

FILED
AUG 08 2011 *gy*
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: 80855
FILED BY: BARBRA J. REED
ON: MAY, 11 2011 TO CHANGE THE
WATERS OF: STEAMBOAT CREEK

**PROTEST & REQUEST TO
ISSUE APPLICATION 80855
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: 80855 FILED ON: MAY 11, 2011 BY: BARBRA J.
REED 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 2-5 OUTLINED IN
ATTACHMENT "A" OR DENY THE APPLICATION.

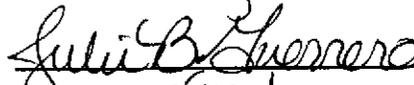
SIGNED:



NORM FREY
CHAIRMAN, CHURCHILL COUNTY COMMISSIONERS
155 N. TAYLOR ST., SUITE 110
FALLON, NV 89406
(775) 423-4092

STATE OF NEVADA
COUNTY OF WASHOE
SUBSCRIBED AND SWORN TO BEFORE ME THIS
BY NORM FREY

5th DAY OF August, 2011



STATE OF: Nevada
COUNTY OF: Churchill



JULIE B. GUERRERO
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 04-89986-4 - Expires June 23, 2012

**\$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**

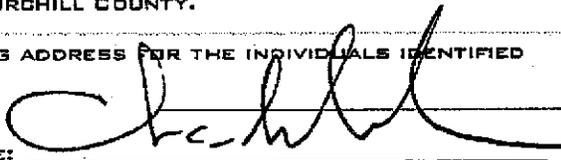
IN REGARDS TO APPLICATION/PERMITS NUMBERS: 80855

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 80855 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 660, 664, 687, 688, 680-683 sought to be changed by application 80855 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 to 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 sewered 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:** Under a similar permit 70309 which involved changes to Steamboat Creek Claims, 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 for permit 70309. 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 1 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. **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 2-5 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 ('sfr') AND mou IN ('oth') AND

Basin	Application	Change of Application	Cart	File date	App status	Source	Point of Diversion	Diversion rate	Use	Irrigated Acres	Duty balances	Step?	CO	Owner name
			Q/Q	Q	SEC	TWN	RNG							
087	64288	41666	SW SE	16	18N	20E		6.890	OTH	0.00	1102.57		WA	WASHOE COUNTY
	69534	7005DTR	NW NE	33	18N	20E		0.195	OTH	0.00	35.89		WA	WASHOE COUNTY
	700DTR	02-04-03	PER					0.195	OTH	0.00	35.89		WA	WASHOE COUNTY
	701DTR	02-04-03	PER					0.195	OTH	0.00	35.89		WA	WASHOE COUNTY
	69535	706DTR 17923	NW SE	33	18N	20E		2.611	OTH	0.00	469.53		WA	WESTERN SUPPLY CORP.
	70309	705DTR	NW SE	33	18N	20E		18.140	OTH	0.00	2902.72		WA	TMWA
	702DTR	08-13-03	PER					18.140	OTH	0.00	2902.72		WA	TMWA
	703DTR	08-13-03	PER					18.140	OTH	0.00	2902.72		WA	TMWA
	704DTR	08-13-03	PER					18.140	OTH	0.00	2902.72		WA	TMWA
			WDR											
			WDR											
			WDR											
			WDR											
			PER											
			PER											
	70925	701DTR	NW NE	33	18N	20E		3.705	OTH	0.00	613.21		WA	WASHOE COUNTY
	708DTR	03-04-04	PER					3.705	OTH	0.00	613.21		WA	WASHOE COUNTY
	7005DTR	03-04-04	PER					3.705	OTH	0.00	613.21		WA	WASHOE COUNTY
	70926	702DTR 17924	NW SE	33	18N	20E		0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.
	704DTR 17924	03-04-04	CER					0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.
	703DTR 17924	02-04-04	CER					0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.
	705DTR 17924	03-04-04	CER					0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.
	706DTR 17924	03-04-04	CER					0.973	OTH	0.00	174.51		WA	WESTERN SUPPLY CORP.
	706DTR	08-25-04	PER					3.151	OTH	0.00	556.51		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
			RFA											
	72216	706DTR	NW SE	33	18N	20E		0.000	OTH	0.00	15.85		WA	WASHOE COUNTY
	72371	709DTR	W2	03	18N	20E		5.040	OTH	0.00	805.75		WA	CENTEX HOMES
	73057	710DTR	W2	03	18N	20E		5.040	OTH	0.00	805.75		WA	CENTEX HOMES
		707DTR	SW SE	16	18N	20E		0.548	OTH	0.00	87.60		WA	NEVADA TRIPARTNERS, LLC
			PER											
	708DTR	07-19-05	PER					0.548	OTH	0.00	87.60		WA	NEVADA TRIPARTNERS, LLC
	74097	705DTR	NW SE	33	18N	20E		2.061	OTH	0.00	333.04		WA	WASHOE COUNTY
	703DTR	04-03-06	PER					2.061	OTH	0.00	333.04		WA	WASHOE COUNTY
	704DTR	04-03-06	PER					2.061	OTH	0.00	333.04		WA	WASHOE COUNTY
	702DTR	04-03-06	PER					2.061	OTH	0.00	333.04		WA	WASHOE COUNTY
	74124	706DTR	NW SE	33	18N	20E		3.091	OTH	0.00	558.63		WA	BALLARDINI, JULIUS & JOANNE
			RFA											
			EXP											
			EXP											

Number of Records: 64

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

Basin Application	Change of Cent	File date	App status	Source	Point of Diversion	Diversion rate	Use Acres	Imported Acres	Daily balance	Sup?	CO	Owner name
				QQ	Q	SEC	TWN	RNG				
CHANGED BY: 78443T												
74669	706DTR	08-22-06	PER	STR	NW SE 33 18N 20E	0.016	OTH	0.00	2.93		WA	TMWA
76540	705DTR	12-19-07	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	41696	11-25-08	PER	STR	SW SE 16 18N 20E	1.413	OTH	0.00	225.83		WA	WASHOE COUNTY
80672	703DTR	03-09-11	APP	STR	NW SE 33 18N 20E	3.065	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	3.065	OTH	0.00	492.77		WA	DAMONTE FAMILY LIMITED PARTNERSHIP
098 77077	676DTR	05-27-08	PER	STR	SW SE 05 17N 20E	0.233	OTH	0.00	47.71		WA	HSTL LAND COMPANY, LLC
	673DTR	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	52317	09-25-08	PER	STR	SW SE 05 17N 20E	0.045	OTH	0.00	8.73		WA	WASHOE COUNTY
77576	53316	11-07-08	PER	STR	SW SE 05 17N 20E	0.006	OTH	0.00	1.00		WA	WASHOE COUNTY
80713	5965DTR	03-29-11	APP	STR	NW SW 04 17N 20E	0.003	OTH	0.00	16.00		WA	ORMAT NEVADA INC
	636DTR	03-29-11	APP	STR	NW SW 04 17N 20E	0.000	OTH	0.00	15.00		WA	ORMAT NEVADA INC
	667DTR	03-29-11	APP	STR	NW SW 04 17N 20E	0.000	OTH	0.00	15.00		WA	ORMAT NEVADA INC
80655	600DTR	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