

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

FILED
AUG 17 2007
STATE ENGINEER'S OFFICE

IN THE MATTER OF
APPLICATION NUMBER: 75954
FILED BY: GUARD, LTD.

PROTEST & REQUEST TO
DENY APPLICATION 75954,
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.365.

ON: JUNE 26, 2007 TO CHANGE THE
WATERS OF: UNDERGROUND

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: 75954 FILED ON: JUNE 26, 2007 BY: GUARD,
LTD. SEEKING TO APPROPRIATE 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 A NEW UNDERGROUND APPROPRIATION IN THE
CHURCHILL VALLEY HYDROGRAPHIC BASIN #102 WHICH IS SEVERELY OVER-
APPROPRIATED. THE USGS ESTIMATE OF PERENNIAL YIELD IS 1,600 AFA WHILE
10,822 AFA OF UNDERGROUND RIGHTS HAVE BEEN ISSUED BY THE STATE
ENGINEER. AN ADDITIONAL 5,301 AFA OF UNDERGROUND APPLICATIONS SEEKING TO
APPROPRIATE ARE PENDING. THE 2004 PUMPAGE INVENTORY FOR CHURCHILL
VALLEY SHOWS 2,359 AFA WHICH IS 1.5 TIMES THE ANNUAL RECHARGE ESTIMATE.
THE LOCATION OF THE POD NEAR THE CARSON RIVER AND LAHONTAN RESERVOIR
WILL HAVE THE EFFECT OF EITHER INTERCEPTING MORE GROUNDWATER WHICH IS
PROVIDING BASE FLOW TO THE RIVER/RESERVOIR AND/OR INDUCING RECHARGE FROM
THE RIVER/RESERVOIR. THERE IS A HYDROLOGIC CONNECTION BETWEEN LAHONTAN
RESERVOIR AND THE CHURCHILL VALLEY BASIN. USGS WATER LEVEL
MEASUREMENTS SHOW FLUCTUATIONS IN SILVER SPRINGS WELLS CORRESPOND WITH
THE STAGE OF LAHONTAN RESERVOIR.

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 (MAY, 2007) SUBMITTED A PROPOSED STUDY WHICH
HAS BEEN INITIALLY FUNDED BY BOR THROUGH FY08 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.

A COPY OF THE DRAFT MAY, 2007 USGS PROJECT PROPOSAL HAS PREVIOUSLY BEEN SUBMITTED TO THE STATE ENGINEER (RICK FELLING) AND HEREBY INCORPORATED IN THIS PROTEST BY REFERENCE. ON AUGUST 7, 2007, CWSD UNANIMOUSLY PASSED A MOTION TO SUPPORT THIS STUDY.

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.

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 INCLUDING 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.

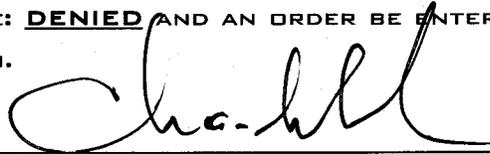
3. PURSUANT TO THE STATE ENGINEER'S 30 AUGUST 2005 POWER POINT AND THE FACT THAT ALL UPPER CARSON RIVER GROUNDWATER BASINS ARE SEVERELY OVER-APPROPRIATED, THE STATE ENGINEER SHOULD DENY THIS APPLICATION SEEKING A NEW APPROPRIATION. THE STATE ENGINEER IS OBLIGATED UNDER NRS CHAPTERS 533, 534 AND 278 TO 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 OR DIRECTLY REMOVE IT FROM THE 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 STATE ENGINEER HAS DENIED SIMILAR APPLICATIONS SEEKING NEW UNDERGROUND APPROPRIATIONS FOR COMMERCIAL PURPOSES FROM CHURCHILL VALLEY IN LOCATIONS VERY NEAR THE PROPOSED POINT OF DIVERSION. RULING #4604 DATED MARCH 10, 1998 AND RULING #5569 DATED MARCH 1, 2006 DENIED SIMILAR APPLICATIONS TO APPROPRIATE ON THE GROUNDS THAT EXISTING APPROPRIATIONS EXCEED PERENNIAL YIELD AND WOULD CONFLICT WITH EXISTING RIGHTS. FURTHERMORE PURSUANT TO NRS 533.370(5) THE STATE ENGINEER DENIED PRIOR APPLICATIONS IN RULING #5569 WITHOUT SENDING TO PUBLICATION, THEREFORE THE STATE ENGINEER SHOULD ISSUE A RULING DENYING THIS APPLICATION ON SIMILAR GROUNDS WITHOUT HOLDING A HEARING.
6. THE GRANTING OF THE APPLICATION WOULD CONFLICT WITH EXISTING RIGHTS, THEREFORE THE STATE ENGINEER MUST DENY THE APPLICATION PURSUANT TO NRS 533.370(4).
7. 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 15TH DAY OF AUGUST, 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: 75953 & 75954

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

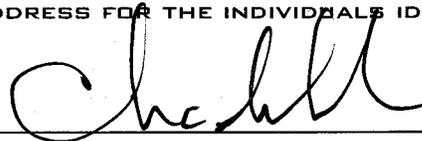
2. **MR. RUSTY JARDINE, ESQ.**
CHURCHILL COUNTY DEPUTY DISTRICT ATTORNEY
155 N. TAYLOR ST., SUITE # 170
FALLON, NV 89406

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