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

IN THE MATTER OF APPLICATION 53659 FILED TO CHANGE THE PLACE OF USE OF THE WATERS OF THE TRUCKEE RIVER AND CARSON RIVER, PREVIOUSLY APPROPRIATED UNDER TRUCKEE-CARSON IRRIGATION DISTRICT CLAIM NUMBER 3, WITHIN THE CARSON DESERT GROUNDWATER BASIN (101), CHURCHILL COUNTY, NEVADA.	)	**RULING** **#4800**

GENERAL

I.

Application 53659 was filed on June 30, 1989, by Kenneth Kent to change the place of use of 103.25 acre-feet of water, a portion of the water previously appropriated from the Truckee and Carson Rivers under Truckee-Carson Irrigation District, United States of America v. Orr Water Ditch Company in Equity No. A-3 Claim No. 3, United States of America v. Alpine Land and Reservoir Company D.C. No. D-183 BRT. The proposed manner and place of use is for decreed purposes within 6.25 acres in the NW¼ NE¼, 0.50 acres in the NE¼ NE¼, 1.25 acres in the SW¼ NE¼, 4.40 acres in the SE¼ NW¼, 3.40 acres in the NE¼ SW¼, 0.90 acres in the SE¼ SW¼, 3.40 acres in the SW¼ SW¼, all in Section 25, T.19N., R.26E., M.D.B.&M., 6.60 acres in the NE¼ NE¼, 2.80 acres in the SW¼ NE¼, both within Section 35, T.19N., R.26E., M.D.B.&M. The point of diversion is described as being within the SW¼ SE¼ of Section 33, T.19N., R.26E., M.D.B.&M.[1]

II.

Application 53659 was timely protested by the Pyramid Lake Paiute Tribe, with the protest overruled by State Engineer's Ruling Number 3868, dated January 30, 1992.

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[1] File No. 53659, official records in the office of the State Engineer.

FINDINGS OF FACT

I.

Application 53659 was filed to change the place of use of a portion of a decreed water right established under the Orr Ditch[2] and Alpine Decrees[3]. The existing places of use are represented by parcels of land which lie within the Newlands Reclamation Project more specifically those lands located within the Truckee-Carson Irrigation District (TCID) serial numbers 538, 703-1, 703, 47-2, 44-2, 696-A, 342-1, 343, 344 and 345. Before applications which request such changes can be considered by the State Engineer, it is necessary for TCID to confirm that the applicant is the owner of that portion of TCID Claim Number 3 requested for transfer. The State Engineer finds that Application 53659 can only be considered for approval after TCID has confirmed the applicant's ownership of the portion of the water right requested for transfer.

II.

By letters date stamped December 29, 1989, and January 21, 1992, the office of the State Engineer requested TCID to provide certification of the applicant's ownership of that portion of TCID Claim No. 3 requested for transfer under Application 53659. The subsequent lack of a response from TCID in this matter, prompted the office of the State Engineer to send a third request for information dated July 16, 1992, and again no response was received from TCID. By letter dated May 21, 1996, the applicant was informed that a recent telephone conversation between representatives of the office of the State Engineer and TCID had occurred from which a determination was made that TCID was unable to confirm the applicant's interest in the water right in question.[1] The State Engineer finds, based upon this knowledge

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[2] Final Decree in United States v. Orr Water Ditch Co., In Equity Docket No. A-3 C.D Nev. 1944, hereinafter referred to as Orr Ditch Decree.
[3] Final Decree in United States v. Alpine Land and Reservoir Co., Civil No. D-183 BRT (D. Nev. 1980), hereinafter referred to as Alpine Decree.

that he is unable to issue a permit under Application 53659 and that said Application must be denied.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.[4]

II.

The State Engineer is prohibited by law from granting a change application to appropriate the public waters where:[5]

A. the proposed use conflicts with existing rights; or

B. the proposed use threatens to prove detrimental to the public interest.

III.

Before an application which requests a change of an existing water right can be considered for approval by the State Engineer, it is necessary for the applicant to hold title to all or that portion of the water right which is being changed. Those applications which are specific to changes associated with TCID Claim No. 3 are no exception and require that TCID confirm the applicant's interest in that portion of the water right requested for change. In the case of Application 53659, TCID was unable to verify that the applicant held an interest in the 103.25 acre-feet of water under TCID Claim No. 3 proposed for change. The State Engineer concludes that to approve an application which requests a change of an existing water right in which the applicant has no title to would threaten to prove detrimental to the public interest.

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[4] NRS Chapter 533.

[5] NRS § 533.370(3).

RULING

Application 53659 is hereby denied on the grounds that its approval would threaten to prove detrimental to the public interest.

Respectfully submitted,

R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/MDB/cl

Dated this 3rd day of November, 1999.