

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



IN THE MATTER OF
APPLICATION NUMBER: 76305
FILED BY: AQUA TRAC, LLC
ON: SEPTEMBER 19, 2007 TO APPROPRIATE THE
WATERS OF: UNDERGROUND

PROTEST & REQUEST TO
DENY APPLICATION 76305;
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.365;
PETITION FOR HYDROLOGICAL &
ENVIRONMENTAL STUDY
PURSUANT TO N.R.S. 533.368

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: 76305 FILED ON: SEPTEMBER 19, 2007 BY:
AQUA TRAC, LLC TO APPROPRIATE THE WATERS OF: UNDERGROUND SITUATED IN: PERSHING
COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING
GROUNDS, TO WIT:

1. APPLICATIONS 76302 - 76308, SEEKING 15 CFS EACH OR IN EXCESS OF 76,000 AFA, WERE FILED TWO DAYS AFTER THE STATE ENGINEER ISSUED RULING #5782 WHICH DENIED ALL OF AQUA TRAC'S PRIOR APPLICATIONS IN GRANITE SPRINGS VALLEY. THIS RULING DENIED THOSE APPLICATIONS OVERWHELMINGLY ON MULTIPLE GROUNDS FOLLOWING A WEEK OF TESTIMONY IN MARCH 2007 BY MULTIPLE EXPERTS FOR THE APPLICANTS & PROTESTANTS. ON OCTOBER 1, 2007, AQUA TRAC APPEALED RULING #5782 TO A LYON COUNTY DISTRICT COURT. PURSUANT TO NRS 533.370(5) THE STATE ENGINEER COULD HAVE DENIED THESE APPLICATIONS BEFORE SENDING TO PUBLICATION. IF FOR SOME REASON, AQUA TRAC PREVAILS IN THE APPEAL PROCESS, THERE IS NO NEED TO PURSUE THESE APPLICATIONS WHICH ARE FURTHER GROUNDS TO SUMMARILY DENY THESE APPLICATIONS AT THIS TIME. AT A MINIMUM, NO ACTION SHOULD BE TAKEN ON THESE APPLICATIONS UNTIL THIS APPEAL PROCESS IS COMPLETED.
2. DUE TO THE LARGE MAGNITUDE OF THE AQUA TRAC, LLC APPLICATIONS SEEKING NEW APPROPRIATIONS FROM MULTIPLE GROUNDWATER BASINS IN EXCESS OF 225,000 AFA, THE STATE ENGINEER SHOULD REQUIRE THE ASSOCIATED HYDROLOGICAL AND ENVIRONMENTAL STUDIES PURSUANT TO N.R.S. 533.368 TO ADEQUATELY ADDRESS POTENTIAL IMPACTS TO EXISTING RIGHTS AND THE ENVIRONMENT. THE PROTESTANT RESERVES THE RIGHTS TO ADD TO OR AMEND THEIR PROTEST AS A RESULT OF THESE STUDIES OR AS OTHER INFORMATION BECOMES AVAILABLE.
3. A PROJECT OF THIS MAGNITUDE WILL REQUIRE N.E.P.A. COMPLIANCE AS WELL AS AN ENVIRONMENTAL IMPACT STATEMENT. THE STATE ENGINEER SHOULD WITHHOLD

OK

HEARINGS AND ACTIONS ON THESE APPLICATIONS UNTIL THESE STUDIES / PROCESSES ARE COMPLETED.

4. THE STATE ENGINEER MUST ADDRESS AND REQUIRE THAT THE PROVISIONS OF N.R.S. 533.370 5. (A-E) ARE FULFILLED & ADDRESSED.
5. THE STATE ENGINEER WILL FIND THESE APPLICATIONS ARE SPECULATIVE IN NATURE AND NOT CONSISTENT WITH THE PROVISIONS OF THIS STATUTE, THEREFORE THE APPLICATIONS SHOULD BE DENIED. THIS SPECULATION IS EVIDENCED IN THE CITY OF FERNLEY'S RECENTLY PUBLISHED WATER MASTER PLAN WHICH DOES NOT INCLUDE THESE WATERS OR IMPORTATION IN THE NEXT 15-20 YEARS. THIS IS INCONSISTENT WITH THE APPLICANT'S INDICATION THAT THE WATER WILL BE PUT TO BENEFICIAL USE WITHIN TEN (10) YEARS. FURTHERMORE, IN THE LAST GROUP OF APPLICATIONS FILED BY AQUA TRAC (74957 - 74976), THE APPLICANT HAS EXPANDED THE PROPOSED PLACE OF USE TO INCLUDE MOST ALL OF THE HYDROGRAPHIC BASINS (074 - 096 & 099 - 108) IN NORTH-WESTERN NEVADA. THE APPLICATION VIOLATES NRS 533.370(1)(C)(2) AND THE "ANTI-SPECULATION DOCTRINE" IN THAT THE APPLICANT DOES NOT INTEND TO PUT THE WATER TO USE FOR ITS OWN BENEFIT AND THE APPLICANT HAS NO CONTRACTUAL OR AGENCY RELATIONSHIP WITH A PERSON, BUSINESS ASSOCIATION, OR GOVERNMENTAL BODY THAT WILL PLACE THE WATER TO BENEFICIAL USE. (BACHER V. STATE ENGINEER, 122 NEV. ADV. OP. NO. 95 (NOVEMBER 22, 2006)).
6. THESE APPLICATIONS WILL LIMIT THE FUTURE GROWTH AND DEVELOPMENT TO THE DETRIMENT OF THESE RURAL COUNTIES AND GROUNDWATER BASINS TO THE BENEFIT OF THE URBANIZING AREAS WHICH ARE EXPERIENCING UNCONTROLLED QUASI-MUNICIPAL GROWTH. THIS IS IN VIOLATION OF N.R.S. 533.370 5. (D).
7. THE COMBINED PRODUCTION OF WATER FOR QUASI-MUNICIPAL USE BY AQUA TRAC, LLC, SHALL NOT EXCEED 130,000 AFA FROM THE GRANITE SPRINGS HYDROGRAPHIC BASIN. USGS OPEN FILE REPORT 78-768 & RECONNAISSANCE REPORT #55 ESTIMATE THE PERENNIAL YIELD OF THIS BASIN AT 4,500 AFA WHICH INCLUDES ESTIMATES OF SUB-SURFACE INFLOW FROM KUMIVA VALLEY. PRELIMINARY DATA FROM THE STATE ENGINEER'S OFFICE DATABASE RECORDS INDICATE EXISTING APPROPRIATIONS OF APPROXIMATELY 5,370 AFA THEREFORE, THE BASIN IS ALREADY OVER-APPROPRIATED. APPROVAL OF THE APPLICATIONS WOULD MINE THE GROUNDWATER BASIN.
8. THE AQUA TRAC. LLC APPLICATIONS ARE REMINISCENT OF THE PERC/ECO-VISION APPLICATIONS FILED IN THE EARLY 1990'S BY WESTPAC WHICH PROPOSED LARGE PREVIOUSLY UNACCOUNTED FOR UNDERGROUND WATERS ASSOCIATED WITH THE BEDROCK/FRACTURE ZONE SYSTEMS. THERE WAS MUCH OPPOSITION TO THOSE APPLICATIONS AND THE AGENT FOR AQUA TRAC (SUMMIT ENGINEERING) IS THE SAME AS FOR THE PERC/WESTPAC/ECO-VISION APPLICATIONS. AT THAT TIME THEY WERE PROPOSING SOME "UNIQUE" TECHNOLOGIES & METHODOLOGIES TO IDENTIFY PRODUCTION ZONES. SINCE THESE METHODS WERE RESULTING IN SUBSTANTIALLY

LARGER ESTIMATES OF PERENNIAL YIELD THAN THE USGS, THIS IS FURTHER JUSTIFICATION FOR REQUIRING THE STUDIES REQUESTED UNDER PROTEST ITEM #1 ABOVE AND FOR THE PROTESTANT TO ADD OR AMEND THEIR PROTEST ACCORDINGLY. AT THE MARCH 2007 HEARING, THE 'SCIENCE' APPEARED TO CHANGE AS THE HEARING PROGRESSED WHICH THE PROTESTANTS SHOULD BE ALLOWED TO RESPOND TO ACCORDINGLY. THIS WAS FURTHER EVIDENCED BY A QUOTE IN THE RENO GAZETTE-JOURNAL ON SEPTEMBER 21, 2007 BY MR. GALLAGHER FOLLOWING RULING #5782 WHERE HE STATED: "IT IS OUR INTENTION TO MEET IN THE NEXT COUPLE OF WEEKS WITH THE STATE ENGINEER TO SEE WHAT WE ACTUALLY HAVE TO DO TO SECURE THIS LARGE, AND WE FEEL, VERY RELIABLE SOURCE OF WATER."

9. IMPORTATION OF GROUNDWATER TO SUPPORT UNCONTROLLED AND IRRESPONSIBLE GROWTH IN THE URBANIZING AREAS WILL CREATE MANY UNKNOWN IMPACTS TO THE HYDROLOGIC RESOURCES, SOCIOECONOMICS AND ENVIRONMENT.
10. LARGE VOLUMES OF GROUNDWATER EXTRACTION HAS THE POTENTIAL TO AFFECT WETLANDS, SPRINGS, SEEPS, SURFACE WATER FLOWS, ARTESIAN WELLS, WELLS, DOMESTIC WELLS, RIPARIAN & NATIVE VEGETATION, WATER QUALITY, FLORA AND FAUNA WITHIN THE HYDROGRAPHIC BASIN. IF INTER-BASIN FLOW EXISTS, THESE SAME IMPACTS WOULD BE REALIZED IN THE ADJACENT BASINS INCLUDING THE HUMBOLDT SINK WHICH IS IN HYDROLOGIC CONNECTION WITH THE CARSON SINK. IN THE CASE OF SPRINGS OR SEEPS, THE APPLICANT HAS FAILED TO ENSURE THAT WILDLIFE THAT CUSTOMARILY UTILIZES THE WATER WILL HAVE CONTINUED ACCESS TO IT. 533.367
11. IF THIS TRANSFER IS APPROVED, THE WATER TRANSFERRED WILL HAVE A NEGATIVE IMPACT ON GROUNDWATER SOURCES RELIED UPON BY FARMERS, RANCHERS AND OTHER LAND OWNERS AND WILL ADVERSELY AFFECT WATER QUALITY & QUANTITY.
12. THE PROPOSED APPLICATIONS REQUIRES EASEMENTS FOR RIGHTS OF WAY OVER PRIVATE AND FEDERALLY ADMINISTERED LANDS AND THE APPLICANT HAS MADE NO DEMONSTRATION THAT IT IS FEASIBLE FOR IT TO OBTAIN SAID EASEMENTS.
13. THE PROPOSED USE OF THE WATER WILL CAUSE THE SOIL TO SUBSIDE, CAUSING CRACKS IN FOUNDATIONS, ROADBEDS AND POSSIBLE IMPACT TO UNDERGROUND UTILITIES.
14. THE PROPOSED USE OF THE WATER WILL CAUSE AN INCREASE IN DUST AND PARTICULATES AND WILL CAUSE EXCEEDANCE OF AIR QUALITY STANDARDS FOR THE BASIN.
15. THE PROPOSED USE CONFLICTS WITH PROTECTABLE INTERESTS IN EXISTING DOMESTIC WELLS AS SET FORTH IN N.R.S. 533.024, THE STATE ENGINEER MUST REJECT THE APPLICATIONS (N.R.S. 533.370(4)).
16. APPLICANT DOES NOT POSSESS THE FINANCIAL ABILITY FOR DEVELOPING AND TRANSPORTING THE WATER TO BENEFICIAL USE WITH REASONABLE DILIGENCE.
17. THE APPLICATION IS NOT IN THE PUBLIC INTEREST.

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 RESPECTIVELY REQUESTS THAT THE STATE ENGINEER REQUIRE A HYDROLOGICAL AND ENVIRONMENTAL STUDY TO BE CONDUCTED PURSUANT TO N.R.S. 533.368 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 2nd DAY OF NOVEMBER, 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: 76302 - 76308 FILED IN THE NAME OF AQUA TRAC, LLC;

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

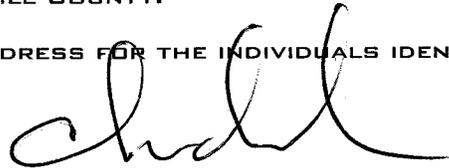
2. **MR. RUSTY JARDINE, ESQ.**
CHURCHILL COUNTY DEPUTY DISTRICT ATTORNEY
155 N. TAYLOR ST., SUITE # 170
FALLON, NV 89406

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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