FILED
JAN 26 2006
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF
APPLICATION NUMBER: 73285
FILED BY: REGIONAL UTILITIES, INC.
ON: SEPTEMBER 28, 2005, TO APPROPRIATE THE WATERS OF: UNDERGROUND

PROTEST & REQUEST TO DENY APPLICATION 73285; 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: 73285 FILED ON: SEPTEMBER 28, 2005 BY: REGIONAL UTILITIES, 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. DUE TO THE LARGE MAGNITUDE OF THE REGIONAL UTILITIES, INC. APPLICATIONS SEEKING NEW APPROPRIATIONS FROM MULTIPLE GROUNDWATER BASINS IN THE AMOUNT OF 11,400 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.
2. 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).
3. 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.
4. THE STATE ENGINEER MUST ADDRESS AND REQUIRE THAT THE PROVISIONS OF N.R.S. 533.370 5. (A-E) ARE FULFILLED & ADDRESSED.
5. 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. THIS SPECULATION IS EVIDENCED IN THE CITY OF FERNLEY'S RECENTLY PUBLISHED WATER MASTER PLAN WHICH DOES NOT INCLUDE

THESE WATERS OR IMPORTATION IN THE NEXT 15-20 YEARS. THIS IS INCONSISTENT WITH THE APPLICANT'S INDICATION THAT THE WATER WILL BE PUT TO BENEFICIAL USE WITHIN FIVE (5) YEARS.

6. 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). APPROVAL OF THESE APPLICATIONS WOULD IMPAIR/IMPACT EXISTING CHURCHILL COUNTY RESIDENTS WELLS AND WOULD PROVE DETRIMENTAL TO CHURCHILL COUNTY PUBLIC INTEREST AND MASTER PLANS FOR RESIDENTIAL AND INDUSTRIAL GROWTH.

7. THE ANNUAL DUTY REQUESTED BY REGIONAL UTILITIES FROM THE PYRAMID LAKE VALLEY HYDROGRAPHIC BASIN IS 6,625 AFA. USGS OPEN FILE REPORT 78-768 ESTIMATES THE PERENNIAL YIELD OF THIS BASIN AT 7,000 AFA. PRELIMINARY DATA FROM THE STATE ENGINEER'S OFFICE DATABASE RECORDS INDICATE EXISTING APPROPRIATIONS APPROXIMATING 360 AFA AND PENDING APPLICATIONS IN THE AMOUNT OF 6,625 AFA. IT IS CHURCHILL COUNTY'S UNDERSTANDING THAT THE PYRAMID LAKE TRIBE CONSIDERS ITSELF A SOVEREIGN NATION AND DOES NOT FOLLOW THE STATE OF NEVADA'S APPROPRIATION PROCESS. THEREFORE, THE TOTAL QUANTITY OF EXISTING APPROPRIATIONS, USE OR CLAIMS IS UNKNOWN. PENDING A DETAILED BASIN ABSTRACT AND INVENTORY OF TRIBAL CLAIMS, THE TOTAL COMMITTED UNDERGROUND WATER RIGHTS IN THIS BASIN MAY EXCEED THE PERENNIAL YIELD, THEREFORE THERE MAY BE NO UNAPPROPRIATED WATER IN THE BASIN. FURTHERMORE THE LOCATION OF THE POINT OF DIVERSION IS ON THE HYDROGRAPHIC BASIN BOUNDARY WITH THE FERNLEY AREA BASIN WHICH IS CLEARLY OVER APPROPRIATED.

8. 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.

9. 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.

10. 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.

11. 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

12. 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.
13. The proposed application 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.
14. The proposed use of the water will cause the soil to subside, causing cracks in foundations and roadbeds.
15. 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.
16. 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)).
17. 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.
18. 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, for the foregoing 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 20TH DAY OF JANUARY, 2006

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: 73284 – 73286 filed in the name of Regional Utilities, 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. 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