FILED
AUG 0 3 2009
STATE ENGINEER'S OFFICE

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

In the Matter of Application Number 78611 Filed By Jackrabbit Properties, LLC on May 29, 2009 for Permission to Change the Point of Diversion, Place of Use, and Manner of Use of a Portion of Water Appropriated Under Permit 65078	**PROTEST**

2009 AUG -3 AM 9:47

Comes now The Pyramid Lake Paiute Tribe, 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 78611, filed on May 29, 2009 by Jackrabbit LLC, for permission to change the point of diversion, place of use, and manner of use of a portion of water appropriated under Permit No. 65078, for the following reasons and on the following grounds, to wit:

1. The base water rights sought for transfer by Application No. 78611 originate from Permit No. 65078 which was filed with the State Engineer's Office in 1999. Permit No. 65078 indicates that the proposed diversion works were in place at the time of the filing in 1999 and that the source of water sought for appropriation originates from an existing artesian well. However, neither the Proof of Completion nor the Proof of Beneficial Use have been filed for Permit No. 65078 since the application to appropriate was originally filed in 1999. The State Engineer granted Permit No. 65078 in January 2004. On information and belief, the proposed transfer involves water rights that have been forfeited and/or abandoned pursuant to NRS 534.090.

2. The proposed point of diversion under Permit No. 65078 (existing point of diversion under Application No. 78611) is a well located in the State of California. Permit No. 65078 should be cancelled and Application No. 78611 should be denied as the Nevada State Engineer does not have authority to grant permits for water rights on wells located in the State of California.

3. On July 22, 2009, the State Engineer granted a Petition for Adjudication of the water rights in the Smoke Creek Desert Hydrographic Basin #21, and therefore the application should not be considered, and certainly not granted, until the conclusion of the adjudication of the basin.

4. The application involves a water exportation project that is associated with and dependant upon the approval of more than 25 other applications involved with the same exportation project. The water

exportation project is vague and speculative. The application should be denied for the applicant's failure to provide a detailed description of the project which would allow the State Engineer to make a proper evaluation of the potential impacts of approving the transfer.

5. The base water rights sought to be changed from irrigation to municipal use under the proposed water exportation project were previously sought to be changed for a proposed power plant scheme, illustrating the speculative nature of the attempted use of the water rights. The application should be denied and the base water rights should be cancelled pursuant to NRS 533.045 as the necessity for the use of the water rights does not exist.

6. The application involves an interbasin transfer and should be rejected pursuant to NRS 533.370(6) for, among other reasons, the applicant's failure to:

A. identify the specifics of the proposed project, including the basin(s) into which water will be imported,

B. justify the need to import water to the other basin(s),

C. demonstrate that a conservation plan(s) has been adopted and effectively carried out for the other basin(s),

D. demonstrate that the proposed export of water from the Smoke Creek Desert Basin is environmentally sound, and

E. demonstrate that the proposed action is an appropriate long-term use which will not limit growth and development in the Smoke Creek Basin.

7. The application for interbasin transfer should also be rejected pursuant to NRS 533.370 for the lack of information regarding:

A. access to the use of public/private lands necessary for the construction of the works of diversion and the means of conveyance,

B. financial ability to construct the works and apply the water to the intended use with reasonable diligence,

C. technical feasibility to construct the works and apply the water to the intended use with reasonable diligence, and

D. justification for the quantity of water required for the proposed project.

8. The application requests to transfer the full duty of water previously permitted for irrigation. The application should be rejected, or at a minimum, be limited to the consumptive use portion of the existing water rights.

9. As of July 2009, the records of the State Engineer's office report the perennial yield of Smoke Creek Desert Hydrographic Basin #21 at 16,000 acre-feet, committed groundwater rights at approximately 12,200 acre-feet, and pending groundwater rights are believed to be in excess of 57,000 acre-feet. This application should not be granted and should only be considered in the context of all other pending water rights in the Hydrographic Basin #21.

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

11. Granting the application would 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.

12. Granting the application would threaten to prove detrimental to the public interest and the interests and reserved water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because among other things, it would:

A. deplete water from the Pyramid Lake by depleting the underflow from the Smoke Creek Desert Basin to the Pyramid Lake Basin;

B. degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater withdrawals from the Smoke Creek Desert Basin;

C. adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe.

D. have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe's groundwater resources;

E. prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the

threatened Lahontan cutthroat trout, in violation of (i) the Endangered Species Act, 16 U.S.C. §1531 et set., and (ii) Nevada law protecting the cui-ui;

F. adversely affect the recreational value of Pyramid Lake;

G. interfere with the purposes for which the Pyramid Lake Indian Reservation was established;

H. deplete the supply of water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

I. affect the suitability of irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

J. increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

K. adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin; and

L. otherwise adversely affect the interests of the Tribe.

13. 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.

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THEREFORE the 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.

Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP

Don Springmeyer, Esq.
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Tel: (702) 341-5200
Agents for the Tribe

Subscribed and sworn to before me this 30 day of July, 2009.

C. Rehfeld
Notary Public

C. REHFELD
Notary Public State of Nevada
No. 99-41339-1
My appt. exp. June 10, 2013

State of Nevada

County of Clark

My Commission Expires: June 10, 2013

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