

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

IN THE MATTER OF
CHANGE APPLICATION NUMBER: 73111
FILED BY: CITY OF FERNLEY
& DB FERNLEY-RIGHTWAY HOLDINGS, LLC
ON: AUGUST 1, 2005, TO CHANGE THE
POINT OF DIVERSION, PLACE & MANNER OF
USE OF: UNDERGROUND WATER.

PROTEST & REQUEST TO
DENY APPLICATION 73111;
PETITION FOR HEARING
PURSUANT TO NRS 533.365;
PETITION FOR A HYDRO-
LOGICAL & ENVIRONMENTAL
STUDY PURSUANT TO
NRS 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 CHANGE APPLICATION NUMBER: 73111 FILED ON: AUGUST 1, 2005 BY:
CITY OF FERNLEY & DB FERNLEY-RIGHTWAY HOLDINGS, LLC TO CHANGE THE POINT OF
DIVERSION, PLACE OF USE AND MANNER OF USE OF A PORTION OF UNDERGROUND WATERS
HERETOFORE APPROPRIATED UNDER PERMIT 66555 SITUATED IN WASHOE COUNTY, STATE
OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO WIT:

1. 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. PREVIOUS STUDIES ON THE TRUCKEE AND CARSON RIVERS INDICATE THE
GROUND AND SURFACE WATERS ARE CONNECTED AND THAT PUMPAGE FROM WELLS LOCATED
NEAR THE RIVER WILL ULTIMATELY DERIVE THEIR WATER FROM THE SURFACE SOURCE AND/OR
WILL INTERCEPT THOSE GROUNDWATER FLOWS REACHING THE RIVER, THUS REDUCING FLOWS
IN THE LOWER TRUCKEE RIVER. THE RIVER IS A GAINING REACH NEAR WADSWORTH. 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 AND LESSEN THE EFFICIENCY IN THE
DELIVERY OF WATER RIGHT OWNERS SERVED BY THE NEWLANDS PROJECT INCLUDING
CHURCHILL COUNTY.

2. 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

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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.

3. 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 CHANGE OF A GROUNDWATER RIGHT, 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.

4. 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.

5. 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).

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

7. THE APPLICATION IS NOT RIPE FOR CONSIDERATION DUE TO ONGOING APPEAL OF THE BASE RIGHTS. THE STATE ENGINEER'S RULING #5079 WHICH GRANTED THE BASE RIGHT PERMITS 66555, 66556 & 66557 HAS BEEN APPEALED BY THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS (PLIT) WHICH IS STILL PENDING. THE OUTCOME OF THE APPEAL PROCESS MAY AFFECT THE LEGITIMACY OF THE BASE RIGHTS SOUGHT TO BE TRANSFERRED UNDER THIS CHANGE APPLICATION.

8. THE APPLICATION IS NOT RIPE FOR CONSIDERATION DUE TO POTENTIAL CANCELLATION OF THE BASE RIGHTS. THE STATE ENGINEER HELD A HEARING ON 4 AUGUST 2005, WHICH WAS REQUESTED BY ONE OF THE APPLICANTS (CITY OF FERNLEY) AND THE PLIT TO CONSIDER THE CANCELLATION OF THE BASE RIGHTS 66555, 66556, 66557 FOR FAILURE TO PROCEED WITH DUE DILIGENCE IN PLACING THE WATER TO BENEFICIAL USE. THE CITY OF FERNLEY WITHDREW THEIR REQUEST FOR CANCELLATION OF THESE BASE RIGHTS ON THE EVE OF THIS HEARING, HOWEVER THE STATE ENGINEER PROCEEDED WITH TAKING EVIDENCE REGARDING POTENTIAL CANCELLATION OF THE BASE RIGHTS AND HAS NOT YET ENTERED A

RULING. AS THE CITY OF FERNLEY CORRECTLY POINT OUT IN THEIR REQUEST FOR CANCELLATION OF THE BASE RIGHTS, THE ORIGINAL BASE RIGHTS (42609, 42610 & 42614) WERE FILED IN 1980 FOR MINING & MILLING, A TEMPORARY USE, AND THE WATER HAS NOT YET BEEN PUT TO BENEFICIAL USE SOME TWENTY FIVE YEARS LATER. CLEARLY THE OWNERS OF THE BASE RIGHTS HAVE NOT PROCEEDED WITH DUE DILIGENCE AFTER TWENTY FIVE YEARS OF FAILING TO PUT THE WATER TO USE AND THEREFORE PROCEEDING WITH CHANGE APPLICATIONS ON BASE RIGHTS THAT MAY BE CANCELLED IS PREMATURE.

9. RIGHT TO USE THE WATER NOT NEEDED UNDER THE BASE RIGHTS N.R.S. 533.045. THE RIGHT TO THE USE OF THE WATER UNDER THE ORIGINAL BASE RIGHTS (42609, 42610 & 42614) FOR MINING & MILLING AND THE SUBJECT BASE RIGHTS (66555, 66556 & 66557) FOR INDUSTRIAL POWER GENERATION CEASED WHEN IT BECAME APPARENT THAT IT WAS NOT NEEDED AND WOULD NOT BE USED FOR THESE PURPOSES.

10. PENDING APPLICATION TO APPROPRIATE 71382 SHOULD BE WITHDRAWN. THE INTENT OF THE CITY OF FERNLEY'S APPLICATION 71382 TO APPROPRIATE SHOULD BE WITHDRAWN SINCE ITS INTENT TO APPROPRIATE WAS PREDICATED UPON THE CANCELLATION OF THE BASE RIGHTS THIS APPLICATION IS NOW SEEKING TO CHANGE.

11. THE APPLICANT IS NOT ABLE TO CONSTRUCT THE WORKS NECESSARY OR ACQUIRE THE NECESSARY RIGHTS OF WAY TO APPLY THE WATER TO BENEFICIAL USE. PRIOR TO THE SETTING OF A HEARING, THE APPLICANT SHOULD BE REQUIRED TO PROVIDE DETAILED PLANS AND SPECIFICATIONS FOR THE WORKS THAT THE APPLICANT INTENDS TO CONSTRUCT FOR THE CONVEYANCE OF WATER FROM THE PROPOSED POINT OF DIVERSION TO THE PROPOSED PLACE OF USE.

12. ADJACENT GROUND WATER BASINS ARE OVER APPROPRIATED. THE PROPOSED POINT OF DIVERSION IS IN CLOSE PROXIMITY TO THE BASIN BOUNDARIES OF THE DODGE FLAT BASIN (82), THE FERNLEY AREA BASIN (76), AND THE TRACY SEGMENT (83). DRI STUDIES HAVE SHOWN THERE IS INTER-BASIN FLOW BETWEEN THESE BASINS. THE BASIN BOUNDARIES NEAR THE PROPOSED POINT OF DIVERSION ARE VERY SHALLOW TOPOGRAPHIC DIVIDES. GRANTING THE APPLICATION WOULD CONFLICT WITH EXISTING RIGHTS AND THREATEN TO PROVE DETRIMENTAL TO THE PUBLIC INTEREST BY LOWERING REGIONAL GROUNDWATER LEVELS AND DETRIMENTALLY AFFECTING GROUNDWATER RESOURCES IN BASINS 76 AND 86 WHICH ARE ALREADY OVER APPROPRIATED.

IN ACCORDANCE WITH RECENT DATA AND BRIEFINGS FROM THE STATE ENGINEER'S OFFICE ALL BASINS WITHIN LYON COUNTY ARE OVER APPROPRIATED AND OVER PUMPED, RESULTING IN DECLINING WATER TABLES. LYON COUNTY AND FERNLEY ARE REACHING OUT AND ATTEMPTING TO ACQUIRE GROUND AND SURFACE WATERS FROM ADJACENT COUNTIES FOR CONTINUED RAPID DEVELOPMENT WITH NO EFFORT TO BALANCE OR MITIGATE THE EXISTING BALANCE ISSUES. THE POTENTIAL RESULT IS LARGE SCALE WELL FAILURE IN FERNLEY AND

LYON COUNTY AND A REGIONAL WATER CRISIS CREATED BY ONE COUNTY THAT CAN ONLY BE SOLVED BY THE STATE TAKING RESOURCES FROM OTHER COUNTIES. UNTIL LYON COUNTY AND ALL MUNICIPALITIES SHARING GROUND WATER SOURCES WITHIN LYON COUNTY DEVELOP AND IMPLEMENT A STATE APPROVED PLAN TO MITIGATE OR REBALANCE CURRENT GROUND WATER MINING, NO NEW APPROPRIATIONS OR TRANSFERS FROM ADJACENT BASINS TO LOCATIONS VERY NEAR THE OVER-APPROPRIATED BASINS SHOULD BE ALLOWED.

13. IMPACTS TO SURFACE FLOWS OF THE TRUCKEE RIVER SHOULD BE MITIGATED. THE APPLICANTS HAVE PREVIOUSLY TENTATIVELY AGREED TO MITIGATE IMPACTS TO THE TRUCKEE RIVER WITH SOME OF THEIR SURFACE RIGHTS DIVERTED AT DERBY DAM. SUCH MITIGATION SHOULD NOT BE ALLOWED WITH SURFACE WATER RIGHTS THE APPLICANTS ARE NOW SEEKING TO TRANSFER FROM CHURCHILL COUNTY.

THEREFORE, FOR THE FORGOING REASONS, THE PROTESTANT RESPECTIVELY REQUESTS THAT THE STATE ENGINEER REQUIRE A HYDROLOGICAL AND ENVIRONMENTAL STUDY TO BE CONDUCTED PURSUANT TO N.R.S. 533.368, THAT THE STATE ENGINEER HOLD A HEARING ON THE APPLICATION AND THAT THE APPLICATION BE DENIED AND AN ORDER BE ENTERED BY THE STATE ENGINEER DENYING SAID APPLICATION.

SIGNED:

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

*State of Nevada
County of Washoe*

SUBSCRIBED AND SWORN TO BEFORE ME THIS 23 ND DAY OF NOVEMBER, 2005,
by *Chris 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: 73111 & 73112 FILED IN THE NAME OF DB FERNLEY-RIGHTWAY HOLDINGS, LLC & CITY OF FERNLEY AND APPLICATION 73207 & 73208 FILED IN THE NAME OF NEVADA LAND & RESOURCE CO., LLC & CITY OF FERNLEY,

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

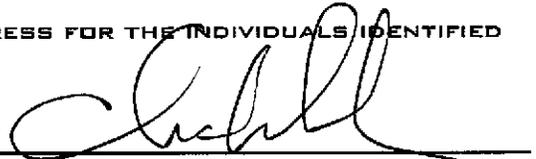
2. **MR. RUSTY JARDINE, ESQ.**
CHURCHILL COUNTY DEPUTY DISTRICT ATTORNEY
155 N. TAYLOR ST., SUITE # 170
FALLON, NV 89406

3. **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: _____



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