.

9. **Public Interest:** The Newlands Project, Churchill and Lyon County and their affected communities, including the City of Fallon benefit from having a stable and reliable irrigation project which constitute the public interest, with benefits including:

    a. improved delivery efficiencies
    b. reduced O&M costs
    c. aquifer recharge which the City of Fallon, Churchill & Lyon Counties and City of Fernley 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 is entirely dependent upon surface flows being maintained in the Truckee Canal for direct diversion, domestic and municipal use purposes and 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, the Applications constitute new water rights on stream systems which are Decreed and 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 applications and protests.

For the reasons set forth above, the City of Fallon averts that there is sufficient information provided in this protest and those of others, for the State Engineer to deny the Applications without hearing.