FILED

MAR 2 1 2011

STATE ENGINEER'S OFFICE

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

In the Matter of Application Number 80470 Filed By the City of Fernley on January 14, 2011 for Permission to Appropriate the Public Waters of the State of Nevada	**PROTEST**

RECEIVED
2011 MAR 21 PM 2:31
STATE ENGINEER'S OFFICE

Comes now The Pyramid Lake Paiute Tribe of Indians, 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 80470, filed on January 14, 2011 by the City of Fernley, for permission to appropriate the public waters of the State of Nevada, for the following reasons and on the following grounds, to wit:

1. In total, Application Nos. 80468, 80469, and 80470 request to appropriate more groundwater than the perennial yield of the Pyramid Lake Valley Basin No. 81.

2. Annual groundwater recharge in the sub-area of Basin No. 81 in which the applicant proposes to drill its wells (Little Valley) cannot support the amount of water requested in the application, let alone the total amount of water requested in all three Application Nos. 80468, 80469, and 80470. Furthermore, the proposed points of diversion for Application Nos. 80468, 80469, and 80470 are located in the extreme southernmost portion of Little Valley (and the Pyramid Lake Valley Basin No. 81) which would limit well water production to only a small portion of the total annual recharge of Little Valley.

3. On information and belief, the Applicant does not own or control the land at the proposed points of diversion under Application Nos. 80468, 80469, or 80470. Granting an application to appropriate public waters where the applicant does not own or control the lands at the proposed points of diversion would be detrimental to the public interest.

4. On information and belief, the applicant proposes to construct a water pipeline from the proposed points of diversion (wells) to the proposed place of use, which pipeline would necessarily have to cross land owned by the United States. Granting an application to appropriate public waters where the applicant does not own or control the lands within the alignment of its water conveyance pipeline would be detrimental to the public interest.

5. The application for municipal and domestic use should be rejected pursuant to NRS 533.340 for the lack of information regarding the number of persons to be served, and the approximate future requirement.

6. The applicant's answer to "Question 12" does not provide sufficient details for the proposed project or proposed water usage, to allow the public, interested parties, protestants, and the State Engineer to make a proper evaluation of the potential impacts of approving the application. Based on the scope and magnitude of the water exportation scheme proposed by Application Nos. 80468, 80469, and 80470, the applicant should be required to conduct the Hydrologic and Environmental Studies specified by NRS 533.368, before the State Engineer makes a final determination on the applications.

7. 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. justify the need to import water to the other basin(s);

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

C. demonstrate that the proposed export of water from the basin is environmentally sound;

D. demonstrate that the proposed action is an appropriate long-term use which will not limit growth and development in the basin; and,

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

8. 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.

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

10. 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.

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

A. deplete water from the Pyramid Lake by depleting underflow from Little Valley to the Lower Truckee River;

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

C. adversely affect regional groundwater levels to the detriment of the Lower Truckee River, Pyramid Lake, existing groundwater wells utilized on the Reservation, 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, and;

H. otherwise adversely affect the interests of the Tribe.

12. 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.

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.
Christopher W. Mixson, Esq.
3556 East Russell Rd., 2nd Floor
Las Vegas, NV 89120
Tel: (702) 341-5200
Agents for the Tribe

Subscribed and sworn to before me this 18 day of March 2011.

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

C. Rehfeld
Notary Public

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.