FILED
DEC 22 2005
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF CHANGE APPLICATION NUMBER: 73161 FILED BY: CITY OF FERNLEY ON: AUGUST 19, 2005, TO CHANGE THE PLACE & MANNER OF USE OF A PORTION WATERS OF THE TRUCKEE RIVER	**PROTEST & REQUEST TO DENY APPLICATION 73161; PETITION FOR HEARING PURSUANT TO NRS 533.365; PETITION FOR A HYDROLOGICAL & 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: 73161 FILED ON: AUGUST 19, 2005 BY: CITY OF FERNLEY TO CHANGE THE PLACE OF USE AND MANNER OF USE OF A PORTION OF TRUCKEE RIVER WATERS HERETOFORE APPROPRIATED UNDER CLAIM #3, TCID S.R. #375-A SITUATED IN CHURCHILL COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO WIT:

1. THE APPLICANTS SEEK TO TRANSFER THE FULL DUTY OF 4.5 ACRE-FOOT/ACRE. IF THE APPLICATION IS GRANTED AT FULL DUTY, IT WOULD ADVERSELY IMPACT RETURN FLOWS, GROUNDWATER RECHARGE AND WETLANDS. THERE ARE DOWN GRADIENT SURFACE WATER RIGHTS WHICH RELY UPON RETURN FLOWS FROM THESE LANDS INCLUDING THE STILLWATER WETLANDS. THE MASSIE AND MAHALA SLOUGHS, LOCATED DOWN GRADIENT OF THE EXISTING PLACE OF USE, HAVE BEEN DESIGNATED AS JURISDICTIONAL WETLANDS BY THE U.S. ARMY CORPS OF ENGINEERS DUE TO THEIR CONNECTION WITH THE STILLWATER WETLANDS AND THE INTERSTATE AND NAVIGABLE CARSON RIVER. ALTHOUGH THE ORR DITCH DECREE DOES NOT SPECIFICALLY DICTATE A CONSUMPTIVE USE REDUCTION UPON A MANNER OF USE CHANGE, THE STATE ENGINEER HAS RECENTLY IMPOSED A 2.5 ACRE-FOOT/ACRE CONSUMPTIVE USE LIMITATION ON TRUCKEE RIVER CHANGE APPLICATIONS. IF THE APPLICATIONS ARE APPROVED THEY SHOULD BE LIMITED TO 2.5 ACRE-FOOT/ACRE WITH THE REMAINING DUTY MADE AVAILABLE FOR MITIGATION WITHIN THE CHURCHILL COUNTY PORTION OF THE TRUCKEE DIVISION.

2. THE APPLICATION, IF GRANTED WOULD VIOLATE FEDERAL RECLAMATION LAW, 43 U.S.C. §389, IN SEVERAL RESPECTS INCLUDING, BUT NOT LIMITED TO: I) THE DETRIMENTAL EFFECT ON EXISTING WATER RIGHTS WITHIN THE NEWLANDS PROJECT; AND II) VIOLATION OF THE TRUST AND CONTRACT OBLIGATIONS OF THE UNITED STATES OF AMERICA TO ALL OWNERS OF NEWLANDS PROJECT WATER RIGHTS INCLUDING CHURCHILL COUNTY. SPECIFICALLY, THE WATER TRANSFER SOUGHT CONFLICTS WITH AND HINDERS THE

Secretary of Interior's ability to reach efficiency required by Newlands Project Operating Criteria and Procedures.

3. The application, if granted would violate N.R.S. 533.370 in that it would be detrimental to the public interest and conflict with existing rights by removing water resources from lands within aquifer recharge areas which in turn would deplete the groundwater which Churchill County's residents rely on to supply their water from domestic wells which have protectable interest under Nevada law. The Application should not be granted without a condition on the transfer for mitigation of adverse effects to groundwater supplies.

4. The application, if granted 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, in violation of N.R.S. 533.370 1(b).

5. The application, if granted would be contrary to and violate federal law, 42 U.S.C. §4300, the National Environmental Policy act (NEPA) because is would implement major actions by the Federal Government without having prepared the required environmental analysis of the cumulative and synergistic effects of said actions to the human environment by either an Environmental Assessment or an Environmental Impact Statement.

6. The application should be subject to Nevada Law, N.R.S 533.368, to determine whether hydrologic and environmental studies are necessary. If so, such studies should be completed prior to approval of the application.

7. The application, if granted would violate the Federal Safe Drinking Water Act because its depletion of groundwater quantity would have a corresponding negative impact on groundwater quality upon which Churchill County depends to supply drinking water to its residents.

8. The applicants seek to change the place of use from the presently authorized use in Churchill County to a different use in Lyon County. N.R.S. 533.363 requires that the Churchill County Commissioners receive notice of the application and are afforded an opportunity to notice the application and hold a hearing on the matter and submit recommendations to the State Engineer. Churchill County has not received such notice.

9. In accordance with recent data and briefings from the State Engineer's Office, many basins or sub-basins within Lyon County are over appropriated and

over pumped, resulting in declining water tables. Entities within Lyon County and Fernley are reaching out and attempting to acquire ground and surface waters from adjacent counties and hydrographic basins for continued rapid development with little or no effort to balance or mitigate the impacts. The potential result could be large scale well failures in Fernley and Lyon County and a regional water crises that can only be solved by the State taking resources from other counties. Until Lyon County and all municipalities sharing surface and groundwater sources within Lyon County develop and implement a State approved plan to mitigate or rebalance current groundwater mining, no new appropriations or surface water transfers from Lyon or adjacent counties should be allowed. Although N.R.S. 533.370 5. applies to interbasin groundwater transfers, these same criteria should apply to surface water transfers between counties and hydrographic basins.

10. Churchill County Code, Chapter 17.77 (Dust Ordinance) requires a person who transfers water rights off a parcel of land five (5) acres or more, or who ceases to irrigate said parcel, to obtain a permit from Churchill County to mitigate fugitive dust which results from the cessation of irrigation. By filing the application, Applicants have caused the cessation of irrigation and are therefore subject to the Dust Ordinance. To date the Applicants have taken no actions under the Ordinance. If the application is granted before the Applicants comply with the Dust Ordinance, it would be detrimental to the public interest.

11. Approving the application without dust mitigation will result in numerous problems related to fugitive dust including harm to plant and animal species, a nuisance to property owners downwind of the parcels which the Applicants have stripped of water rights, as well as blowing dust which creates a hazard to Public health, vehicular traffic on adjacent county roads and state highways. As such, if the application is granted without conditions of mitigation, the public interest will be harmed.

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 19th DAY OF DECEMBER, 2005,

BY CHRIS C. MAHANNAH

KEITH WEAVER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 05-99986-2 - Expires September 6, 2009

_____

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: 73245, 73246 & 73161 - 73165 FILED IN THE NAVE OF 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: _____

CHRIS C. MAHANNAH, P.E., SWRS #976 (AGENT)
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