IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

2006 OCT 23 PM 4:08

STATE ENGINEER'S OFFICE

In the Matter of Application Number 74592 Filed By Dennis W. Smith and Marcia Bennett Smith on August 3, 2006, for Permission to Change the Point of Diversion and Place of Use of a Portion of Water Appropriated Under Permit No. 20928, Certificate No. 7257	)	**PROTEST**

FILED
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Comes now The Pyramid Lake Paiute Tribe of Indians, whose post office address is P.O. Box 256, Nixon, Nevada 89424, whose occupation is a federally recognized Tribe of Indians, the governing body of the Pyramid Lake Indian Reservation, organized pursuant to the Indian Reorganization Act of 1934, with a Constitution and By-laws approved by the Secretary of Interior, and protests the granting of Application Number 74592, filed on August 3, 2006 by Dennis W. Smith and Marcia Bennett Smith, for permission to change the point of diversion and place of use of a portion of water appropriated under Permit No. 20928, Certificate No. 7257, for the following reasons and on the following grounds, to wit:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the groundwater available in the basin, and the resulting inability of the perennial yield to serve existing permits and commitments with groundwater, and in light of the obligations of the State Engineer pursuant to NRS Chapters 533, 534, and 278 to require that there be adequate plans to protect existing rights, uses and commitments of groundwater, and to exercise all appropriate authority and discretion to control over-demand on the source and to protect both the public and other right holders of both surface and groundwater rights.

2. Granting the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created, and to the public interest, by depleting flows in the Carson River and reducing inflows to Lahontan Reservoir, for the reasons stated above and because of the connection, both legal and physical, between groundwater and surface water in the basin, to the detriment of senior surface water right holders in the Newlands Project, which senior right holders are entitled to divert Truckee River water through the Truckee Canal to make up for insufficient Carson River flows which are the primary source to satisfy their rights, and which greater diversions of Truckee River water away from Pyramid Lake would operate to the detriment of the threatened and endangered species inhabiting Pyramid Lake and the lower Truckee River, and impair instream flows.

3. Granting the application may threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application - by way of example Fernley's Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 - and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

4. Granting the application would threaten to prove detrimental to the public interest.

5. This Protestant incorporates in this Protest by reference as if fully set forth herein every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

THEREFORE this Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Robert C. Maddox & Associates

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Robert C. Maddox, Esq.
3811 W Charleston Blvd Suite 110
Las Vegas NV 89102
Tel: (702) 366-1900
Agents for the Tribe

Subscribed and sworn to before me this 23rd ay of October, 2006.

TANYA SMITH
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-2455-2 - Expires June 9, 2008

Tanya Smith
Notary Public

State of Nevada

County of Washoe

My Commission Expires: June 9, 2008

$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE - ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.