Truckee-Carson Irrigation District
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BEFORE THE STATE ENGINEER, STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES

IN THE MATTER APPLICATION 79901 FILED BY WASHOE COUNTY TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF WATERS OF THE TRUCKEE RIVER	**PROTEST AND REQUEST TO DENY APPLICATION 79901; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365**

COMES NOW THE TRUCKEE-CARSON IRRIGATION DISTRICT ("TCID"), by and through Rusty D. Jardine, 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 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 rights 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), hereby protests the granting of application 79901 (the "Application") filed by Washoe County ("Applicant"), to change the point of diversion, manner of use and place of use of Truckee River waters. TCID protests the application for the following reasons and on the grounds, to wit:

1. There currently exists neither the municipal demand nor capacity to apply the waters to beneficial use as described by the Applicant. The Application seeks to convert *Orr Ditch* decree surface water rights from irrigation to "Municipal/Domestic" ("M&I") use. The

proposed places of diversion are the Washoe County and Truckee Meadows Water Authority's ("TMWA") existing water treatment plants, from whence the water will placed into TMWA's existing water distribution system. On its face, the Application is obviously intended for development and municipal use in Truckee Meadows. However, according to its 2010-2030 Water Resources Plan forecast, TMWA has an estimated 2010 water demand of approximately 77,000 acre-feet, and a projected 2030 demand of approximately 97,000 acre-feet. *See* TMWA 2010-2030 Water Resources Plan at p. 12. [1] As of June 2009, TMWA had sufficient water resources to serve approximately 101,000 acre-feet of commitments. *Id.* at p. 58. Thus, TMWA's existing supplies exceed demand; there is no actual present M&I use of these waters as described in the Application. Water rights may not exist absent an actual beneficial use. *See* N.R.S. 533.035; N.R.S. 533.460. Further, under N.R.S. 533.370(5), the State Engineer shall reject an application that conflicts with existing rights or threatens detriment to the public interest. It is not in the public interest to allow these water rights to become detached from their appurtenant lands for conversion to a non-existent beneficial use. Accordingly, the Application should be rejected and no permit issued.

2. Given an opportunity to present evidence at a hearing, TCID would prove that TMWA's only possible use for the waters described in the Application is storage and conversion to fish credit water under the terms of TROA.[2] Though TROA has not yet entered effect, there can be no doubt that TMWA is obligated to and will store the water described in the Application under the provisions of TROA. As noted above, there is no present municipal demand for this water. Unless the water is stored, it must either flow down the natural channel to Pyramid Lake or through the Truckee Canal into the Carson River. Neither location has been or can be claimed as a location of beneficial use for TWMA. TROA, on the other hand, explicitly contemplates that new water service commitments in the Truckee Meadows which rely on surface water rights will be stored under its terms. TROA § 4.B. The ability to store, accumulate and release various categories of Credit Water is the cornerstone of TROA. *See* TROA § 7.A. Such changes to the

[1] A complete copy of the Plan can be found at http://www.tmh2o.com/docs/your_water/2030WRP/Final/2030_WRP.pdf.

[2] TCID has protested similar applications requesting a change in the point of diversion, place of use, and manner of use of historical agricultural water rights within the Truckee Meadows. The State Engineer has determined that these applications lack sufficient information regarding the intended beneficial use and potential for injury to existing water rights, as reflected in the August 10, 2010 letter from Nevada Division of Water Resources Hearing Officer Tim Wilson. See Exhibit A. Because this application is substantially identical to those discussed in Mr. Wilson's August 10, 2010 letter, the same requirements for additional information should apply.

point of diversion, manner of use and place of use of these waters--particularly the credit storing uses contemplated in TROA--conflict with the existing water rights of Newlands Project water users because those changes threaten to reduce return flows essential to the preservation of senior vested rights of downstream Newlands Project water users. Accordingly, the State Engineer should reject the Application and refuse to issue a permit, as required N.R.S. 533.370(5) and the *Orr Ditch* Decree.

3. If, as in previous applications to convert Truckee River waters from agricultural to M&I use, the State Engineer does not hold a new hearing but instead relies exclusively upon information from the November 14, 1989 hearing pursuant to State Engineer Ruling 3739 to make his ruling on this Application, then the facts and conditions required for harmless M&I conversion as identified in Ruling 3739 should be made express conditions of any permit issued for this Application. For over 20 years the State Engineer has relied on these conditions to protect the return flows that serve down stream water right owners. *See* Rulings 3875, 4005, 4008, 4009, 4010, 4011, 4449, 4486, 4514, 4582, 4521, 4729, 5811, 5938, and 5972. These conditions include but are not limited to: 1) the conversion to M&I must provide a 50% return flow for use by downstream water right owners, 2) Rule 17 (or "the 58% rule") requires, as a method of drought protection, that only 58% of each acre-foot of water converted be devoted to development in Truckee Meadows, leaving the remaining 42% to flow in the river for use by downstream water right owners, and 3) that the Truckee River Agreement's diverted flow requirement protects Newlands Project water right owners. Confronted with potentially changed conditions and an evolving legal landscape, in the interest of clarity TCID requests that any reliance upon these conditions be expressly and explicitly incorporated into the State Engineer's ruling.

TCID therefore respectfully requests that the State Engineer exercise his authority under N.R.S. 533.370(5) to summarily deny this Application and refuse to issue a permit because the Application's proposed changes threaten to prove detrimental to the public interest and conflict with existing water rights. In the alternative, TCID requests that the State Engineer either (1) hold a hearing on the Application and accept evidentiary submissions regarding changed circumstances, including the impact of TROA as it pertains to conflict with and injury to existing rights, or (2) expressly limit any permit granted without such hearing to the terms and conditions

for harmless conversion to M&I use as previously established in the November 14, 1989 hearing pursuant to State Engineer Ruling 3739.

Dated this 20th day of Aug, 2010.

Respectfully submitted,

Truckee-Carson Irrigation District

By: _____
Rusty D. Jardine, Esq.

Subscribed and sworn to before me this day of Aug 20, 2010.

IDA L. ADAMS
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 00-62984-4 - Expires June 6, 2012

Ida L Adams
Notary Public

State of Nevada

County of Churchill

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