

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

In the Matter of Application Number 81399
Filed By the City of Fernley on
December 19, 2011 for Permission to Change
the Point of Diversion and Place of Use of a
portion of Water Appropriated Under
Application No. 40004

FILED
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PROTEST

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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 81399, filed on December 19, 2011 by the City of Fernley, for permission to change the point of diversion and place of use of a portion of water appropriated under Application No. 40004, for the following reasons and on the following grounds, to wit:

1. The water rights sought for transfer have not been put to beneficial use within the periods prescribed by the State Engineer and beneficial use of those water rights has not been prosecuted with reasonable due diligence. The proof of beneficial use associated with the base water rights sought for transfer was originally due nearly 30 years ago. Pursuant to NRS 534.090, the water rights sought for transfer have been forfeited and/or abandoned.

2. The proposed point of diversion is in close proximity to the boundary of the Tracy Segment Basin (83). Granting the application and the subsequent development of groundwater under the application would conflict with existing rights and threaten to prove detrimental to the public welfare by lowering regional groundwater levels and detrimentally affecting the groundwater resources in Basin Number 83.

3. The application has its proposed point of diversion within close proximity of the boundary of the Pyramid Lake Indian Reservation and in close proximity to the Tribe's existing municipal and domestic wells, and in close proximity to an area needed for development of the Tribe's potable water supply expansion. That expansion is intended to replace existing contaminated wells and provide for future growth within the Reservation. The impacts of granting the transfer will be lowered regional groundwater levels in the Wadsworth area and reduced surface flows in the lower Truckee River. These impacts threaten to

prove detrimental to the Tribe and the public interest as set forth below.

4. The proposed place of use expands the existing place of use into multiple basins. The use of water outside of the basin of origin results in losses and return flows that cannot be utilized within the basin of origin.

5. The manner of use specified for Application 81399 is municipal. The application 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. Granting the application, and the subsequent development of groundwater under the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created, and to the public interest by:

- A. depleting flows in the lower Truckee River and impairing instream flows;
- B. degrading or impairing water quality in the lower Truckee River;
- C. adversely affecting regional groundwater levels and the productivity of the Tribe's existing and planned wells in the Wadsworth area;
- D. adversely affecting groundwater quality in the Wadsworth Area;
- E. preventing or interfering 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 seq., and (ii) Nevada law protecting the cui-ui; and
- F. adversely affecting the recreational value of Pyramid Lake.

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

8. Granting the application will threaten to prove detrimental to the public interest in light of the declining quantity and quality of the groundwater available in the Fernley hydrographic basin to serve existing permits and commitments, and in light of the obligations of the State Engineer pursuant to NRS Chapters 534 and 278 to require that there be adequate plans to protect existing uses and commitments of ground water and to require that the subject rights, or an appropriate portion of them, be devoted to groundwater recharge to

protect existing users and customers before any additional rights are allocated to new development.

9. 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.

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10. 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.

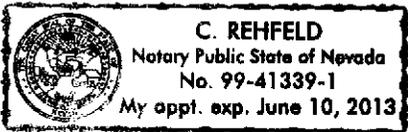
THEREFORE the protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

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 22 day of February 2012.



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 AND ONE COPY MUST BE FILED WITH THE STATE ENGINEER'S OFFICE. ORIGINAL SIGNATURE.

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