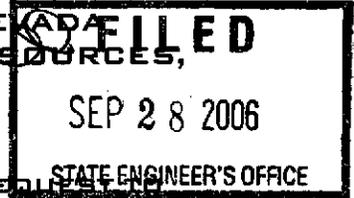


BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION & NATURAL RESOURCES,
DIVISION OF WATER RESOURCES



IN THE MATTER OF
APPLICATION NUMBER: 74434
FILED BY: DENNIS W. & MARCIA BENNETT SMITH &
DAVID D. & SANDRA L. WINCHELL
ON: JUNE 30, 2006 TO APPROPRIATE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST FOR
DENY APPLICATION 74434;
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: 74434 FILED ON: JUNE 30, 2006 BY: DENNIS W.
SMITH & MARCIA BENNETT SMITH (UNDIVIDED 50% INT.) AND DAVID D. WINCHELL &
SANDRA L. WINCHELL (UNDIVIDED 50% INT.) 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. UPON INFORMATION AND BELIEF THE SUBJECT WATER RIGHTS MAY BE SUBJECT TO FORFEITURE AND/OR ABANDONMENT.
2. THE APPLICANT IS PROPOSING A FULL DUTY (4.0 AF/ACRE) TRANSFER FROM IRRIGATION TO MUNICIPAL WHICH IS CONTRARY TO OTHER STATE ENGINEER RULINGS 5167, 5359 & 5491 WHICH LIMITED CHANGES TO THE CONSUMPTIVE USE RATE DEFINED UNDER THE ALPINE DECREE OF 2.5 AF/ACRE. IN RULING #5491, THE STATE ENGINEER INDICATES AT PAGE 10: "THE POLICY OF IDENTIFYING AND TRANSFERRING ONLY THE ESTIMATED CONSUMPTIVE USE PORTION OF AN EXISTING IRRIGATION PERMIT THROUGH THE PERMITTING PROCESS IS NOT INTENDED TO BE APPLIED TO EVERY REQUEST TO CHANGE AND EXISTING IRRIGATION RIGHT. IT IS TO BE USED ON A CASE-BY-CASE BASIS, WHICH ALLOWS FLEXIBILITY WHEN CONSIDERING THE VARIOUS LEVELS OF GROUNDWATER DEVELOPMENT FOUND WITHIN THE STATE. THE MOST LIKELY CANDIDATES FOR THIS TYPE OF ACTION WOULD BE THOSE DESIGNATED BASINS THAT ARE CONSIDERED AREAS OF ACTIVE MANAGEMENT... DAYTON VALLEY CAN BE CONSIDERED SUCH AN AREA; THEREFORE, THE STATE ENGINEER FINDS THAT TO ALLOW THE FULL DUTY TO BE CHANGED IS TANTAMOUNT TO THE ISSUANCE OF A NEW WATER RIGHT IN A GROUNDWATER BASIN THIS IS OVER APPROPRIATED AND NEW APPROPRIATIONS ARE LIMITED." THE AMOUNT OF SECONDARY RECHARGE OR RETURN FLOW TO THE AQUIFER OR RIVER IS DEPENDENT UPON A NUMBER OF FACTORS SUCH AS PROXIMITY TO RIVER, METHOD OF IRRIGATION, SEASON OF USE, ETC. THE CIRCUMSTANCES SURROUNDING THIS CHANGE APPLICATION WARRANT THE STATE ENGINEER TO LIMIT THE TRANSFER TO THE

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HISTORIC CONSUMPTIVE USE WHICH MAY BE LESS THAN 2.5 AF/ACRE. LYON COUNTY WILL ALSO BE SEEKING TO REDUCE THE WATER RIGHT DEDICATION AMOUNT TO LESS THAN 1.12 AF/EDU WHICH IS FURTHER REASON TO LIMIT THE TRANSFER TO THE HISTORIC CONSUMPTIVE USE AMOUNT. SEE ATTACHED LETTER DATED AUGUST 25, 2005 FROM CHURCHILL COUNTY TO THE STATE ENGINEER RELATING VARIOUS CONCERNS REGARDING LYON COUNTY'S GROUNDWATER MANAGEMENT PLAN AND CONJUNCTIVE USE PLAN, THE CONTENTS OF WHICH IS HEREBY INCORPORATED BY REFERENCE HEREIN AND MADE A PART HEREOF AS AN EXHIBIT TO THIS PROTEST.

3. THE APPLICANT IS ALSO SEEKING TO MOVE THE POINT OF DIVERSION (POD) SIGNIFICANTLY CLOSER TO THE CARSON RIVER FROM WHICH THE PROTESTANT OWNS SENIOR DOWNSTREAM DECREED SURFACE RIGHTS. THE PPOD IS APPROXIMATELY 1.25 MILES FROM THE RIVER IN THE CARSON PLAINS SUB-BASIN WHILE THE EPOD IS APPROXIMATELY FIVE (5.0) MILES FROM THE RIVER IN THE STAGE COACH SUB-BASIN. THERE IS CERTAINLY A TOPOGRAPHIC DIVIDE AND PERHAPS AN IMPERMEABLE BOUNDARY BETWEEN THE EPOD AND THE RIVER WHILE THE PPOD IS LOCATED WITHIN THE FLOOD PLAIN AQUIFER IMMEDIATELY ADJACENT TO THE RIVER AND THE TWO ARE HYDRAULICALLY CONNECTED. THIS MOVEMENT OF THE POD CLOSER TO THE RIVER WILL HAVE THE EFFECT OF EITHER INTERCEPTING MORE GROUNDWATER WHICH IS PROVIDING BASE FLOW TO THE RIVER AND/OR INDUCING RECHARGE FROM THE RIVER. AT THE 2005 CARSON RIVER SYMPOSIUM SPONSORED BY CWSD, DOUG MAURER 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 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 WAS 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 TO THE SURFACE FLOW IN THE CARSON RIVER RESULTING FROM THE MOVEMENT OF THE POD CLOSER TO THE RIVER NEED TO BE EXAMINED, ADDRESSED AND MITIGATED.

4. 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 DAYTON VALLEY SUB-BASINS. THE PRESENTATION OUTLINED MANY ISSUES INCLUDING: SEVERE BASIN OVER-APPROPRIATION, WATER LEVEL DECLINES, OVER PUMPAGE, SURFACE WATER IMPACTS, AND POTENTIAL REMEDIATION OR CURTAILMENT OPTIONS. WATER LEVEL DECLINES IN EXCESS OF TWENTY (20') FEET HAVE BEEN OBSERVED AT THE DAYTON ELEMENTARY SCHOOL OVER A RELATIVELY SHORT TIME SPAN OF SEVEN (7) YEARS. THIS APPLICATION'S POD IS WITHIN THE CARSON PLAINS SUB-BASIN OF DAYTON VALLEY, WHICH ACCORDING TO THE STATE ENGINEER'S PRESENTATION HAS UNDERGROUND NON-SUPPLEMENTAL PERMITS ISSUED IN AMOUNTS EXCEEDING ESTIMATES OF RECHARGE BY 260% OR MORE. DUE TO THE APPLICATION'S POD CLOSE PROXIMITY (APPROXIMATELY 1.25 MILES) TO THE CARSON RIVER, SEVERE BASIN OVER-APPROPRIATION, WATER LEVEL DECLINES, RETURN FLOW ISSUES, THIS APPLICATION WILL BE ADVERSE AND IMPACT EXISTING SURFACE AND UNDERGROUND RIGHTS.
5. 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.
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).

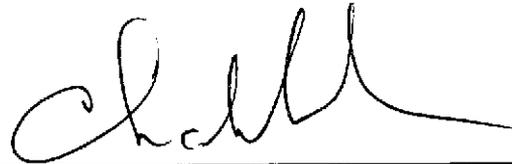
8. THE APPLICATION WOULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST FOR THE ABOVE REFERENCED REASONS, HOWEVER THE PROTESTANT RESERVES THE RIGHT TO ADD TO OR AMEND THIS PROTEST. PUBLIC INTEREST CRITERIA ARE DYNAMIC AND WHAT MAY BE IN OR DETRIMENTAL TO THE PUBLIC INTEREST TODAY CAN BE DIFFERENT IN THE FUTURE 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 26ST DAY OF SEPTEMBER, 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: 74434 FILED IN THE NAME OF DENNIS W. SMITH & MARGIA BENNETT SMITH (UNDIVIDED 50% INT.) AND DAVID D. WINCHELL & SANDRA L. WINCHELL (UNDIVIDED 50% INT.)

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: _____



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