FILED
MAR 29 2012
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: 81532
FILED BY: TRI GID
ON: JANUARY 27, 2012 TO APPROPRIATE
WATERS OF: UNDERGROUND

PROTEST & REQUEST TO
DENY APPLICATION 81532

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: 81532 FILED ON: JANUARY 27, 2012 BY: TRI GID TO APPROPRIATE UNDERGROUND WATERS SITUATED IN: STOREY COUNTY, STATE OF NEVADA, FOR THE FOLLOWING REASONS AND ON THE FOLLOWING GROUNDS, TO WIT:

1. APPLICANT IS FILING NEW UNDERGROUND APPROPRIATIONS TO "BACK UP" PRIOR APPLICATIONS WHICH WERE DENIED UNDER EITHER RULINGS 5747 OR 5749. SIGNIFICANT EVIDENCE AND TESTIMONY WAS PRESENTED BY APPLICANTS AND MULTIPLE PROTESTANTS AT HEARING BEFORE RULING 5747 APPROVED SOME APPLICATIONS UP TO WHAT THE STATE ENGINEER BELIEVED WAS THE PERENNIAL YIELD AND DENIED THE REMAINDER. RULING 5749 AGAIN DENIED APPLICANTS SECOND REFILLING FOR NEW UNDERGROUND APPROPRIATIONS WITHOUT A HEARING, RELYING ON THE TESTIMONY AND FINDINGS IN RULING 5747. BASED UPON FINDINGS IN RULINGS 5747 AND 5749, THERE IS NO UNAPPROPRIATED WATER AT THE SOURCE.
2. PROTESTANTS CHURCHILL COUNTY AND PYRAMID LAKE PAIUTE TRIBE HAVE ALSO CHALLENGED PRIOR UNDERGROUND APPLICATIONS IN THE TRACY SEGMENT AND CARSON RIVIER BASINS ON THE GROUNDS THAT THEY WILL REDUCE SURFACE FLOWS IN THE TRUCKEE RIVER BY EITHER CAPTURING GROUNDWATER FLOW DISCHARGING TO THE RIVER MAKING UP BASE FLOW AND/OR CAPTURE WATER DIRECTLY FROM THE RIVER. IN RIVER DOMINATED BASINS SUCH AS THE TRACY SEGMENT WHERE THERE IS A SURFACE WATER – GROUNDWATER CONNECTION AND PUMPING GROUNDWATER WILL ULTIMATELY REDUCE SURFACE FLOWS FROM WHICH THE PROTESTANT HOLDS SENIOR DECREED SURFACE RIGHTS UNDER CLAIM 3 OF THE ORR DITCH DECREE. STATE ENGINEER REJECTED THIS ARGUMENT IN RULING 5747, HOWEVER

THAT RULING IS STILL UNDER APPEAL AND HAS NOT BEEN FINALIZED. SIMILAR APPEALS ARE ALSO PENDING ON THE CARSON RIVER. APPLICATIONS SHOULD BE DENIED ON THE GROUNDS THAT THEY WILL REDUCE SURFACE FLOWS OF THE TRUCKEE RIVER OR AT A MINIMUM WITHHOLD ACTION ON THIS PROTEST GROUND UNTIL ALL APPEALS ON THE TRUCKEE AND CARSON RIVERS ARE FINAL.

3. APPLICATIONS ARE SPECULATIVE IN NATURE AND APPLICANT HAS DEMONSTRATED NEITHER NEED NOR FINANCIAL ABILITY TO CONSTRUCT AND OPERATE THE PROJECT. THE PLACE OF USE FOR THESE APPLICATIONS IS LARGE AND INCLUDES APPROXIMATELY 120,000 ACRES WITHIN STOREY AND LYON COUNTIES IN THREE HYDROGRAPHIC BASINS. SUBJECT TO A DETAILED ABSTRACT BEING PERFORMED, APPLICANT CURRENTLY OWNS APPROXIMATELY 6,900 ACRE-FEET OF SURFACE AND GROUNDWATER AND HAS >10,000 ACRE-FEET OF PENDING GROUNDWATER APPROPRIATIONS FOR USE WITHIN THIS SAME PLACE OF USE. ADDITIONALLY, APPLICANT HAS PENDING PROTESTED APPLICATIONS SEEKING TO REMOVE APPROXIMATELY 1,000 AFA OF CLAIM 3 SURFACE WATERS FROM THE NEWLANDS PROJECT TO THE PROPOSED PLACE OF USE WHICH ARE CLEARLY SPECULATIVE. APPLICANT SHOULD BE REQUIRED TO JUSTIFY THE NEED BASED UPON DEVELOPMENT POTENTIAL WITHIN PROPOSED PLACE OF USE AND WATER RIGHTS THEY ALREADY OWN. APPLICANT SHOULD ALSO BE REQUIRED TO DEMONSTRATE THEIR FINANCIAL ABILITY TO CONSTRUCT AND OPERATE THE PROJECT AND PLACE WATER TO BENEFICIAL USE.

IN SUMMARY, THESE APPLICATIONS SEEK TO APPROPRIATE WATER WHERE THERE IS NO UNAPPROPRIATED WATER, WOULD CONFLICT WITH EXISTING SENIOR PRIORITY DECREED SURFACE RIGHTS AND WOULD PROVE DETRIMENTAL TO THE PUBLIC INTEREST. NRS §533.365(3) PROVIDES THAT IT IS WITHIN THE STATE ENGINEER'S DISCRETION TO DETERMINE WHETHER A PUBLIC ADMINISTRATIVE HEARING IS NECESSARY TO ADDRESS THE MERITS OF A PROTEST WHEN THERE IS SUFFICIENT INFORMATION TO EVALUATE THE MERITS OF THE APPLICATIONS AND PROTESTS. GIVEN THIS IS THE THIRD ATTEMPT BY THE APPLICANT TO APPROPRIATE UNDERGROUND WATERS IN THE TRACY SEGMENT WHICH THE STATE ENGINEER HAS DENIED ON TWO PRIOR OCCASIONS UNDER RULINGS 5747 AND 5749, THERE IS SUFFICIENT INFORMATION TO DENY THE APPLICATIONS, THEREFORE IT IS RESPECTFULLY REQUESTED THAT THE STATE ENGINEER DENY THESE APPLICATIONS WITHOUT BURDENING THEIR OFFICE, PROTESTANTS AND APPLICANTS WITH ANOTHER COSTLY HEARING.

SIGNED: _____

CHRIS C. MAHANNAH, P.E., AGENT
MAHANNAH & ASSOCIATES, LLC
P.O. BOX 2494
RENO, NV 89505
(775) 323-1804

STATE OF NEVADA

COUNTY OF WASHOE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 28TH DAY OF MARCH, 2012

BY CHRIS C. MAHANNAH

_____

STATE OF: NEVADA

COUNTY OF: WASHOE

JOHN L. HENSON
NOTARY PUBLIC - STATE OF NEVADA
COUNTY OF WASHOE
APPT No. 05-101421-2
MY APPT. EXPIRES OCTOBER 10, 2013

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$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: 81524 - 81532

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)
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