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

IN THE MATTER OF
APPLICATION NUMBER: 79478
FILED BY: CITY OF SPARKS
ON: FEBRUARY 5, 2010 TO APPROPRIATE THE
WATERS OF: NORTH TRUCKEE DRAIN

PROTEST & REQUEST TO
DENY APPLICATION 79478
PETITION FOR HEARING
PURSUANT TO N.R.S. 533.386
ONLY IF DEEMED NECESSARY

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: 79478 FILED ON: FEBRUARY 5, 2010 BY: CITY OF
SPARKS TO APPROPRIATE THE WATERS OF: NORTH TRUCKEE DRAIN SITUATED IN: WASHOE
COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING
GROUNDS, TO WIT:

1. APPLICATION 79478, SEEKS A NEW APPROPRIATION OF 2.0 CFS OR 878 AFA FOR WILDLIFE (INSTREAM FLOW) PURPOSES FROM THE NORTH TRUCKEE DRAIN WHICH IS TRIBUTARY TO THE TRUCKEE RIVER. APPLICANT SEEKS TO APPROPRIATE URBAN RUNOFF RETURN FLOW WATERS WHICH HAVE PREVIOUSLY BEEN APPROPRIATED AND DELIVERED THROUGH TRUCKEE MEADOWS WATER AUTHORITY (TMWA'S) MUNICIPAL SYSTEM. WHEN TMWA'S ORR DITCH RIGHTS WERE ORIGINALLY CONVERTED FROM DECREE TO MUNICIPAL THEY WERE PERMITTED AT FULL DUTY RECOGNIZING RETURN FLOWS FROM THE MUNICIPAL SYSTEM WOULD HELP SATISFY DOWNSTREAM WATER RIGHTS. PERMITTING THIS APPLICATION WOULD ALLOW ADDITIONAL APPROPRIATION ON A FULLY APPROPRIATED STREAM SYSTEM FOR WHICH ALL UN-APPROPRIATED WATERS HAVE BEEN GRANTED. PROTESTANTS OWN AND RELY UPON ORR DITCH CLAIM #3 WATER RIGHTS HAVING A 1902 PRIORITY WHICH IS MADE UP PARTIALLY FROM THESE MUNICIPAL RETURN FLOWS IN THE TRUCKEE MEADOWS, THEREFORE GRANTING A NEW APPROPRIATION ON A TRIBUTARY TO THE TRUCKEE RIVER HAVING A 2010 PRIORITY WOULD AFFECT EXISTING RIGHTS AND NOT BE IN THE PUBLIC INTEREST. THE WATERS SOUGHT UNDER APPLICATION 79478 ARE ALREADY APPROPRIATED UNDER THE ORR DITCH DECREE AND THE APPLICANT MAY NOT MAKE A SECOND APPROPRIATION OF THE RETURN FLOWS.
2. THE STATE ENGINEER SHALL REJECT AN APPLICATION WHERE THERE IS NO UNAPPROPRIATED WATER IN THE PROPOSED SOURCE OF SUPPLY. NRS 533.370 (5). THERE IS NO UNAPPROPRIATED WATER ON THE PROPOSED SOURCE OF SUPPLY PURSUANT TO STATE ENGINEER RULING 4683 GRANTING THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS (PLIT) APPLICATIONS 48061 AND 48494 FOR 477,851 AFA OF UNAPPROPRIATED WATER IN THE TRUCKEE RIVER. THIS DETERMINATION WAS UPHELD

ON APPEAL BY THE NEVADA THIRD JUDICIAL DISTRICT COURT, FINDING THAT THE WATER SOUGHT BY THE TRIBE WAS STORM WATERS AVAILABLE ONLY IN CERTAIN YEARS. THE TRUCKEE CARSON IRRIGATION DISTRICT (TCID) CURRENTLY HAS PENDING A COMPETING APPLICATION 9330 TO APPROPRIATE 100,000 AFA TO APPROPRIATE 100,000 AFA OF UNAPPROPRIATED WATER OF THE TRUCKEE RIVER FOR USE IN THE NEWLANDS PROJECT. APPLICATION 9330 WAS REJECTED BY THE STATE ENGINEER IN RULING 4659 BUT HAS BEEN REMANDED BACK TO THE STATE ENGINEER BY THE THIRD JUDICIAL DISTRICT COURT (CASE NO. 25004) TO CONDUCT FURTHER HEARINGS IN CONSIDERATION OF THE TRUCKEE RIVER OPERATING AGREEMENT (TROA). THE TRUCKEE RIVER AND ITS TRIBUTARIES ARE FULLY APPROPRIATED, AND THERE ARE SENIOR PENDING APPLICATIONS FOR ADDITIONAL WATER. IT WOULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST AND INJURE EXISTING WATER RIGHTS TO ALLOW FURTHER APPROPRIATION OF TRUCKEE RIVER WATER.

3. THE STATE ENGINEER HAS RECENTLY RULED ON A SIMILAR APPLICATION 77221 FILED BY THE CITY OF RENO SEEKING TO APPROPRIATE URBAN RETURN FLOWS FROM CHALK CREEK. THIS APPLICATION WAS DENIED IN STATE ENGINEER RULING 5972 DATED APRIL 17, 2009 ON THE AFOREMENTIONED GROUNDS.
4. NRS 533.365 (3) PROVIDES THAT IT IS WITHIN THE STATE ENGINEERS DISCRETION TO DETERMINE WHETHER A PUBLIC ADMINISTRATIVE HEARING IS NECESSARY TO ADDRESS THE MERITS OF A PROTEST TO AN APPLICATION TO APPROPRIATE PUBLIC WATERS OF THE STATE OF NEVADA. AS FOUND IN STATE ENGINEER RULING 5972, AN ADMINISTRATIVE HEARING TO OBTAIN ADDITIONAL EVIDENCE WAS NOT NECESSARY. GIVEN THE NEARLY IDENTICAL SET OF CIRCUMSTANCES IN APPLICATIONS 77221 AND 79478 AND NEARLY IDENTICAL PROTEST GROUNDS, PROTESTANT REQUESTS THE STATE ENGINEER ISSUE A RULING DENYING THE APPLICATION WITHOUT THE UNNECESSARY BURDEN OR COST OF AN ADMINISTRATIVE HEARING.
5. ALTERNATIVELY, THE APPLICANT COULD CONSIDER WITHDRAWING THE APPLICATION TO SAVE THE STATE ENGINEER, WITH LIMITED BUDGETS AND STAFF, THE TIME AND EXPENSE OF ISSUING A RULING DENYING THE APPLICATION.

THEREFORE, BASED ON THE FORGOING REASONS:

- ◇ THERE IS NO UN-APPROPRIATED WATER AT 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 DENY THE APPLICATION WITHOUT A HEARING PURSUANT TO NRS 533.365 (3).

SIGNED:

CHRIS C. MAHANNAH, P.E., SWRS#976 (AGENT)
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
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(775) 323-1804

STATE OF NEVADA
COUNTY OF WASHOE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 31ST DAY OF MARCH, 2010
BY CHRIS C. MAHANNAH

STATE OF: NEVADA
COUNTY OF: WASHOE



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ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE**