

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

STATE ENGINEER'S OFFICE
2007 MAR 21 PM 1:50
RECEIVED
FILED
MAR 21 2007
STATE ENGINEER'S OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 75277
FILED BY: LYON COUNTY C/O
LYON COUNTY UTILITIES
ON: JANUARY 23, 2007 TO CHANGE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST TO
DENY APPLICATION 75277;
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: 75277 FILED ON: JANUARY 23, 2007 BY: LYON
COUNTY C/O LYON COUNTY UTILITIES TO CHANGE THE POINT OF DIVERSION, PLACE OF USE
AND MANNER OF USE OF THE WATERS OF: UNDERGROUND WATERS SITUATED IN: LYON
COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING
GROUNDS, TO WIT:

1. THE APPLICANT IS 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 0.75-1.0
MILE FROM THE RIVER CHANNELS IN THE CARSON PLAINS SUB-BASIN WHILE THE
EPOD IS APPROXIMATELY 3.25 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. ADDITIONALLY, THE USGS HAS JUST RECENTLY (FEBRUARY 2007) SUBMITTED A PROPOSED STUDY TO CWSO FOR JOINT FUNDING ENTITLED: "EVALUATION OF GROUND-WATER FLOW IN THE MIDDLE CARSON RIVER BASIN, EAGLE, DAYTON, & CHURCHILL VALLEY'S, WEST-CENTRAL NEVADA" TO ADDRESS THIS VERY ISSUE. SOME PERTINENT QUOTES FROM THE "PROBLEM" SECTION IN THIS PROPOSAL INCLUDE:

- SUCH WITHDRAWALS (GROUNDWATER) MAY CAPTURE EASTWARD FLOWING GROUNDWATER FROM EAGLE VALLEY THAT SUPPLIES BASE FLOW TO THE CARSON RIVER.
- CHANGES IN LAND AND WATER USE AND INCREASING DEVELOPMENT OF WATER RESOURCES IN THE UPPER CARSON RIVER BASIN MAY AFFECT FLOW OF THE RIVER AND, IN TURN, AFFECT DOWNSTREAM WATER USERS DEPENDENT ON SUSTAINED RIVER FLOWS TO LAHONTAN RESERVOIR.
- DOWNSTREAM FROM LAHONTAN RESERVOIR, GROUNDWATER RESOURCES IN THE ARID LAHONTAN VALLEY ARE LIMITED, AND DEVELOPMENT IN LAHONTAN VALLEY MAY DEPEND GREATLY ON SUSTAINED FLOW OF THE CARSON RIVER.
- DEVELOPMENT OF A REGIONAL SURFACE-WATER AND GROUNDWATER INTERACTIONS MODEL OF THE MIDDLE CARSON RIVER BASIN WOULD PROVIDE A TOOL TO ASSESS THE POTENTIAL EFFECTS OF CHANGES IN LAND AND WATER USE AND INCREASED GROUNDWATER WITHDRAWALS ON STREAM FLOW OF THE CARSON RIVER.

ACTION ON THIS APPLICATION SHOULD BE WITHHELD OR IMPACT MITIGATION MEASURES IMPLEMENTED IN THE PERMIT TERMS UNTIL SUCH TIME AS THESE OR OTHER STUDIES/MODELS ARE COMPLETE. CHURCHILL AND LYON COUNTY REPRESENTATIVES HAVE RECENTLY MET TO NEGOTIATE A MITIGATION AGREEMENT AND THE STATE ENGINEER & USGS INPUT WILL BE SOUGHT IN THIS PROCESS. A COPY OF THE DRAFT FEBRUARY, 2007 USGS PROJECT PROPOSAL IS ATTACHED AND HEREBY INCORPORATED IN THIS PROTEST BY REFERENCE.

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.

2. 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 0.75-1.0 MILE) 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.
3. 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, THE PROBLEM(S) CORRECTED OR MITIGATION MEASURES ARE INCORPORATED IN THE PROTEST TERMS. 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.
4. 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 DCAP'S IS TO MAXIMIZE THE USE OF THE CARSON RIVER FOR THE PROJECT WHILE MINIMIZING DIVERSIONS FROM THE TRUCKEE TO THE PROJECT.
5. THE GRANTING OF THE APPLICATION WOULD CONFLICT WITH EXISTING RIGHTS, THEREFORE THE STATE ENGINEER MUST DENY THE APPLICATION PURSUANT TO NRS 533.370(4).

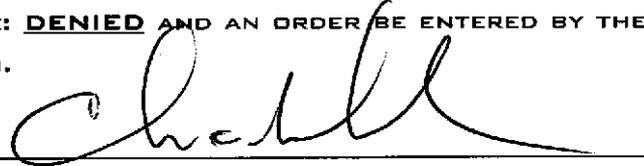
6. THE APPLICATION WOULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST FOR THE ABOVE REFERENCED REASONS, HOWEVER THE PROTESTANT RESERVES THE RIGHT TO ADD TO OR AMEND THIS PROTEST. PUBLIC INTEREST CRITERIA ARE DYNAMIC AND WHAT MAY BE IN OR DETRIMENTAL TO THE PUBLIC INTEREST TODAY CAN BE DIFFERENT IN THE FUTURE 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 OUTHRIGHT 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 G. 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 9TH DAY OF MARCH, 2007
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: 75277 FILED IN THE NAME OF LYON COUNTY, C/O LYON COUNTY UTILITIES

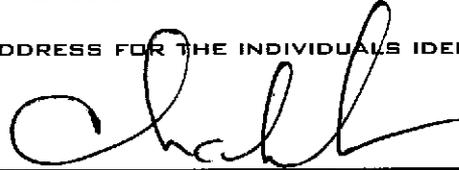
PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND SEND COPIES OF ALL CORRESPONDENCE TO THE ADDRESSES BELOW:

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)
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804