

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

FILED
AUG 17 2006
STATE ENGINEER'S OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 74207
FILED BY: JAMES E. MCKAY
ON: APRIL 17, 2006, TO APPROPRIATE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST
DENY APPLICATION 74207
PETITION FOR HEARING
PURSUANT TO N.R.S. 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: 74207 FILED ON: APRIL 17, 2006 BY: JAMES E.
MCKAY TO APPROPRIATE THE WATERS OF: UNDERGROUND SITUATED IN: LYON COUNTY,
STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO
WIT:

1. THE APPLICANT IS SEEKING TO APPROPRIATE 2,240 AFA OF GROUND WATER FROM THE CHURCHILL VALLEY (#102) WHICH WAS DESIGNATED ON 23 AUGUST 1977 UNDER ORDER#689. THE BASIN IS SEVERELY OVER-APPROPRIATED; THEREFORE THERE IS NO UN-APPROPRIATED WATER. PURSUANT TO THE USGS OPEN FILE REPORT 78-768, THE PERENNIAL YIELD OF BASIN# 102 IS 1,600 AFA WHILE, PENDING A DETAILED BASIN ABSTRACT, THE STATE ENGINEER IS SHOWING 10,822 AFA OF UNDERGROUND RIGHTS COMMITTED. THIS IS NEARLY SEVEN (7.0) TIMES THE PERENNIAL YIELD AS ESTIMATED BY THE USGS.
2. FURTHER UNDERGROUND APPROPRIATIONS HAVE THE POTENTIAL TO INTERCEPT GROUNDWATER WHICH PROVIDES BASE FLOW TO THE CARSON RIVER AND/OR LAHONTAN RESERVOIR FROM WHICH THE PROTESTANT OWNS DECREED SURFACE RIGHTS. AT THE 2005 CARSON RIVER SYMPOSIUM SPONSORED BY CWSD, DOUG MADRER FROM THE USGS PRESENTED DATA AND FINDINGS FROM STUDIES IN THE CARSON VALLEY ON THIS VERY SUBJECT. HIS CONCLUSION WAS: "A MAJOR EFFECT OF PUMPING IS INCREASED INFILTRATION OF STREAM FLOW FROM THE CARSON RIVER AND IRRIGATION CANALS AND DECREASED OUTFLOW OF THE CARSON RIVER." CHURCHILL COUNTY, USFWS, USGS AND OTHERS HAVE SPONSORED A THREE YEAR STUDY TO BE COMPLETED BY THE USGS ENTITLED: "COMPILATION OF AVAILABLE SURFACE-WATER AND GROUND-WATER DATA IN THE UPPER CARSON RIVER BASIN AND TRENDS IN STREAMFLOW ON THE CARSON RIVER ABOVE LAHONTAN DAM" WHICH WILL FURTHER ADDRESS THE IMPACTS AND REDUCTIONS IN CARSON RIVER FLOWS RESULTING FROM GROUNDWATER PUMPING IN THE UPPER BASIN. ACTION ON THIS APPLICATION SHOULD BE WITHHELD UNTIL THIS STUDY OR OTHERS ARE COMPLETE. THE STATE ENGINEER HAS RECOGNIZED THIS SURFACE AND GROUND WATER CONNECTION FOR NEARLY THIRTY YEARS AND HAS DENIED UNDERGROUND

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STATE ENGINEER'S OFFICE

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APPLICATIONS ON THE GROUNDS THEY WILL DIMINISH SENIOR DECREED SURFACE WATER FLOWS. SEE RULING # 2197 DATED 1 MARCH 1977 AND GRIFFIN V. WESTEGARD DATED 29 JULY 1980 THAT WERE APPEALED TO THE NEVADA SUPREME COURT WHICH UPHELD RULING #2197. MORE RECENTLY, TESTIMONY PROVIDED BY THE STATE ENGINEER AND HIS STAFF TO THE LEGISLATIVE COMMISSION COMMITTEE SCR 26 ON 21 JUNE 2006 SUPPORTED AND RECOGNIZED THE CONNECTION BETWEEN UNDERGROUND AND SURFACE WATERS. THE SCR 26 COMMITTEE RECOGNIZED THIS AS AN IMPORTANT ISSUE IN THE STATE AND MADE THE RECOMMENDATION TO INCLUDE STATEMENTS IN THEIR REPORT TO THE LEGISLATURE THAT THIS ISSUE NEEDED TO BE ADDRESSED. THE IMPACTS RESULTING FROM A NEW UNDERGROUND APPROPRIATION IN A SEVERELY OVER-APPROPRIATED BASIN WILL REDUCE AND IMPACT SENIOR DECREED SURFACE WATER RIGHTS.

3. ON 30 AUGUST 2005 THE STATE ENGINEER MADE A PUBLIC POWER POINT PRESENTATION AT THE LYON COUNTY UTILITIES FACILITY WHICH PROVIDED AN OVERVIEW OF THE GROUNDWATER RESOURCE ISSUES IN LYON COUNTY AND SPECIFICALLY CHURCHILL VALLEY. THE PRESENTATION OUTLINED MANY ISSUES INCLUDING: SEVERE BASIN OVER-APPROPRIATION, WATER LEVEL DECLINES, OVER PUMPAGE, SURFACE WATER IMPACTS, AND POTENTIAL REMEDIATION OR CURTAILMENT OPTIONS. THIS APPLICATION'S POD IS WITHIN THE CHURCHILL VALLEY, WHICH ACCORDING TO THE STATE ENGINEER'S PRESENTATION HAS UNDERGROUND NON-SUPPLEMENTAL PERMITS ISSUED IN AMOUNTS EXCEEDING ESTIMATES OF RECHARGE BY A FACTOR OF NEARLY SEVEN (7) AND 2004 PUMPAGE EXCEEDS RECHARGE BY A FACTOR OF 1.5. DUE TO THE APPLICATION'S POD PROXIMITY TO THE CARSON RIVER AND LAHONTAN RESERVOIR, SEVERE BASIN OVER-APPROPRIATION, WATER LEVEL DECLINES, SUPPLEMENTAL POTENTIAL, THIS APPLICATION WILL BE ADVERSE AND IMPACT EXISTING SURFACE AND UNDERGROUND RIGHTS.
4. PURSUANT TO THE STATE ENGINEER'S 30 AUGUST 2005 POWER POINT AND THE FACT THAT ALL UPPER CARSON RIVER GROUNDWATER BASINS ARE SEVERELY OVER-APPROPRIATED, THE STATE ENGINEER SHOULD EITHER DENY THIS APPLICATION OR WITHHOLD ACTION UNTIL ONE OR MORE OF THE REMEDIATION ACTIONS HE PRESENTED ARE IMPLEMENTED AND THE PROBLEM(S) CORRECTED. THE STATE ENGINEER IS OBLIGATED UNDER NRS CHAPTERS 533, 534 AND 278 TO REQUIRE THAT THERE BE ADEQUATE PLANS TO PROTECT EXISTING RIGHTS AND COMMITMENTS OF GROUNDWATER AND TO EXERCISE ALL APPROPRIATE AUTHORITY AND DISCRETION TO CONTROL OVER-APPROPRIATION/DEMAND ON THE SOURCE TO PROTECT BOTH THE PUBLIC AND EXISTING RIGHTS OF BOTH SURFACE AND UNDERGROUND RIGHTS.
5. THE STATE ENGINEER MAY BE TEMPTED TO ISSUE PERMITS ON THESE MINING & MILLING APPLICATIONS UNDER THE PREFERRED USE STATUTE NRS 534.120(2) AND FURTHER LIMIT OR SCRUTINIZE FUTURE TRANSFERS DUE TO A SO-CALLED 'TEMPORARY' MINING USE. SUCH A CONSIDERATION SHOULD NOT BE ENTERTAINED IN THIS SITUATION DUE TO THE PROVISIONS OUTLINED IN THIS PROTEST.

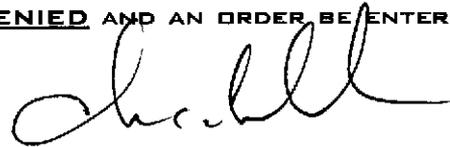
6. THE APPLICATION IF APPROVED IS NOT IN THE PUBLIC INTEREST AS IT WILL CAUSE LESS WATER TO REACH LAHONTAN RESERVOIR, THEREBY POTENTIALLY INCREASING DIVERSIONS FROM THE TRUCKEE RIVER CAUSING ALLEGED HARM BY THE PLIT AND USFWS TO THREATENED AND ENDANGERED SPECIES IN PYRAMID LAKE. ONE OF THE MAIN PURPOSES OF THE NEWLANDS PROJECT OCAP'S IS TO MAXIMIZE THE USE OF THE CARSON RIVER FOR THE PROJECT WHILE MINIMIZING DIVERSIONS FROM THE TRUCKEE TO THE PROJECT.
7. THE GRANTING OF THE APPLICATION WOULD CONFLICT WITH EXISTING RIGHTS, THEREFORE THE STATE ENGINEER MUST DENY THE APPLICATION PURSUANT TO NRS 533.370(4).
8. THE APPLICATION WOULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST FOR THE ABOVE REFERENCED REASONS, HOWEVER THE PROTESTANT RESERVES THE RIGHT TO ADD TO OR AMEND THIS PROTEST. PUBLIC INTEREST CRITERIA ARE DYNAMIC AND WHAT MAY BE IN OR DETRIMENTAL TO THE PUBLIC INTEREST TODAY CAN BE DIFFERENT IN THE FUTURE FOR ANY NUMBER OF REASONS BEYOND THE CONTROL OF THE PROTESTANT.

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 RESPECTFULLY REQUESTS THAT THE STATE ENGINEER DENY THE APPLICATION OUTRIGHT OR 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)
 MAHANNAH & ASSOCIATES, LLC.
 P.O. BOX 2494
 RENO, NV 89505
 (775) 323-1804

STATE OF NEVADA
 COUNTY OF WASHOE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 16TH DAY OF AUGUST, 2006
 BY CHRIS C. 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: 74206 & 74207 FILED IN THE NAME OF
JAMES E. MCKAY**

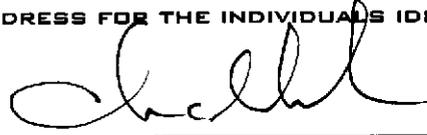
**PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND SEND COPIES OF ALL
CORRESPONDENCE TO THE ADDRESSES BELOW:**

- 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.
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505**

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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