Truckee-Carson Irrigation District
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STATE ENGINEER'S OFFICE

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

IN THE MATTER APPLICATION 81526 FILED BY TRI GED TO APPROPRIATE WATERS OF; UNDERGROUND	**PROTEST AND REQUEST TO DENY APPLICATION 81526**

COMES NOW, TRUCKEE-CARSON IRRIGATION DISTRICT ("TCID"), by and through Rusty D. Jardine, Esq., Project Manager, organized under Chapter 539 of the Nevada Revised Statutes, whose address is Box 1356, Fallon, Nevada, 89407-1356, with responsibilities under contract, to operate and maintain the Newlands Federal Reclamation Project and to deliver water to landowners who have contracted either with the United States or with TCID, and to comply with water rights decrees for water rights appropriated by the United States under the Reclamation Act (43 U.S.C. 371, et seq.) and as a party to the water right decree of the Truckee River, known as the *Orr Ditch* Decree (*U.S. v. Orr Water Ditch Co.*, Equity A-3-LDG, U.S. District Court, Nevada, September 8, 1944), and does, hereby, protest the granting of application 81526 (the "Application"), filed by TRI GED ("Applicant"), to appropriate UNDERGROUND waters situated in, Storey County, State of Nevada. For the reasons which follow, TCID here protests this Application No. 81526, and does, hereby, request that the application be denied, to wit:

1. Applicant is filing new underground appropriations to "sack up" prior applications which were denied under either ruling 5747 or 5749. Significant evidence and testimony was presented by applicants and multiple protestants at a hearing before ruling 5747 approved some applications up to what the State Engineer believed was the perennial yield and denied the remainder. Ruling 5749 again denied applicants second refiling for new underground appropriations without a hearing, relying on the testimony and findings in ruling 5747. Based upon findings in rulings 5747 and 5749, there is no unappropriated water at the source.

2. Protestants Churchill County and Pyramid Lake Paiute Tribe have also challenged prior underground applications in the Tracy segment and Carson River Basins on the grounds that they will reduce surface flows in the Truckee River by either capturing groundwater flow discharging to the river making up base flow and/or capture water directly from the river. In river dominated basins such as the Tracy segment where there is a surface water-ground water connection and pumping groundwater will ultimately reduce surface flows from which the protestant holds senior decreed surface rights under Claim 3 of the Orr Ditch Decree. The State Engineer rejected this argument in ruling 5747; however, that ruling is still under appeal and has not been finalized. Similar appeals are also pending on the Carson River. Applications should be denied on the grounds that they will reduce surface flows of the Truckee River or at a minimum withhold action on this protest ground until all appeals on the Truckee and Carson Rivers are final.

3. 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 >10,000 acre-feet of pending groundwater appropriations for use within this same place of use.

Additionally, applicant has pending protested applications seeking to remove approximately 1,000 afa of Claim 3 surface waters from the Newlands Project to the proposed place of use which are clearly speculative. 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.

In summary, these applications seek to appropriate water where there is no unappropriated water, would conflict with existing senior priority decreed surface rights and would prove 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 applications and protests. Given this is the third attempt by the applicant to appropriate underground waters in the Tracy segment which the State Engineer has denied on two prior occasions under rulings 5747 and 5749, there is sufficient information to deny the applications. Therefore, for the foregoing reasons, the Protestant TCID, here, respectfully requests that the State Engineer issue a ruling subject to the foregoing conditions or deny the application.

Dated this 30th day of March, 2012. Respectfully submitted,

TRUCKEE-CARSON IRRIGATION DISTRICT

By: _____
Rusty D. Jardine, Esq.
District Manager

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Subscribed and sworn before me this 30th day of March, 2012.

PAULA K. UTTER
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 11-6303-4 - Expires November 2, 2015

Paula K. Utter
Notary Public

State of Nevada

County of Churchill

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STATE OF NEVADA DIVISION OF WATER RESOURCES
REQUEST FOR NOTICE

IN REGARDS TO APPLICATION/PERMIT NUMBER: **81526**

PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND SEND COPIES OF ALL CORRESPONDENCE TO THE ADDRESSES BELOW:

1. **MR. RUSTY D. JARDINE**
   DISTRICT MANAGER & GENERAL COUNSEL
   TRUCKEE-CARSON IRRIGATION DISTRICT
   P.O. BOX 1356
   FALLON, NV 89407

2. **BOARD OF DIRECTORS**
   TRUCKEE-CARSON IRRIGATION DISTRICT
   P.O. BOX 1356
   FALLON, NV 89407

3. **CHRIS C. MAHANNAH, P.E.**
   MAHANNAH & ASSOCIATES, LLC
   P.O. BOX 2494
   RENO, NV. 89505

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I AM THE AGENT OR REPRESENTATIVE FOR TRUCKEE-CARSON IRRIGATION DISTRICT.

THIS FORM ACCURATELY REFLECTS THE MAILING ADDRESS FOR THE INDIVIDUALS IDENTIFIED ABOVE.

SIGNATURE:

RUSTY D. JARDINE, ESQ.
DISTRICT MANAGER
TRUCKEE-CARSON IRRIGATION DISTRICT
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(775) 423-2141