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

FILED
AUG 08 2005
STATE ENGINEER'S OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 72475
FILED BY: AQUA TRAC, LLC C/O NATHAN AMAN
ON: APRIL 4, 2005, TO APPROPRIATE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST TO DENY APPLICATION 72475; PETITION FOR HEARING PURSUANT TO N.R.S. 533.365; PETITION FOR HYDROLOGICAL & ENVIRONMENTAL STUDY PURSUANT TO N.R.S. 533.368

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: 72475 FILED ON: APRIL 4, 2005 BY: AQUA TRAC, LLC, C/O NATHAN AMAN, 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. THE COUNTY COMMISSIONERS HAVE NOT BEEN PROPERLY NOTICED PURSUANT TO N.R.S. 533.363. SUCH NOTICE SHOULD BE RECEIVED BY THE COUNTY PRIOR TO THE READY FOR ACTION DATE SUCH THAT THE COMMISSIONERS CAN PROPERLY NOTICE AND CONDUCT PUBLIC MEETING PURSUANT TO N.R.S. 533.363 (4). THIS WOULD ALLOW THE GENERAL PUBLIC TO LODGE PROTESTS IN ADDITION TO THE COMMISSIONER RECOMMENDATIONS WHICH MAY BE PROVIDED FOR CONSIDERATION BY THE STATE ENGINEER.
2. DUE TO THE LARGE MAGNITUDE OF THE AQUA TRAC, LLC APPLICATIONS SEEKING NEW APPROPRIATIONS FROM MULTIPLE GROUNDWATER BASINS IN EXCESS OF 113,000 AFA, THE STATE ENGINEER SHOULD REQUIRE THE ASSOCIATED HYDROLOGICAL AND ENVIRONMENTAL STUDIES PURSUANT TO N.R.S. 533.368 TO ADEQUATELY ADDRESS POTENTIAL IMPACTS TO EXISTING RIGHTS AND THE ENVIRONMENT. THE PROTESTANT RESERVES THE RIGHTS TO ADD TO OR AMEND THEIR PROTEST AS A RESULT OF THESE STUDIES OR AS OTHER INFORMATION BECOMES AVAILABLE.
3. WHEN A DETERMINATION HAS BEEN MADE THAT A STUDY IS TO BE PERFORMED, FAILURE OF THE PART OF THE STATE ENGINEER TO CONSULT WITH THE GOVERNING BODY OF THE COUNTY OR COUNTIES IN WHICH THE POINT OF DIVERSION AND THE PLACE OF USE IS LOCATED CONCERNING THE SCOPE AND PROGRESS OF THE STUDY. NRS 533.368 (4).
4. A PROJECT OF THIS MAGNITUDE WILL REQUIRE N.E.P.A. COMPLIANCE AS WELL AS AN ENVIRONMENTAL IMPACT REPORT. THE STATE ENGINEER SHOULD WITHHOLD HEARINGS AND ACTIONS ON THESE APPLICATIONS UNTIL THESE STUDIES / PROCESSES ARE COMPLETED.

5. The State Engineer must address and require that the provisions of N.R.S. 533.370 5. (a-e) are fulfilled & addressed.
6. The State Engineer will find these applications are speculative in nature and not consistent with the provisions of this statute, therefore the applications should be denied.
7. These applications will limit the future growth and development to the detriment of these rural counties and groundwater basins to the benefit of the urbanizing areas which are experiencing uncontrolled quasi-municipal growth. This is in violation of N.R.S. 533.370 5. (d).
8. The combined production of water for quasi-municipal and environmental use by Aqua Trac, LLC, shall not exceed 13,000 afa from the Winnemucca Lake Hydrographic basin. USGS Open File Report 78-768 estimate the perennial yield of this basin at 3,300 afa. Preliminary data from the State Engineer's Office database records indicate existing appropriations in excess of 305 afa and pending applications in the amount of 2,000 afa. Therefore, pending a detailed basin abstract, the total committed and pending underground water rights in this basin total 2,305 afa. The total committed and pending rights including the Aqua Trac applications exceed 15,000 afa or nearly five (5) times the current USGS estimates of perennial yield. Approval of the applications would mine the groundwater basin.
9. The Aqua Trac. LLC applications are reminiscent of the PERC/Eco-Vision applications filed in the early 1990's by Westpac which proposed large previously unaccounted for underground waters associated with the bedrock/fracture zone systems. There was much opposition to those applications and the agent for Aqua Trac (Summit Engineering) is the same as for the PERC/Westpac/Eco-Vision applications. At that time they were proposing some "unique" technologies & methodologies to identify production zones. Since these methods were resulting in substantially larger estimates of perennial yield than the USGS, this is further justification for requiring the studies requested under protest item #2 above and for the protestant to add or amend their protest accordingly.
10. Importation of groundwater may have adverse water quality & quantity impacts on the Lower Truckee River, Pyramid Lake, Endangered or Threatened Species and the Newlands Project/Churchill County.
11. The application(s) violates applicable Decrees, existing Legal Agreements, the Reclamation Act and Contracts, the Clean Water Act, the Clean Act and the Endangered Species Act.
12. Importation of groundwater to support uncontrolled and irresponsible growth in the urbanizing areas will create many unknown impacts to the hydrologic resources, socioeconomics and environment.

13. Large volumes of groundwater extraction has the potential to affect wetlands, springs, seeps, surface water flows, artesian wells, wells, domestic wells, riparian & Native vegetation, water quality, flora and fauna within the hydrographic basin. If inter-basin flow exists, these same impacts would be realized in the adjacent basins. In the case of springs or seeps, the applicant has failed to ensure that wildlife that customarily utilizes the water will have continued access to it. 533.367
14. If this transfer is approved, the water transferred will have a negative impact on groundwater sources relied upon by farmers, ranchers and other land owners and will negatively impact flows to the wetlands and will adversely affect water quality & quantity.
15. The proposed applications requires easements for rights of way over private and federally administered lands and the Applicant has made no demonstration that it is feasible for it to obtain said easements.
16. The proposed use of the water will cause the soil to subside, causing cracks in foundations and roadbeds.
17. The proposed use of the water will cause an increase in dust and particulates and will cause exceedances of air quality standards for the basin.
18. The proposed use conflicts with protectable interests in existing domestic wells as set forth in N.R.S. 533.024, the State Engineer must reject the applications (N.R.S. 533.370(4)).
19. If inter-basin flow exists between the Winnemucca Lake and Pyramid Lake hydrographic basins, pumpage from Winnemucca Lake may intercept subsurface flow to Pyramid Lake. Reduction in flows to Pyramid Lake will further increase demands on Newlands Project waters to offset losses to Pyramid Lake for the benefit of threatened or endangered species. Such actions conflict with existing rights.
20. A portion of the proposed place of use is the Fernley Hydrographic Basin #76. If Fernley's future M&I demand is served from this source, it will likely affect Decreed, statutory and contractual requirements and legal agreements for water delivery between the Truckee Carson Irrigation District, Reclamation, the Pyramid Lake Tribe and other third parties.
21. The application is not in the public interest.

THEREFORE, BASED ON THE FORGOING REASONS:

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

THEREFORE 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 8TH DAY OF AUGUST, 2005

_____

STATE OF: NEVADA

COUNTY OF: WASHOE

BETTY MELARKEY
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 89-0049-2 - Expires March 10, 2006

$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: 72441 – 72480, 72718 – 72814, 72830 – 72836, 72848 – 72863 & 72868 – 72896 FILED IN THE NAME OF AQUA TRAC, LLC;

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. SCHROEDER, ESQ.
   SCHROEDER 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.
P.O. BOX 5007
RENO, NV 89513
(775) 747-1100