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2006 MAY 24 PM 12:55

CLERK OF DISTRICT COURT
COUNTY OF NV

BY: SHELLIE HOOTEN DEPUTY

1 Case No. 25219/25227
2 Dept. No. 2

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6 **IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**

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9 IN THE MATTER OF APPLICATIONS
10 47047, 47121, 47209, 47264, 48061 AND
11 48494 FILED TO APPROPRIATE THE
12 WATERS OF THE TRUCKEE RIVER
13 AND ITS TRIBUTARIES WASHOE
14 COUNTY, NEVADA.

**ORDER SUPPLEMENTING THE
RECORD AND REMANDING TO
STATE ENGINEER**

12 TRUCKEE-CARSON IRRIGATION
13 DISTRICT,

14 Petitioner,

15 and

16 CORKILL BROS., INC.

17 Petitioner,

18 v.

19 R. MICHAEL TURNIPSEED, State
20 Engineer, State of Nevada, Department of
21 Conservation and Natural Resources,
22 Division of Water Resources,

Respondent.

23 THIS MATTER comes before the Court pursuant to Truckee-Carson Irrigation
24 District's Motion to Supplement the Record and for Judicial Notice in the Petition for
25 Judicial Review of Ruling No. 4683 by the State Engineer filed with the Court on or
26 about November 21, 2005. Attorney Michael J. Van Zandt filed a Declaration of Michael
27 J. Van Zandt in Support of Motion to Supplement the Record and for Judicial Notice in

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1 Petition for Judicial Review of Ruling No. 4683 by the State Engineer with the Court on
2 or about November 21, 2005. Petitioner Truckee-Carson Irrigation District filed a Motion
3 for Additional Supplement to the Record and for Judicial Notice in Petition for Judicial
4 Review of Ruling No. 4683 by the State Engineer with the Court on or about January 18,
5 2006. Respondent filed an Opposition to Motion for Additional Supplement to the
6 Record and for Judicial Notice in Petition for Judicial Review of Ruling No. 4683 by the
7 State Engineer on or about January 26, 2006. Truckee-Carson Irrigation District filed a
8 Motion to Strike Portions of and Reply to Opposition to Motion for Additional
9 Supplement to the Record and for Judicial Notice in Petition for Judicial Review of
10 Ruling No. 4683 by the State Engineer with the Court on or about February 3, 2006.
11 Truckee-Carson Irrigation District then filed a Notice of Withdrawal of Truckee-Carson
12 Irrigation District's Motion to Strike Portions of Opposition to Motion for Additional
13 Supplement to the Record and for Judicial Notice in Petition for Judicial Review of
14 Ruling No. 4683 by the State Engineer on February 8, 2006. Respondent Hugh Ricci,
15 P.E., State Engineer, filed an Opposition to Motion to Supplement the Record and for
16 Judicial Notice in Petition for Judicial Review of Ruling No. 4683 by the State Engineer
17 with the Court on February 15, 2006. Truckee-Carson Irrigation District filed Truckee-
18 Carson Irrigation District's Reply to Opposition to Motion to Supplement the Record and
19 for Judicial Notice in Petition for Judicial Review of Ruling No. 4683 by the State
20 Engineer with the Court on or about March 2, 2006. Respondent Hugh Ricci, P.E., State
21 Engineer, filed an Objection to Truckee-Carson Irrigation District's Reply to Opposition
22 to Motion to Supplement the Record and for Judicial Notice in Petition for Judicial
23 Review of Ruling No. 4683 by the State Engineer with the Court on March 24, 2006.
24 Truckee-Carson Irrigation District filed a Notice of Motion and Motion for Leave to File
25 Response to Objection by Nevada State Engineer to Truckee-Carson Irrigation District's
26 Reply to Opposition to Supplement the Record and for Judicial Review of Ruling No.
27 4683 by the State Engineer with the Court on April 5, 2006. Truckee-Carson Irrigation
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1 District filed Truckee-Carson Irrigation District's Response to Objection by Nevada State
2 Engineer to Truckee-Carson Irrigation District's Reply to Opposition to Supplement the
3 Record and for Judicial Review of Ruling No. 4683 by the State Engineer with the Court
4 on April 5, 2006. The Pyramid Lake Paiute Tribe filed a Joinder by Pyramid Lake Paiute
5 Tribe of Indians to Objection by the State Engineer to Truckee-Carson Irrigation
6 District's Reply to Opposition to Motion to Supplement the Record and for Judicial
7 Notice in Petition for Judicial Review of Ruling No. 4683 with the Court on April 10,
8 2006. The Court has received and reviewed the parties' written briefs, the Court file and
9 the law applicable to the issues raised. Deeming itself fully advised of the matter, the
10 Court hereby enters its Order as follows:

11 This Court issued the Order Denying Motion to Dismiss, Granting Motion to Stay,
12 and Denying Motion for Change of Venue on October 12, 2005, which gave the parties
13 until December 19, 2005, to bring this matter before the Court. Since that time, the
14 parties have stipulated to proceed as if this matter was submitted on December 19, 2005,
15 on the condition that the Attorney General's Office reserves the right to appeal this
16 Court's Order of October 12, 2005. Furthermore, the Honorable Archie E. Blake has
17 issued a decision holding that NRCP 41(e) does not apply to appeals of State Engineer
18 decisions due to the inconsistency created by the five-year time period enumerated in
19 Rule 41(e) and the informal and summary proceedings of appeals to State Engineer
20 decisions. There has also been an updated draft of the Truckee River Operating
21 Agreement submitted to the Court that was not available when the State Engineer heard
22 this case. There have also been numerous decisions issued by the State Engineer since
23 this case was initiated.

24 In light of all the information and Motions before the Court, as well as the parties'
25 stipulation to proceed as if this case was filed on December 19, 2005, it would appear that
26 the prudent action to take at this junction would be to remand this case back to the State
27 Engineer to see if any of this newly available information impacts the present case, which
28 was decided by the State Engineer in 1998.

1 Judicial review of an agency decision is generally “confined to the record.” NRS
2 233B.135(1)(b). During this review confined to the record, the Court’s function is “to
3 review the evidence presented to the administrative body and ascertain whether that body
4 acted arbitrarily or capriciously.” *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281,
5 282 (1980).

6 However, new evidence may be presented to the Court after there has been a
7 Petition for Judicial Review.

8 “If, before submission to the court, an application is made to the
9 court for leave to present additional evidence, and it is shown to the
10 satisfaction of the court that the additional evidence is material and
11 that there were good reasons for failure to present it in the
12 proceeding before the agency, the court may order that the additional
13 evidence and any rebuttal evidence be taken before the agency upon
14 such conditions as the court determines.” NRS 233B.131(2).

15 The agency may then modify the findings and/or the decision and “shall file the
16 evidence and any modifications, new findings or decisions to the reviewing court.” NRS
17 233B.131(3).

18 The Court finds that there is new evidence being proposed. The Court further
19 finds that this evidence, in the form of a draft of the Truckee River Operating Agreement,
20 was not obtainable or able to be produced at the time of the underlying hearing because it
21 was not in existence at that time. If, as alleged, this draft of the Truckee River Operating
22 Agreement is intended to take precedence over the Truckee River Agreement of 1935, the
23 evidence is material, even if it is in draft form. Thus the evidence is material and there
24 was good reasons for failing to bring this information before the State Engineer in the
25 earlier proceeding. Therefore, the Court will remand this case, along with the newly
26 available evidence, to the State Engineer to determine if new or modified findings or
27 decisions are appropriate.

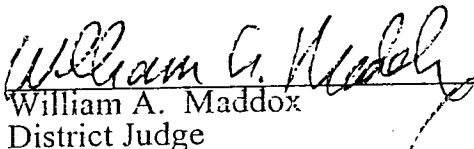
28 Therefore, good cause appearing;

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IT IS HEREBY ORDERED that this case, along with the newly available evidence presented in these motions, shall be remanded to the State Engineer to be heard to determine if any new or modified findings and/or decisions are appropriate.

DATED this 23rd day of May, 2006.



William A. Maddox
District Judge