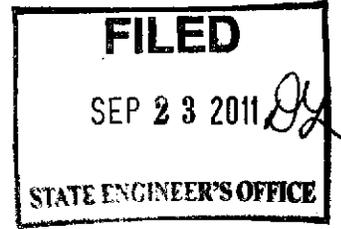


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 80941
FILED BY TRI General Improvement District
ON June 29, 20 11



PROTEST



Comes now Carson Water Subconservancy District (CWSD)

Printed or typed name of protestant

whose post office address is 777 E. William St., Suite 110A, Carson City, NV 89701

Street No. or PO Box, City, State and ZIP Code

whose occupation is subconservancy district

and protests the granting

of Application Number 80941

, 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 Attached Exhibit A.

THEREFORE the Protestant requests that the application be

Denied

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

Edwin James

Agent or protestant

Edwin James, General Manager

Printed or typed name, if agent

Address

777 E. William St., Suite 110A

Street No. or PO Box

Carson City, NV 89701

City, State and ZIP Code

775-887-7456

Phone Number

edjames@cwsd.org

E-mail

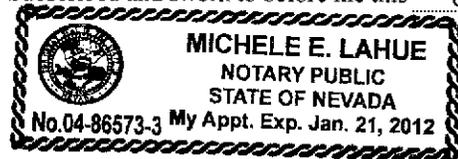
Subscribed and sworn to before me this

23rd

day of

September

, 20 11



Michele E. Lahue

Notary Public

State of Nevada

County of Carson City

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

EXHIBIT "A"

TRI GID APPLICATION 80941

Application 80941 seeks 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 and Orr Ditch Decrees, remove it from the Newlands Project to a point of diversion upstream and adjacent to the Truckee River. The existing place of use of the 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. The applicant, TRI GID, proposes to divert water out of the Truckee River through an induction well.

The Carson Water Subconservancy District is an owner of several water rights in the Carson River Watershed. Below is a list of concerns pertaining to Application 80941.

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. 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 80941:** Application 80941 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.
3. **Alpine Decree Violation:** The Application seeks full duty transfer at 3.5 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. To protect other water users in the Newlands Project and not violate the Alpine Decree, the applicants can only ask that 2.99 acre-feet/acre be transferred with the remaining 0.51 acre-foot/acre staying with the Newlands Project.

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4. Co-mingled Rights & Storage Issues:

- a. Applicants propose a 25/75% split of these rights between the Truckee & Carson portion, respectively, based upon average conditions. Diversions from the Truckee River to the Truckee and Carson Divisions of the Newlands Project are governed by a complex set of rules outlined in the Secretary of Interior's Operating Criteria and Procedures (OCAP). Depending on water year conditions and storage levels in Lahontan Reservoir, diversions from the Truckee to Lahontan Reservoir vary drastically year to year. 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; therefore using an average split would not be appropriate.
- 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.
- c. During wet years the entire water needs below Lahontan Reservoir are met from the Carson River. During these years no water is diverted from the Truckee River. Allowing the applicants to divert water on the Truckee River during wet years will be an expansion of use and could reduce flows into Pyramid Lake.

5. **Irrigation District Efficiency:** Pursuant to NRS 533.370 1(b), an application within an irrigation district cannot 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 this application. 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.

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6. **Expansion of Use:** The application is proposing to take an irrigation water right which can only be used during the irrigation season and to use the water year round.

7. **Public Interest:** The Newlands Project and Churchill County receive many benefits to the public interest and environmental resources from having a continuous irrigation project. These include:
 - a. improved delivery efficiencies;
 - b. reduced O&M costs;
 - c. aquifer recharge which Fallon and Churchill rely upon for their municipal and domestic supplies;
 - d. enhanced wetlands;
 - e. increased recreational opportunities;
 - f. enhanced quality of life;
 - g. improved environment;
 - h. wildlife habitat; and
 - i. improved air quality.

Approval of this application would start the fragmentation process of the Newlands Project and negatively affect the foregoing public interest issues; therefore the application is 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 application and protest. Clearly, the impacts associated with such a precedent setting application are overwhelming and there is sufficient information provided in this application, protest, and State Engineers records; therefore, it is respectfully requested that the State Engineer summarily deny this application.

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