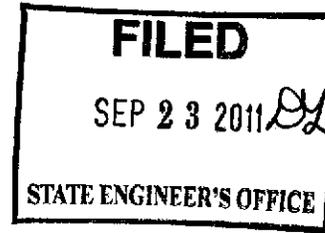


Truckee-Carson Irrigation District
Rusty D. Jardine, Esq.
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rusty@tcid.org



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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 80941 FILED BY TRI GENERAL IMPROVEMENT DISTRICT TO CHANGE POINT OF DIVERSION, MANNER OF USE AND PLACE OF USE OF WATERS OF THE TRUCKEE RIVER	PROTEST AND REQUEST TO DENY APPLICATION 80941; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365
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COMES NOW, THE 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 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)*, and hereby protests the granting of application 80941 (the "Application"), filed by TRI GID ("Applicant"), to change the point of diversion, manner of use and place of use of Truckee River waters. NRS 533.370(5) provides, in pertinent part, that "where there is no un-appropriated waters in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit." For the

reasons which follow, TCID here protests Application No. 80941, and does, hereby, request that the application be denied, to wit:

1. **General:** 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, and 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.
2. **No Secretary of Interior approval to remove water from Newlands Project:** The 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 been obtained. 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. The 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.
3. **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.
4. **Alpine Decree Violation:** Applications seek full duty transfer at 3.5 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. This Application should be rejected for

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seeking a full duty transfer to municipal purposes.

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

- a. 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 a federal regulation as the 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 on storage, supply and demand. 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. 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 different supply regime.
- d. The Application seeks to divert surface water using induction wells adjacent to the Truckee River near Tracy and Lahontan Reservoir near Silver Springs. This is a

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problem because induction wells do not immediately draw surface water as a surface water diversion would. 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.

6. **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 tend to lessen delivery efficiency. This will be 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. This 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.

7. **Speculative and Ability to Finance:** 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 9,000 acre-feet of pending groundwater appropriations for use within this same place of use. Applicant should also be required to demonstrate their financial ability to 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 a test case and speculative to remove water from the Carson Division of the Newlands Project since the applicant can not demonstrate additional need given their

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current water right portfolio.

8. **Public Interest:** The Newlands Project, and persons residing generally within the Newlands Project, benefit from having a continuous irrigation project which has many benefits to the public interest and environmental resources. 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. wetlands
 - e. recreation
 - f. quality of life
 - g. environmental
 - h. wildlife
 - i. air quality

Approval of these applications would start the fragmentation process of the Newlands Project and negatively affect the foregoing public interest issues. Accordingly, the application is detrimental to the public interest.

For the foregoing reasons, this application constitutes a new water right on stream systems which have been Decreed and declared fully appropriated. There is no unappropriated water at the source(s); and, 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 the applications and protests. Clearly, the impacts associated with such a precedent setting application are overwhelming. There is sufficient information provided in this protest, and those of other Protestants. Therefore, it is respectfully requested that the State Engineer deny these applications without burdening their office, Protestants, and Applicants with the burdens of the hearing process and related costs.

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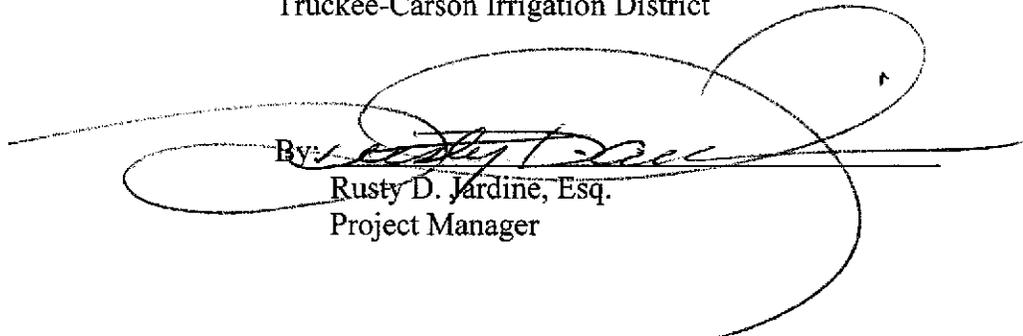
Conclusion:

For the reason herein above-cited, Protestant TCID, here, 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.

Dated this 23rd day of Sept., 2011.

Respectfully submitted,

Truckee-Carson Irrigation District

By: 
Rusty D. Jardine, Esq.
Project Manager

Subscribed and sworn to before me this day of Sept. 23, 2011.



Merliza A. Curtis
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: 80941

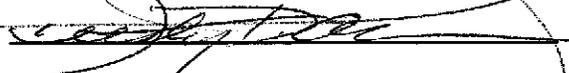
PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND
SEND COPIES OF ALL CORRESPONDENCE TO THE ADDRESSES BELOW:

1. **MR. RUSTY D. JARDINE**
PROJECT 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

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.
PROJECT MANAGER
TRUCKEE-CARSON IRRIGATION DISTRICT
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FALLON, NV 89407
(775) 423-2141

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