



Application No. 77221

THE STATE OF NEVADA

APPLICATION TO APPROPRIATE WATER

Name of applicant: RENO-CITY
Source: CHALK CREEK
Basin: TRUCKEE MEADOWS
Manner of Use: MUNICIPAL
Period of Use: January 1st to December 31st
Priority Date: 07/11/2008

DENIAL OF STATE ENGINEER

The protests are upheld in part and this application is hereby denied on the grounds that there is no unappropriated water at the proposed source, that approval would conflict with existing rights, and thereby would threaten to prove detrimental to the public interest.

IN TESTIMONY WHEREOF, I, TRACY TAYLOR, P.E.,

State Engineer of Nevada, have hereunto set my hand and the
seal of my office, this 17th day of April, A.D. 2009

Tracy Taylor, P.E.
State Engineer

EXHIBIT

tabbles

TCID 258

AMENDED

Application No. **77221**

**APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC
WATERS OF THE STATE OF NEVADA**

THIS SPACE FOR OFFICE USE ONLY	
Date of filing in State Engineer's Office	<u>JUL 11 2008</u>
Returned to applicant for correction	<u>JUL 23 2008</u>
Corrected application filed	<u>SEP 22 2008</u>
Map filed	<u>SEP 22 2008</u>

The applicant CITY OF RENO

1 E. 1ST ST of RENO

NV 89501 hereby make(s) application for permission to appropriate

the public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation, give date and place of incorporation; if a copartnership or association give names of members.)

- The source of water is CHALK CREEK
- The amount of water applied for is 1 second feet.
(a) If stored in reservoir give number of acre-feet _____
- The water to be used for MUNICIPAL
- If use is for:
 - Irrigation, state number of acres to be irrigated _____
 - Stockwater, state number and kind of animals _____
 - Other use (describe fully in No. 12) _____
 - Power:
 - Horsepower developed _____
 - Point of return of water to stream _____

5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a known section corner. If on unsurveyed land, it should be so stated.)

SW 1/4 NE 1/4 SEC 17 T 19 N, R 19 E, MDBIM OR AT A POINT FROM WHICH THE NW CORNER OF SAID SECTION 17, T 19 N, R 19 E, MDBIM BEARS N 59° 13' 13" W A DISTANCE

6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated.) OF 3167.37'.
SEE ATTACHED EXHIBIT 'B' AND AS SHOWN ON MAP THAT ACCOMPANIED APPLICATION 71606

7. Use will begin about JAN 1 and end about DEC 31 of each year.
Month and Day

8. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e. diversion structure, ditches and canals, drilled well with pump and motor, etc.)
DIVERSION STRUCTURE, POND, PUMPS & TREATMENT WORKS

9. Estimated cost of works: \$2,000,000

10. Estimated time required to construct works: 3 YEARS
(If not completed, describe work.)

11. Estimated time required to complete the application of water to beneficial use: 10 YRS.

12. Provide a detailed description of the proposed project and its water usage (use attachments if necessary):
(Failure to provide a detailed description may cause a copy to be provided.)

CHALK CREEK HAS HIGH CONCENTRATIONS OF TOTAL DISSOLVED SOLIDS (TDS) AT NEARLY 3000 MG/L...
(CONTINUED ON ATTACHMENT A & AVERAGE MONITORING ON ATTACHMENT 'C'.)

13. Miscellaneous remarks:

svetch@ci.reno.nv.us
E-mail Address

(775) 334 3314
Phone No.

APPLICATION MUST BE SIGNED BY THE APPLICANT OR 8482713 22 835 2002

ELAINE TERRI SVETCH
Type of person or entity

By [Signature]
Signature, applicant or agent

CITY OF RENO
Company Name

1 E. FIRST ST CITY HALL 8th Floor
Street Address or P.O. Box

RENO NV 89501
City, State, Zip Code

\$250 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

Revised 11-07

Protested: November 18, 2008, by Churchill County; November 19, 2008, by TMWA; November 24, 2008, by TCID

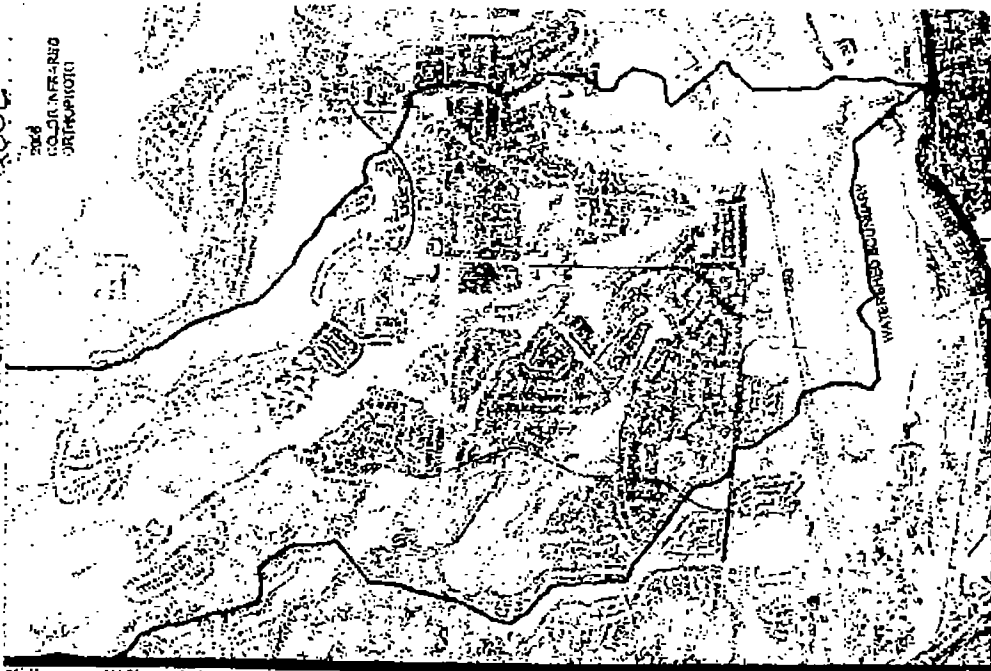
Attachment 'A'

Chalk Creek has high concentrations of Total Dissolved Solids (TDS) at nearly 3000 mg/l, nitrogen (N) at 4 mg/l and phosphorus (P) 0.5 mg/l and flows directly into the Truckee River. This creek flow has developed subsequent to the decree on the Truckee River as a result of urbanization. In 1980 prior to the bulk of development, the Chalk Ck drainage was ephemeral. By 2006, much of the watershed has been developed and the creek has become a flowing perennial stream as a result of secondary recharge. The attached map illustrates this point using infrared orthophotos. The infrared shows the green vegetation as red. The Chalk Creek Watershed map from 1980 is pretty much prior to most of the development. Red is only visible along the Truckee River and in the vicinity of the springs at the top of the photo. Comparing this to the Chalk Creek Watershed map from 2006, red is clearly shown throughout the watershed and in the drainage. Storm water flowing from impervious surfaces, irrigation and over watering has contributed to making this flow continuous. The Truckee River has a Total Maximum Daily Load (TMDL) for TDS, N, and P. The City is exploring ways in which flows from this creek can be treated to mitigate the loading to the Truckee River.

77221

MAP SHOWING VEGETATION 2006

2006
COLOR INFERRED
ORTHOPHOTIC



1990

1990
COLOR INFERRED
NAIP SCAN

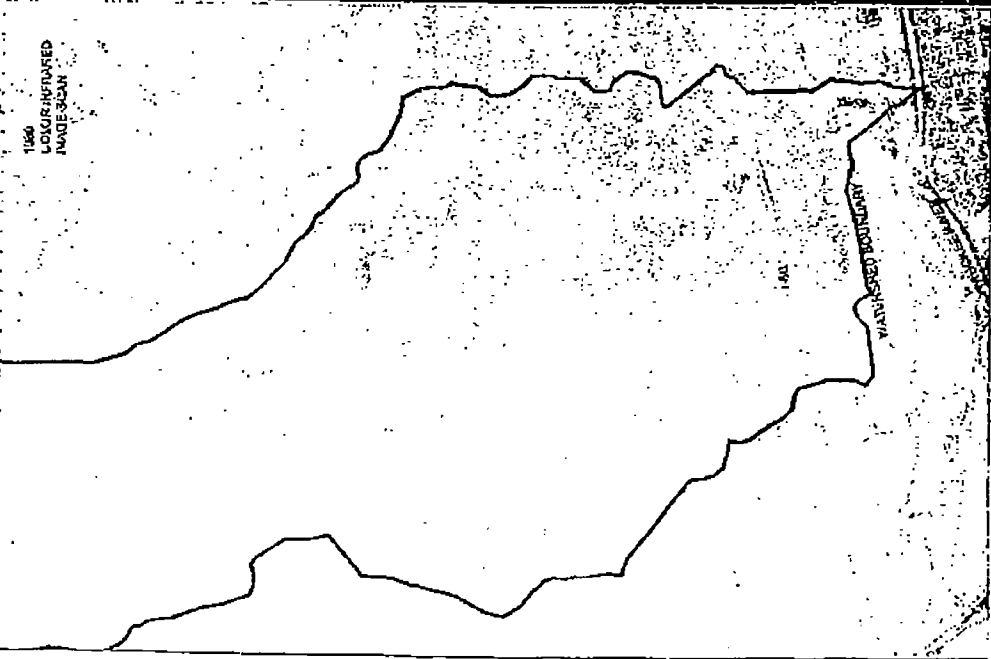


EXHIBIT "B"
PROPOSED PLACE OF USE

DIVISION	SECTION	IN	R-E	
ALL	1-5	18	12	MDRAM
EX	6-7	18	12	MDRAM
ALL	8-17	18	12	MDRAM
EX	18-19	18	12	MDRAM
ALL	20-29	18	12	MDRAM
EX	30-31	18	12	MDRAM
ALL	32-36	18	12	MDRAM
ALL	1-5	19	18	MDRAM
EX	6-7	19	18	MDRAM
ALL	8-17	19	18	MDRAM
EX	18-19	19	18	MDRAM
ALL	20-29	19	18	MDRAM
EX	30-31	19	18	MDRAM
ALL	32-36	19	18	MDRAM
ALL	1-5	20	11	MDRAM
EX	6-7	20	11	MDRAM
ALL	8-17	20	11	MDRAM
EX	18-19	20	11	MDRAM
ALL	20-29	20	11	MDRAM
EX	30-31	20	11	MDRAM
ALL	32-36	20	11	MDRAM
ALL	1-5	21	12	MDRAM
EX	6-7	21	12	MDRAM
ALL	8-17	21	12	MDRAM
EX	18-19	21	12	MDRAM
ALL	20-29	21	12	MDRAM
EX	30-31	21	12	MDRAM
ALL	32-36	21	12	MDRAM
ALL	1-35	18	19	MDRAM
ALL	1-35	19	19	MDRAM
ALL	1-35	20	19	MDRAM
ALL	1-35	21	19	MDRAM
ALL	3-33	18	20	MDRAM
WX	34	18	20	MDRAM
ALL	1-12	19	20	MDRAM
ALL	14-23	19	20	MDRAM
ALL	25-33	19	20	MDRAM
ALL	1-35	20	20	MDRAM
ALL	1-35	21	20	MDRAM
ALL	1-35	20	21	MDRAM
ALL	1-35	21	21	MDRAM

SEE SUPPORTING MAP ON FILE WITH APPLICATION NO. 71606

77221

Attachment #1 c' ET Sketch 9/19/08

Based upon the monitoring collected in the past year the:

TDS concentration (average): 2669 mg/l

Average Flow 0.53 cfs or about 341,000 gallons/day

Average Daily loading of TDS to the Truckee River: 7,600 pounds/day

Annual average based upon this data 2,800,000 pounds/year

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

RECEIVED
2008 NOV 18 PM 1:20
STATE ENGINEERS OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 77221
FILED BY: CITY OF RENO
ON: JULY 11, 2008 TO APPROPRIATE THE
WATERS OF: CHALK CREEK

PROTEST & REQUEST TO
DENY APPLICATION 77221
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.265;

COMES NOW: CHURCHILL COUNTY
WHOSE ADDRESS IS: 155 NORTH TAYLOR STREET, SUITE 153, FALLON NV 89406
WHOSE OCCUPATION IS: A POLITICAL SUBDIVISION OF THE STATE OF NEVADA AND PROTESTS
THE GRANTING OF APPLICATION NUMBER: 77221 FILED ON: JULY 11, 2008 BY: CITY OF
RENO TO APPROPRIATE THE WATERS OF: CHALK CREEK SITUATED IN: WAGHDE COUNTY
STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO
WIT:

1. APPLICATION 77221, SEEKS A NEW APPROPRIATION OF 1.0 CFS FOR MUNICIPAL PURPOSES FROM CHALK CREEK WHICH IS TRIBUTARY TO THE TRUCKEE RIVER. APPLICANT SEEKS TO APPROPRIATE URBAN RUNOFF RETURN FLOW WATERS WHICH HAVE PREVIOUSLY BEEN APPROPRIATED AND DELIVERED THROUGH TRUCKEE MEADOWS WATER AUTHORITY (TMWA'S) MUNICIPAL SYSTEM. WHEN TMWA'S ORR DITCH RIGHTS WERE ORIGINALLY CONVERTED FROM DECREE TO MUNICIPAL THEY WERE PERMITTED AT FULL DUTY RECOGNIZING RETURN FLOWS FROM THE MUNICIPAL SYSTEM WOULD HELP SATISFY DOWNSTREAM WATER RIGHTS. PERMITTING THIS APPLICATION WOULD ALLOW ADDITIONAL APPROPRIATION ON A FULLY APPROPRIATED STREAM SYSTEM FOR WHICH ALL UN-APPROPRIATED WATERS HAVE BEEN GRANTED. PROTESTANTS OWN AND RELY UPON ORR DITCH CLAIM #3 WATER RIGHTS HAVING A 1902 PRIORITY, THEREFORE GRANTING A NEW APPROPRIATION ON A TRIBUTARY TO THE TRUCKEE RIVER HAVING A 2008 PRIORITY WOULD AFFECT EXISTING RIGHTS AND NOT BE IN THE PUBLIC INTEREST.
2. PROTESTANT ACKNOWLEDGES THE PURPOSE OF THE APPLICATION IS TO REDUCE THE TOTAL MAXIMUM DAILY LOAD (TMDL) FOR TDS, N & P AND IS SUPPORTIVE OF THOSE EFFORTS SINCE THEY ARE THE RECIPIENTS OF THIS 'LOADED' WATER AT THEIR DERBY DAM POINT OF DIVERSION. PROTESTANTS WOULD CONSIDER WITHDRAWING PROTEST IF APPLICANT WOULD AGREE OR STATE ENGINEER REQUIRES A MATCHED IN-STREAM FLOW PERMIT WHICH WOULD MOVE A LIKE AMOUNT OF DROUGHT ADJUSTED ORR DITCH WATER RIGHTS TO THE RIVER. PERMIT WOULD NEED TO PROVIDE FOR IN-STREAM FLOWS THROUGH THE TRUCKEE MEADOWS AND THEN BECOME AVAILABLE FOR DIVERSION BELOW VISTA.

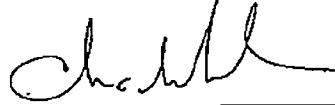
OK

THEREFORE, BASED ON THE FORGOING REASONS:

- 0 THERE IS NO UN-APPROPRIATED WATER AT THE SOURCE,
- 0 GRANTING OF THE APPLICATIONS WOULD CONFLICT WITH EXISTING RIGHTS,
- 0 AND COULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST

THEREFORE, FOR THE FOREGOING REASONS, THE PROTESTANT RESPECTIVELY REQUESTS THAT THE STATE ENGINEER DENY THE APPLICATION OR ISSUE SUBJECT TO CONDITIONS OUTLINED IN ITEM#2 ABOVE.

SIGNED:



CHRIS C. MAHANNAH, P.E., SWRS#976 (AGENT)
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804

STATE OF NEVADA

COUNTY OF WASHOE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 17th DAY OF NOVEMBER, 2008

BY CHRIS C. MAHANNAH



STATE OF: NEVADA
COUNTY OF: WASHOE

\$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**STATE OF NEVADA DIVISION OF WATER RESOURCES
REQUEST FOR NOTICE**

IN REGARDS TO APPLICATION/PERMITS NUMBERS: 77221 FILED IN THE NAME OF CITY OF
RENO

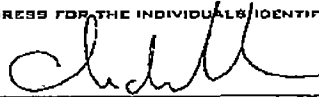
PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND SEND COPIES OF ALL
CORRESPONDENCE TO THE ADDRESSES BELOW:

1. MR. BRAD BOETSCH, MANAGER
CHURCHILL COUNTY
155 N. TAYLOR ST, SUITE #153
FALLON, NV 89406
2. MR. RUSTY JARDINE, ESQ.
CHURCHILL COUNTY DEPUTY DISTRICT ATTORNEY
155 N. TAYLOR ST., SUITE # 170
FALLON, NV 89406
3. CHRIS C. MAHANNAH, P.E.
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505

I AM THE AGENT OR REPRESENTATIVE FOR CHURCHILL COUNTY.

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

SIGNATURE: _____



CHRIS C. MAHANNAH, P.E., SWRS #976 (AGENT)
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804

FILED
NOV 24 2500
STATE ENGINEER'S OFFICE

RECEIVED
NOV 24 AM 10:43

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

IN THE MATTER APPLICATION 77221 FILED BY
THE CITY OF RENO TO APPROPRIATE WATERS
OF CHALK CREEK

PROTEST AND REQUEST TO
DENY APPLICATION 77221;
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.365;

COMES NOW THE TRUCKEE-CARSON IRRIGATION DISTRICT ("TCID"), by and through its attorneys, 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 77221 (the "Application") filed by the City of Reno ("Applicant"), to appropriate water from Chalk Creek. TCID protests the application for the following reasons and on the grounds, to wit:

1. The Applicant seeks a new appropriation in the amount of 1.0 second foot of water from Chalk Creek, which is a tributary of the Truckee River. The State Engineer shall reject an application where there is no unappropriated water in the proposed source of supply. NRS 533.370(5). According to the Application, water contributing to the flow in Chalk Creek is "storm water flowing over impervious surfaces." See Application Attachment A. On November 24, 1998 the Nevada State Engineer entered State Engineer's Ruling 4683 granting the Pyramid Lake Paiute Tribe of Indian's ("Tribe") applications 48061 and 48494 for 477,851 acre feet of

OK

unappropriated water in the Truckee River. This determination was upheld on appeal by the Nevada Third Judicial District Court, finding that the water sought by the Tribe was storm waters available only in certain years.¹ TCID's currently has pending a competing application 9330 to appropriate 100,000 acre-feet annually of the unappropriated water of the Truckee River for use in the Newlands Project. Application 9330, which was rejected by the State Engineer in Ruling No. 4659, has been remanded back to the State Engineer by the Third Judicial District Court (Case No. 25004) to conduct further hearings in consideration of the Truckee River Operating Agreement ("TROA"). The Truckee River and its tributaries are fully appropriated, and there are senior pending applications for additional "storm water." It would prove detrimental to the public interest and injure existing water rights to allow further appropriation of Truckee River water.

2. The Applicant claims that irrigation and over watering has contributed to making the flow in Chalk Creek continuous. See Application, Attachment A. Surplus water consisting of water not consumed by irrigation and water running from irrigated grounds constitutes "waste water." *Gallia v. Ryan*, 52 Nev. 330, 344 (1930). No permanent right to can be acquired to waste water by appropriation, therefore the Application must be denied. *Id.* at 344-345.

3. The Application will conflict and interfere with the existing water rights of water right owners in the Newlands Project. Return flows from water use in Truckee Meadows, both irrigation and municipal use, are relied on by down stream water users in the Newlands Project. Application 77221 will interfere and conflict with existing senior vested water rights in violation of NRS 533.370(5) and the Orr Ditch Decree.

¹ The City of Fallon has appealed this determination before the Nevada Supreme Court (Case No. 52329).

4. The waters sought under Application 77221 are already appropriated under the *Orr Ditch Decree*, and the Applicant may not make a second appropriation of the return flows.

5. The purpose of Application 77221 is unclear. It states that the "City is exploring ways in which flows from this creek can be treated to mitigate the loading to the Truckee river." Thus, it appears the purpose is for treatment of water and release back to the river without consumption. However, the Application proposes to divert water for municipal use indicating a place of beneficial use in Truckee Meadows (*see* accompanying map 71606). To the extent that the Application contemplates a municipal consumptive use of this water, it will conflict with existing rights and threaten to prove detrimental to the public interest as discussed above. If the Application is approved, it should be issued subject to the specific condition that there be no consumptive use of the water, and the diversion and use of water shall be for the sole purpose of treatment, after which the water shall be returned to the source or the Truckee River at the confluence of Chalk Creek and the Truckee River.

THEREFORE, TCID respectfully requests that the State Engineer summarily deny the Application or in the alternative request that the State Engineer hold a hearing on the Application.

Dated this 21st day of November, 2008.

Respectfully submitted,


MICHAEL J. VAN ZANDT, ESQ.
Nevada Bar No. 7199
Attorney for the Truckee-Carson Irrigation District

JURAT

STATE OF *California*)
COUNTY OF)
SAN FRANCISCO)

ss:

Subscribed and sworn to (or affirmed) before me on this 21st day of November, 2008
by Michael J. Van Zandt, personally known to me or proved to me on
the basis of satisfactory evidence to be the person(s) who appeared before me.

[Signature] (Notary Seal)



CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years, and that I am not a party to nor interested in this action. On the date stated below, I caused to be served a true and correct copy of the within **PROTEST AND REQUEST TO DENY APPLICATION 77221; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365;** by the method indicated below:

City of Reno
Elaine Terri Svetich
1 E. First Street, City Hall, 8th Floor
Reno, NV 89501

By First Class Mail - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein following ordinary business practices.

and addressed to the following parties listed on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 21, 2008 in San Francisco, California.


Keith Kiley

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

FILED
NOV 19 2008
STATE ENGINEER'S OFFICE

RECEIVED
2008 NOV 19 AM 8:18
STATE ENGINEER'S OFFICE

PROTEST

IN THE MATTER OF APPLICATION NUMBER.....77221.....
FILED BY.....CITY OF RENO.....
ON...JULY 11....., 2008..., TO APPROPRIATE THE
WATERS OF.....CHALK CREEK.....

Comes now.....TRUCKEE MEADOWS WATER AUTHORITY.....

Printed or typed name of protestant

whose post office address is...1355 Capital Boulevard, Reno, Nevada 89502.....

Street No. Or P.O. Box, City, State and Zip Code

whose occupation isMunicipal water supplier for the Truckee Meadows.....and protests the granting

of Application Number77221....., filed onJuly 11....., 2008.....

byCity of Reno, One East First Street, Reno, Nevada 89501.....to appropriate

the waters ofChalk Creek, a tributary to the Truckee River.....situated in . Washoe.....

County, State of Nevada, for the following reasons and on the following grounds, to wit:

- (1) There is no unappropriated water on the proposed source of supply as a result of State Engineer Ruling No. 4683.
- (2) The proposed use conflicts with existing water rights, including those granted in State Engineer Ruling No. 4683 and with other Truckee River water rights, in that it seeks to appropriate water which should be allowed to return to the Truckee River;
- (3) There is no reasonable expectation that the Applicant can construct the work and apply the water to its intended beneficial use with reasonable diligence; and
- (4) The proposed use threatens to prove detrimental to the public interest in that it is inconsistent with the Truckee River Operating Agreement, to which the Applicant is a party, and if granted, it will prevent implementation of that Agreement and the benefits to the public which are dependent on that Agreement entering into effect.

THEREFORE the Protestant requests that the application be.....DENIED.....

Denial, based 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.....

John A. Erwin

Printed or typed name, if agent

Address...P.O. Box 30013.....

Street No. or P.O. Box No

.....Reno, Nevada 89520-3013.....

City, State and Zip Code No

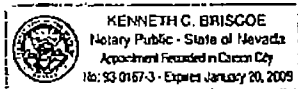
Subscribed and sworn to before me this ..13th...day of...November....., 2008.....

Kenneth C. Briscoe

Notary Public

State of.....Nevada.....

County ofCarson City.....



**☐ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

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

IN THE MATTER OF APPLICATION 77221)
FILED TO APPROPRIATE THE PUBLIC)
WATERS OF CHALK CREEK LOCATED)
WITHIN THE TRUCKEE MEADOWS)
HYDROGRAPHIC BASIN (87), WASHOE)
COUNTY, NEVADA.)

RULING

5972

GENERAL

I.

Application 77221 was filed on July 11, 2008, by the City of Reno to appropriate 1 cubic foot per second (cfs), of water from Chalk Creek for municipal purposes. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 17, T.19N., R.19E., M.D.B.&M. The proposed place of use is described as the Truckee Meadows Water Authority Service Area.¹

II.

Application 77221 was timely protested by Churchill County on the following grounds:¹

1. Application 77221, seeks a new appropriation of 1.0 cfs for municipal purposes from Chalk Creek which is tributary to the Truckee River. Applicant seeks to appropriate urban runoff return flow waters which have previously been appropriated and delivered through Truckee Meadows Water Authority (TMWA's) municipal system. When TMWA's Orr Ditch rights were originally converted from Decreed to Municipal they were permitted at full duty recognizing return flows from the municipal system would help satisfy downstream water rights. Permitting this application would allow additional appropriation on a fully appropriated stream system for which all un-appropriated waters have been granted. Protestants own and rely upon Orr Ditch Claim #3 water rights having a 1902 priority, therefore granting a new appropriation on a tributary to the Truckee River having a 2008 priority would affect existing rights and not be in the public interest.

¹ File No. 77221, official records in the Office of the State Engineer.

2. Protestant acknowledges the purpose of the application is to reduce the Total Maximum Daily Load (TMDL) for TDS, N & P and is supportive of those efforts since they are the recipients of this 'Loaded' water at their Derby Dam point of diversion. Protestants would consider withdrawing protest if applicant would agree or State Engineer requires a matched in-stream flow permit which would move a like amount of drought adjusted Orr Ditch water rights to the river. Permit would need to provide for in-stream flows through the Truckee Meadows and then become available for diversion below Vista.

III.

Application 77221 was timely protested by the Truckee Meadows Water Authority on the following grounds:¹

- (1) There is no unappropriated water on the proposed source of supply as a result of State Engineer Ruling No. 4683.
- (2) The proposed use conflicts with existing water rights, including those granted in State Engineer Ruling No. 4683 and with other Truckee River water rights, in that it seeks to appropriate water which should be allowed to return to the Truckee river;
- (3) There is no reasonable expectation that the Applicant can construct the work and apply the water to its intended beneficial use with reasonable diligence; and
- (4) The proposed use threatens to prove detrimental to the public interest in that it is inconsistent with the Truckee River Operating Agreement, to which the Applicant is a party, and if granted, it will prevent implementation of that Agreement and the benefits to the public which are dependent on that Agreement entering into effect.

IV.

Application 77221 was timely protested by the Truckee-Carson Irrigation District (TCID) on the following grounds:¹

1. The Applicant seeks a new appropriation in the amount of 1.0 second foot of water from Chalk Creek, which is a tributary of the Truckee River. The State Engineer shall reject an application where there is no unappropriated water in the proposed source of supply. NRS 533.370(5). According to the Application, water contributing to the flow in Chalk Creek is "storm water flowing over impervious surfaces." See Application Attachment A. On November 24, 1998 the Nevada State Engineer entered State Engineer's Ruling 4683 granting the Pyramid Lake Paiute Tribe of Indian's ("Tribe") applications 48061 and 48494

for 477,851 acre feet of unappropriated water in the Truckee River. This determination was upheld on appeal by the Nevada Third Judicial District Court, finding that the water sought by the Tribe was storm waters available only in certain years. [Citation omitted] TCID's [sic] currently has pending a competing application 9330 to appropriate 100,000 acre-feet annually of the unappropriated water of the Truckee River for use in the Newlands Project. Application 9330, which was rejected by the State Engineer in Ruling No. 4659, has been remanded back to the State Engineer by the Third Judicial District Court (Case No. 25004) to conduct further hearings in consideration of the Truckee River Operating Agreement ("TROA"). The Truckee River and its tributaries are fully appropriated, and there are senior pending applications for additional "storm water." It would prove detrimental to the public interest and injure existing water rights to allow further appropriation of Truckee River water.

2. The Applicant claims that irrigation and over watering has contributed to making the flow in Chalk Creek continuous. See Application, Attachment A. Surplus water consisting of water not consumed by irrigation and water running from irrigated grounds constitutes "waste water." *Gallio v. Ryan*, 52 Nev. 330, 344 (1930). No permanent right to[sic] can be acquired to waste water by appropriation, therefore the Application must be denied *Id.* at 344-345.
3. The Application will conflict and interfere with existing water rights of water right owners in the Newlands Project. Return flows from water use in Truckee Meadows, both irrigation and municipal use, are relied on by down stream[sic] water users in the Newlands Project. Application 77221 will interfere and conflict with existing senior vested water rights in violation of NRS 533.370(5) and the Orr Ditch Decree.
4. The waters sought under Application 77221 are already appropriated under the *Orr Ditch Decree*, and the Applicant may not make a second appropriation of the return flows.
5. The purpose of Application 77221 is unclear. It states that the "City is exploring ways in which flows from this creek can be treated to mitigate the loading to the Truckee river[sic]." Thus, it appears the purpose is for treatment of water and release back to the river without consumption. However, the Application proposes to divert water for municipal use indicating a place of beneficial use in Truckee Meadows (see accompanying map 71606). To the extent that the Application contemplates a municipal consumptive use of this water, it will conflict with existing rights and threaten to prove detrimental to the public interest as discussed above. If the Application is approved, it should be issued subject to the specific condition that there be no consumptive use of the water, and the diversion and use of water shall be for the sole purpose of treatment, after which the water shall be returned to the

source of the Truckee River at the confluence of Chalk Creek and the Truckee River.

FINDINGS OF FACT

I.

Nevada Revised Statute § 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 to an application to appropriate the public waters of the State of Nevada. The State Engineer finds that sufficient information is available in the Office of the State Engineer and an administrative hearing to obtain additional evidence is not necessary.

II.

Protestants Churchill County, TMWA and TCID all cite grounds that there is no unappropriated water at the source. State Engineer's Ruling No. 4683 approved Applications 48061 and 48494 to appropriate those flows in the river from storm and flood events in excess of the senior water rights.² Chalk Creek is a tributary to the Truckee River and was therefore subject to the adjudication of the Truckee River stream system and to Ruling No. 4683. The State Engineer finds that there is no unappropriated water at the source.

III.

On November 14, 1989, a public administrative hearing was held by the State Engineer concerning two prior applications to transfer Orr Ditch decreed water rights from below Derby Dam in the vicinity of Wadsworth and on prior application to change the point of diversion from below Vista and above Wadsworth to Westpac Utilities' water treatment plants for utilization within the proposed place of use of Westpac Utilities' certificated water service area. The two applications below Derby Dam were also protested by TCID who presented their case in support of their protests at the hearing. The other application, which was not protested, was also discussed at the hearing. Further

² State Engineer's Ruling No. 4683, dated November 24, 1998, official records in the Office of the State Engineer.

possible change applications were discussed at the hearing, and the cumulative effect of such changes was analyzed.³

Ultimately, these applications were approved for full duty, rather than for only the consumptive use portion of the irrigation, under the reasoning that there would remain return flows to the river under the municipal uses. It is these non-consumptive portions of the upstream rights returning to the river that help serve those rights downstream.

TCID and Churchill County both identify Claim #3 of the Truckee River Decree, which serves the Newlands Project, as the downstream water right that would be impacted by a new appropriation on the Truckee River.

The State Engineer finds that approval of the application would conflict with existing rights.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the subject matter of this determination.⁴

II.

The State Engineer is prohibited by law from granting a permit for an application to appropriate the public waters where:⁵

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that there is no unappropriated water at the source, since the water being sought for appropriation is either storm and flood water subject to

³ Transcript, public administrative hearing before the State Engineer, November 14, 1989, concerning Applications 53092, 53093 and 53369, official records in the Office of the State Engineer.

⁴ NRS chapter 533.

⁵ NRS § 533.370(5).

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State Engineer's Ruling No. 4683 or return flows resulting from the municipal use of waters previously appropriated.

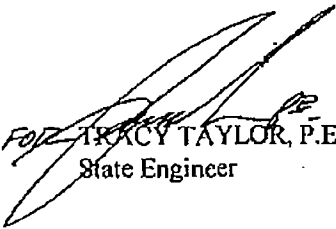
IV.

The State Engineer concludes that approval of Application 77221 would be an additional appropriation on the Truckee River stream system, and such an appropriation would conflict with existing rights.

RULING

The protests are upheld in part and Application 77221 is hereby denied on the grounds that there is no unappropriated water at the proposed source, that approval would conflict with existing rights, and thereby would threaten to prove detrimental to the public interest.

Respectfully submitted,


FOR TRACY TAYLOR, P.E.
State Engineer

TT/MJW/jm

Dated this 17th day of

April, 2009.