

FILED
MAY 27 2011
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF
APPLICATION NUMBER: 80672
FILED BY: DAMONTE FAMILY LIMITED PARTNERSHIP
ON: MARCH 9, 2011 TO CHANGE THE
WATERS OF: STEAMBOAT CREEK

PROTEST & REQUEST TO
ISSUE APPLICATION 80672
SUBJECT TO CONDITIONS OR
DENY APPLICATION

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: 80672 FILED ON: MARCH 9, 2011 BY: DAMONTE
FAMILY LIMITED PARTNERSHIP TO CHANGE THE MANNER OF USE, AND PLACE OF USE OF:
STEAMBOAT CREEK SITUATED IN: WASHOE COUNTY, STATE OF NEVADA, FOR THE FOLLOWING
REASONS AND ON THE FOLLOWING GROUNDS, TO WIT:

SEE ATTACHMENTS "A" & "B" FOR SUPPORTING PROTEST GROUNDS

THEREFORE, FOR THE FOREGOING REASONS, THE PROTESTANT RESPECTFULLY REQUESTS
THAT THE STATE ENGINEER CONDITION THE PERMIT TO ADDRESS ISSUES 2-6 OUTLINED IN
ATTACHMENT "A" OR DENY THE APPLICATION.

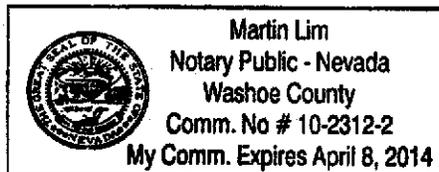
SIGNED:

CHRIS C. MAHANNAH, P.E., SWRS#976 (PAGE 2)
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804

RECORDED
2011 MAY 27 PM 2:03
STATE ENGINEER'S OFFICE

STATE OF NEVADA
COUNTY OF WASHOE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27TH DAY OF MAY, 2011
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: 80672

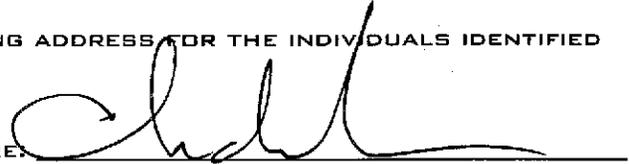
PLEASE ADD THE FOLLOWING INDIVIDUALS TO THE MAILING LIST AND SEND COPIES OF ALL CORRESPONDENCE TO THE ADDRESSES BELOW:

1. **MR. BRAD GOETSCH, MANAGER**
CHURCHILL COUNTY
155 N. TAYLOR ST, SUITE #153
FALLON, NV 89406
2. **MR. CRAIG MINGAY, ESQ.**
CHURCHILL COUNTY DEPUTY DISTRICT ATTORNEY
165 N. ADA STREET
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

ATTACHMENT "A"

1. **Introduction:** Application 80672 is seeking to change tributary Steamboat Creek Orr Ditch Claims from Decreed use to in-stream flow purposes between the point of diversion and the Vista gage on the Truckee River. Upon passing the Vista Gage, the water will be considered return flow. There are currently approximately 8,654 afa of Steamboat Creek rights which have either been permitted or are pending for in-stream return flow purposes which are summarized on Attachment "B". When wholesale Truckee River water is delivered to the South Truckee Meadows for M&I use and effluent is not returned to the Truckee River, the loss of the return flow component to the Truckee River is to be made up from these in-stream flow changes. Washoe County requires that for every acre-foot dedicated for residential use which is not sewered back to the Truckee River, that 0.50 acre-feet be dedicated for in-stream flow to make up for the loss of return flow. For some commercial projects, the return flow requirement is 100% of their demand. Nearly all Truckee River changes of Decreed Claims to M&I were approved by the State Engineer at full duty with no consumptive use reduction because on average approximately half of the diverted water was returned to the river as effluent, thus protecting downstream rights.

When Washoe County, Truckee Meadows Water Authority (TMWA) or others seek changes in Decreed Truckee River Claims to M&I, the proposed place of use describes TMWA's entire service area including the South Truckee Meadows which is not sewered back to the Truckee River. Therefore, the Protestant has no idea specifically where the water will be served in the service area or whether the effluent generated from the use will return to the Truckee River. The Protestant has not protested these types of changes. On the face of the subject application 80672, seeking a change to in-stream flow, the Protestant has no objection, however how it relates to accounting for those Truckee River dedications not sewered back to the river and making up return flows are of critical interest to the Protestant to protect downstream rights.

2. **Consumptive Use Reduction:** All of the permits which are summarized on Attachment "B" were approved at full duty (4.0-4.5 af/acre) without any consumptive use reduction. The State Engineer has been inconsistent with the application of the consumptive use reduction on other South Truckee Meadows tributary creeks, some approved at full duty and others restricted to 62.5% (2.5/4.0 af/acre) of their head gate duty. Claims 702, 703 and 705 sought to be changed by application 80672 have existing places of use immediately adjacent to Steamboat Creek wherein there would have been return flows to the creek either by direct tail water runoff and/or deep percolation to the shallow groundwater table which feeds the gaining creek. Evidence presented before the State Engineer in December 2009 by Mahannah & Associates, LLC regarding TMWA's applications seeking to store the consumptive use fraction of some of their main-stem Truckee River rights, demonstrated an actual historical

consumptive use of ~2.0 af/acre. In Ruling 6035, the State Engineer limited the consumptive use to 2.5 af/acre, however that ruling is under appeal. Tributary creek rights which do not have the benefit of large upstream storage reservoirs would likely have less historical consumptive use than a main-stem Truckee River right due to the drought factor. The non-consumptive return flow portion of these tributary rights would continue downstream in Steamboat Creek and ultimately the Truckee River to help satisfy downstream rights. Therefore, a consumptive use reduction of less than or no more than 2.5 af/acre should be applied to this application or if approved at full duty as previously done, do not allow the non-consumptive portion to be counted as return flows when accounting for the loss of return flows from the Truckee River rights not sewerred back to the river.

3. **System Yield & Drought Factor Reduction:** Washoe County has spent a considerable amount of time and effort in studies and analysis to address the use of the South Truckee Meadows tributaries for a municipal supply. These include the 2002 Facilities Plan which looked at Thomas, Whites and Galena Creeks. More recently in October 2006 and June 2007 they have had ECO:LOGIC, et al prepare the 'Steamboat & Tributary Municipal Water Supply Yield Analysis'. These reports have noted that unlike the Truckee River system, there is no reliable surface storage reservoir in the South Truckee Meadows that can store water during wet periods to be released when needed. They have noted that the amount of water flowing in the creeks is highly variable and a municipal supply must have water available at all times during drought years, not just during average or normal conditions. Therefore they have been selective in those rights which can be dedicated for M&I use and included an appropriate drought factor which also assumes a conjunctive use scenario whereby groundwater and wholesale Truckee River water can be used when the tributary creeks will not supply their dedicated demand. The following dedication/demand ratios for M&I use are currently in place: 2:1 (Whites), 3.3:1 (Thomas) and Galena is variable by priority of the Claim. Washoe County has not accepted any Steamboat Creek rights for M&I use due to the unreliable nature of the source and has only accepted Steamboat rights for in-stream return flow purposes. Downstream rights should be assured the same reliability of return flows as an M&I demand, therefore an appropriate drought factor reduction should be applied to each Claim in addition to the consumptive use reduction or accounting issue raised under item 2 above.
4. **TEC 1 Water Supply Analysis:** After permit 70309 was issued which involved some of the same Claims as the subject application 80672, the State Engineer provided some percentage return flow credits for each Claim in a letter dated 8 August 2005 to TEC 1, the agent for the applicant/developer. It is presumed these percent credits were to account for the drought factor for each Claim. These percentages were based upon an apparent faulty water supply analysis performed by TEC 1 which summarized the results in a letter to the State Engineer dated 10 February 2005. At page 10 of this letter they state:

“Conclusions: The Truckee River Operating Agreement (TROA) establishes operating protocols for the Truckee River. When the Truckee River at Farad, California is below what are known as ‘Floristan Rates’ (400 cfs for October to February and 500 cfs for March to September), there is no requirement to provide return flow to the Truckee River. Therefore, return flow demand during these periods is ‘zero’.” (emphasis added)

The analysis then continues with numerous computations based on this erroneous assumption wherein they have set every monthly return flow demand to zero whenever Floristan rates were not met. There is no such provision in TROA and even if there was, TROA has not been implemented or fully approved by various jurisdictions, nor have the required modifications required by the Orr Ditch Decree Court been made. Furthermore, it makes no sense from a practical standpoint to have this provision. Even during times when Floristan Rates are/were not met, there will still be irrigation diversions in the Truckee Meadows and associated return flows due to the surface irrigation methods employed in the valley. Additionally, municipal diversions would obviously continue and have effluent return flows under a reduced Floristan Rates. The TEC I analysis and any drought factor percentages derived from it should be rejected. An independent water supply analysis should be performed by the State Engineer or designated representative to arrive at technically sound drought factors to be applied to each Claim.

5. **Washoe Lake Storage:** The Claims sought to be changed to in-stream flow under application 80672 are also supported by supplemental Washoe Lake storage Claims and associated Shares. In the Washoe County 2006 & 2007 Steamboat yield analysis reports referenced above, they state:

“Steamboat Creek rights and the associated (storage) shares should not be severed from each other for any planned use for municipal supply or return flow purposes” (emphasis added)

The State Engineer has only partially addressed this in prior permit terms associated with Steamboat Creek in-stream flow permits. The permit terms for 70309 states:

“By issuance of this permit, supplemental storage rights described under Truckee River Decree Claims 660 and 669, can no longer be used at the existing place of use.”

This permit term alone will only allow more water to be retained in storage to support other Claims unless linked with the direct diversion Claims. Change applications should also be filed on the associated storage Claims for in-stream flow purposes to support the direct diversion rights sought to be changed under 80672. Application 80672 should be denied unless companion storage Claims are also changed to in-stream flow use.

6. **Accounting & Monitoring:** Previous in-stream flow permits have been conditioned with the requirement of providing a monitoring plan approved by the State Engineer and that no return flow credit water for subdivisions will be approved from the permit until data supporting the use has been approved by the State Engineer. Recent inquiries with the State Engineer's office have not determined whether any monitoring data has been submitted, analyzed or approved. Additionally, there is apparently no accounting of all the Truckee River full duty changes for use in the South Truckee Meadows and a corresponding return flow accounting of these tributary in-stream changes to keep the downstream rights whole. Rather, they are dealt with on a permit by permit basis at the time the proofs of beneficial use (PBU) are filed and information is supplied as to which rights they are using to satisfy the return flow requirement. This is problematic because it may take years or even decades before a PBU is filed and the information is provided to the State Engineer, during which time the return flow amounts may not have been sufficient, particularly during drought periods. Furthermore, this appears to be more of a delayed 'paper' water right accounting method which doesn't address actual return flow requirements or amounts in real time. Permits need to be conditioned upon a monitoring plan, data collection, analysis which can be managed in real time to ensure return flow requirements are being met.

THEREFORE, for the foregoing reasons, the Protestant respectfully requests that the State Engineer condition the permit to address Issues 2-6 outlined above or deny the application.

ATTACHMENT "B"

**HYDROGRAPHIC ABSTRACT OF STEAMBOAT CREEK RIGHTS
CONVERTED TO IN-STREAM FLOW USE**

Hydrographic Abstract

Number of Records: 64

Selection Criteria: app_status IN ('APP','CER','PER','RES','RFA','RFP','RLP','RVP','VST','DEC') AND source IN ('str') AND mou IN ('oth') AND

Basin	Application	Change of Application	File date	App status	Source	CO	Q	SEC	TWN	RNG	Diversion rate	Use	Irrigated Acres	Duty balance	Sup?	CO	Owner name	
087	64288	41666	07-08-98	PER	STR	SW	SE	16	18N	20E	6.890	OTH	0.00	1102.57		WA	WASHOE COUNTY	
69534	7005DTR		02-04-03	PER	STR	NW	NE	33	18N	20E	0.195	OTH	0.00	35.89		WA	WASHOE COUNTY	
700DTR			02-04-03	PER	STR	NW	NE	33	18N	20E	0.195	OTH	0.00	35.89		WA	WASHOE COUNTY	
701DTR			02-04-03	PER	STR	NW	NE	33	18N	20E	0.195	OTH	0.00	35.89		WA	WASHOE COUNTY	
69535	706DTR	17923	02-04-03	CER	STR	NW	SE	33	18N	20E	2.611	OTH	0.00	469.53		WA	WESTERN SUPPLY CORP.	
70309	706DTR		08-13-03	PER	STR	NW	SE	33	18N	20E	18.140	OTH	0.00	2902.72		WA	TMWA	
702DTR			08-13-03	PER	STR	NW	SE	33	18N	20E	18.140	OTH	0.00	2902.72		WA	TMWA	
703DTR			08-13-03	PER	STR	NW	SE	33	18N	20E	18.140	OTH	0.00	2902.72		WA	TMWA	
704DTR			08-13-03	PER	STR	NW	SE	33	18N	20E	18.140	OTH	0.00	2902.72		WA	TMWA	
CHANGED BY: 79698																		
CHANGED BY: 79698																		
CHANGED BY: 79698																		
CHANGED BY: 79698																		
70925	701DTR		03-04-04	PER	STR	NW	NE	33	18N	20E	3.705	OTH	0.00	613.21		WA	WASHOE COUNTY	
700DTR			03-04-04	PER	STR	NW	NE	33	18N	20E	3.705	OTH	0.00	613.21		WA	WASHOE COUNTY	
7005DTR			03-04-04	PER	STR	NW	NE	33	18N	20E	3.705	OTH	0.00	613.21		WA	WASHOE COUNTY	
702DTR	17924		03-04-04	CER	STR	NW	SE	33	18N	20E	0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.	
704DTR	17924		03-04-04	CER	STR	NW	SE	33	18N	20E	0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.	
703DTR	17924		03-04-04	CER	STR	NW	SE	33	18N	20E	0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.	
705DTR	17924		03-04-04	CER	STR	NW	SE	33	18N	20E	0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.	
706DTR	17924		03-04-04	CER	STR	NW	SE	33	18N	20E	0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.	
71609	706DTR		08-25-04	PER	STR	NW	SE	33	18N	20E	3.151	OTH	0.00	556.51		WA	DAMONTE FAMILY LIMITED PARTNERSHIP	
CHANGED BY: 80673																		
72216	706DTR		02-11-05	PER	STR	NW	SE	33	18N	20E	0.000	OTH	0.00	15.85		WA	WASHOE COUNTY	
72371	709DTR		03-11-05	PER	STR	W2		03	18N	20E	5.040	OTH	0.00	805.75		WA	CENTEX HOMES	
710DTR			03-11-05	PER	STR	W2		03	18N	20E	5.040	OTH	0.00	805.75		WA	CENTEX HOMES	
73057	707DTR		07-19-05	PER	STR	SW	SE	16	18N	20E	0.548	OTH	0.00	87.60		WA	NEVADA TRI PARTNERS, LLC	
708DTR			07-19-05	PER	STR	SW	SE	16	18N	20E	0.548	OTH	0.00	87.60		WA	NEVADA TRI PARTNERS, LLC	
74097	705DTR		04-03-06	PER	STR	NW	SE	33	18N	20E	2.081	OTH	0.00	333.04		WA	WASHOE COUNTY	
703DTR			04-03-06	PER	STR	NW	SE	33	18N	20E	2.081	OTH	0.00	333.04		WA	WASHOE COUNTY	
704DTR			04-03-06	PER	STR	NW	SE	33	18N	20E	2.081	OTH	0.00	333.04		WA	WASHOE COUNTY	
702DTR			04-03-06	PER	STR	NW	SE	33	18N	20E	2.081	OTH	0.00	333.04		WA	WASHOE COUNTY	
74124	706DTR		04-05-06	PER	STR	NW	SE	33	18N	20E	3.091	OTH	0.00	558.63		WA	BALLARDINI, JULIUS & JOANNE	
CHANGED BY: 80854T																		
CHANGED BY: 75502T																		
CHANGED BY: 76996T																		

Number of Records: 64

Selection Criteria: app_status IN ('APP','CER','PER','RES','RFA','RFP','RLP','RVP','VST','DEC') AND source IN ('str') AND mou IN ('oth') AND

Basin	Application	Change of Application	Cert	File date	App status	Source	Point of Diversion	Diversion rate	Use	Irrigated Acres	Duty balance	Sup?	CO	Owner name
						QQ	Q	SEC	TWN	RNG				
CHANGED BY: 78440T														
74669				08-22-06	PER	STR	NW SE 33 18N 20E	0.016	OTH	0.00	2.93		WA	TMWA
76540				12-18-07	PER	STR	NW SE 33 18N 20E	0.125	OTH	0.00	19.94		WA	CARAMELLA FAMILY LIMITED PARTNERSHIP
702DTR				12-18-07	PER	STR	NW SE 33 18N 20E	0.125	OTH	0.00	19.94		WA	CARAMELLA FAMILY LIMITED PARTNERSHIP
704DTR				12-18-07	PER	STR	NW SE 33 18N 20E	0.125	OTH	0.00	19.94		WA	CARAMELLA FAMILY LIMITED PARTNERSHIP
703DTR				12-18-07	PER	STR	NW SE 33 18N 20E	0.125	OTH	0.00	19.94		WA	CARAMELLA FAMILY LIMITED PARTNERSHIP
77639				11-25-08	PER	STR	SW SE 16 18N 20E	1.413	OTH	0.00	225.83		WA	WASHOE COUNTY
80672				03-09-11	APP	STR	NW SE 33 18N 20E	3.066	OTH	0.00	492.77		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
704DTR				03-09-11	APP	STR	NW SE 33 18N 20E	3.066	OTH	0.00	492.77		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
702DTR				03-09-11	APP	STR	NW SE 33 18N 20E	3.066	OTH	0.00	492.77		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
705DTR				03-09-11	APP	STR	NW SE 33 18N 20E	3.066	OTH	0.00	492.77		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
088 77077				05-27-08	PER	STR	SW SE 05 17N 20E	0.233	OTH	0.00	47.71		WA	HSTL LAND COMPANY, LLC
677DTR				05-27-08	PER	STR	SW SE 05 17N 20E	0.233	OTH	0.00	47.71		WA	HSTL LAND COMPANY, LLC
678DTR				05-27-08	PER	STR	SW SE 05 17N 20E	0.233	OTH	0.00	47.71		WA	HSTL LAND COMPANY, LLC
679DTR				05-27-08	PER	STR	SW SE 05 17N 20E	0.233	OTH	0.00	47.71		WA	HSTL LAND COMPANY, LLC
77419				09-25-08	PER	STR	SW SE 05 17N 20E	0.049	OTH	0.00	8.73		WA	WASHOE COUNTY
77576				03-11-07-08	PER	STR	SW SE 05 17N 20E	0.006	OTH	0.00	1.00		WA	WASHOE COUNTY
80713				03-29-11	APP	STR	NW SW 04 17N 20E	0.000	OTH	0.00	15.00		WA	ORMAT NEVADA INC
686DTR				03-29-11	APP	STR	NW SW 04 17N 20E	0.000	OTH	0.00	15.00		WA	ORMAT NEVADA INC
687DTR				03-29-11	APP	STR	NW SW 04 17N 20E	0.000	OTH	0.00	15.00		WA	ORMAT NEVADA INC
80855				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
664DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
680DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
681DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
682DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
683DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
687DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J
688DTR				05-11-11	APP	STR		0.000	OTH	0.00	184.05		WA	REED, BARBARA J