

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

FILED
AUG 22 2005
72419 BARIUM'S OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 72419
FILED BY: BARIUM, INC.
ON: MARCH 28, 2005, TO APPROPRIATE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST TO
DENY APPLICATION 72419
PETITION FOR HEARING
PURSUANT TO NRS 533.365;

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: 72419 FILED ON: MARCH 28, 2005 BY: BARIUM,
INC., TO APPROPRIATE THE WATERS OF: UNDERGROUND SITUATED IN: WASHOE COUNTY,
STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO
WIT:

1. NO PERMIT MAY BE ISSUED, AS THERE IS NO UNAPPROPRIATED GROUNDWATER IN THE
AREA OF THE APPLICATION. NRS, 534.110 (3).

THIS APPLICATION IS SEEKING A NEW GROUNDWATER APPROPRIATION FROM EITHER
THE DODGE FLAT HYDROGRAPHIC BASIN #82 OR THE FERNLEY AREA HYDROGRAPHIC BASIN
#76. THE LOCATION OF THE POINT OF DIVERSION (POD) IS ON THE DIVIDING LINE BETWEEN
THESE TWO BASINS SO IT IS DIFFICULT TO DETERMINE WHICH BASIN THE APPLICANT SEEKS
TO DIVERT FROM, HOWEVER THERE IS NO CLEAR TOPOGRAPHIC DIVISION BETWEEN THE
BASINS NEAR THE POD LOCATION. THERE IS NO UNAPPROPRIATED GROUNDWATER IN EITHER
BASIN. STATE ENGINEER RULING #5079 DATED SEPTEMBER 27, 2001 EVALUATED THE
TOTAL APPROPRIATIONS IN DODGE FLAT AND CONCLUDED THAT THIS BASIN IS FULLY
APPROPRIATED.

2. THE APPLICATION VIOLATES NRS 355.340(4) BECAUSE IT DOES NOT SPECIFY THE
PROPOSED METHOD OF APPLYING AND UTILIZING WATER FOR MINING AS REQUIRED.

3. PERMITTING THIS APPLICATION WILL RESULT IN A VIOLATION OF NRS 533.370.

RECENT STUDIES CONDUCTED BY WASHOE COUNTY AND DRI INDICATE
GROUNDWATER FLOWS FROM THE FERNLEY AREA TOWARDS THE DODGE FLAT BASIN
DISCHARGE TO THE TRUCKEE RIVER. THE RIVER IS A GAINING REACH NEAR WADSWORTH.
THIS APPLICATION WILL EITHER INTERCEPT THOSE GROUNDWATER FLOWS AND/OR
POTENTIALLY DRAW WATER FROM THE TRUCKEE RIVER, THUS REDUCING FLOWS IN THE LOWER
TRUCKEE RIVER. SUCH ACTION WILL POTENTIALLY IMPACT THREATENED AND ENDANGERED
SPECIES IN PYRAMID LAKE AND THE LOWER RIVER. REDUCTIONS IN FLOWS IN THE LOWER
RIVER WILL RESULT IN ADDITIONAL WATER RIGHT ACQUISITIONS FROM THE NEWLANDS
PROJECT AND/OR OTHER ASSOCIATED ACTIONS BY THE PYRAMID LAKE INDIAN TRIBE
ADVERSE TO CHURCHILL COUNTY AND THE NEWLANDS PROJECT WATER RIGHTS USERS.
THESE ACTIONS WOULD ADVERSELY AFFECT THE COST OF CHARGES FOR WATER DELIVERY

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AND LESSEN THE EFFICIENCY IN THE DELIVERY OF WATER RIGHT OWNERS SERVED BY THE NEWLANDS PROJECT INCLUDING CHURCHILL COUNTY:

4. PERMITTING THIS APPLICATION WILL RESULT ADVERSE AFFECT TO THE PUBLIC INTEREST, IN PARTICULAR IN RELATION TO LAHONTAN CUTHROAT AND CUI-UI.

REDUCTION IN FLOWS IN THE LOWER TRUCKEE RIVER IS INCONSISTENT WITH THE UNITED STATES FISH AND WILDLIFE SERVICE AND PYRAMID LAKE PAIUTE TRIBE'S EFFORTS TO INCREASE FLOWS FOR THE PURPOSES OF FISH SPAWNING AND TO MAINTAIN AND STABILIZE THE LEVEL OF THE LAKE FOR FISH SPAWNING PURPOSES AND IS THEREFORE ADVERSE TO THE PUBLIC INTEREST.

5. PERMITTING THIS APPLICATION WILL RESULT IN AN APPROPRIATION OF TRUCKEE RIVER SURFACE WATERS.

CAPTURE OF GROUNDWATER RECHARGE THAT DISCHARGES TO THE TRUCKEE RIVER AND/OR INDUCING RECHARGE FROM THE TRUCKEE RIVER AMOUNT TO A NEW APPROPRIATION OF TRUCKEE RIVER WATER WITH A 2005 PRIORITY DATE THAT WILL BE DIVERTED OUT OF PRIORITY UNDER A "PURPORTED" GROUNDWATER USE.

ALBEIT A NEW APPROPRIATION OF GROUNDWATER, THIS IS ESSENTIALLY A NEW APPROPRIATION OF SURFACE WATER ON THE LOWER TRUCKEE RIVER WITH A 2005 PRIORITY THAT COULD NEVER BE APPROVED IF APPROPRIATELY FILED.

ALL UNAPPROPRIATED TRUCKEE RIVER WATER IS ALLOCATED EITHER BY PERMIT OR PENDING APPLICATION(S), THEREFORE THERE IS NO UNAPPROPRIATED SURFACE WATER TO ALLOCATE FOR CONJUNCTIVE USE.

6. PERMITTING THIS APPLICATION WOULD RESULT IN DEGRADATION OR IMPAIRMENT OF WATER QUALITY IN THE LOWER TRUCKEE RIVER.

THE APPLICATION WOULD HAVE A DETRIMENTAL EFFECT ON GROUNDWATER QUALITY IN THE WADSWORTH AREA.

7. THE PROPOSED USE CONFLICTS WITH PROTECTABLE INTERESTS IN EXISTING DOMESTIC WELLS AS SET FORTH IN N.R.S. 533.024,

SUCH INTERFERENCE REQUIRES THE STATE ENGINEER TO REJECT THE APPLICATIONS. NRS. 533.370(4). "THE STATE ENGINEER MAY RESTRICT DRILLING OF WELLS IN ANY PORTION THEREOF IF HE DETERMINES THAT ADDITIONAL WELLS WOULD CAUSE AN UNDUE INTERFERENCE WITH EXISTING WELLS...." NRS 534.110 (7).

8. THE APPLICATION IS NOT IN THE PUBLIC INTEREST. N.R.S. 533.370 (4)

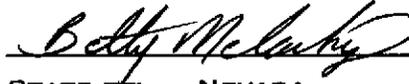
FOR THE FORGOING REASONS, THE PROTESTANT REQUESTS THAT THE APPLICATION BE: **DENIED** AND THAT AN ORDER BE ENTERED FOR SUCH RELIEF AS THE STATE ENGINEER DEEMS JUST AND PROPER.

SIGNED:



CHRIS C. MAHANNAH, P.E., SWRS#976 (AGENT)
WATER RESEARCH & DEVELOPMENT, INC.
P.O. Box 5007
RENO, NV 89513
(775) 747-1100

SUBSCRIBED AND SWORN TO BEFORE ME THIS 22ND DAY OF AUGUST, 2005



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: 72419 & 72420 FILED IN THE NAME OF BARIUM, INC.

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

1. **MR. BRAD GOETSCH, 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

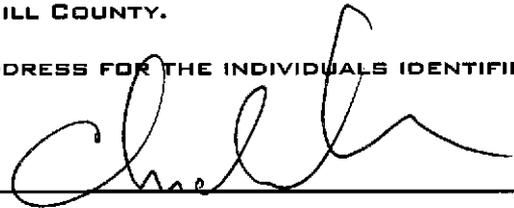
3. **MS. LAURA A. SCHRÖEDER, ESQ.**
SCHRÖEDER LAW OFFICES P.C.
1915 NE 39TH AVE.
P.O. BOX 12527
PORTLAND, OR 97212

4. **CHRIS C. MAHANNAH, P.E.**
WATER RESEARCH & DEVELOPMENT, INC.
P.O. BOX 5007
RENO, NV 89513-5007

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)
WATER RESEARCH & DEVELOPMENT, INC.
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