

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

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In the Matter of Application Number)
81728 Filed By Lake Mountain Mining, LLC on) **PROTEST**
April 3, 2012 for Permission to Appropriate)
the Public Waters of the State of Nevada)

Comes now The Pyramid Lake Paiute Tribe, 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 81728, filed on April 3, 2012 by Lake Mountain Mining, LLC for permission to appropriate the public waters of the State of Nevada, for the following reasons and on the following grounds, to wit:

1. Application No. 81728 requests to appropriate groundwater from the Dodge Flat Hydrographic Basin which is a fully-appropriated basin. Granting the application would result in the withdrawal of groundwater in excess of the perennial yield of the Dodge Flat Hydrographic Basin and therefore would adversely affect existing rights and would threaten to prove detrimental to the public interest.

2. The miscellaneous remarks section of Application No. 81728 states: "This application is for a 10 year term. This water will replace water previously appropriated under Permits 67949 (sic) and 70975, which recently expired." According to the Nevada State Engineer's website, Permit Nos. 67949 and 70975 have in fact expired, and those permits expired on March 27, 2012 -- prior to the filing date of Application No. 81728 (April 3, 2012). Application No. 81728 cannot simply "replace" water rights or permits that have expired. Application No. 81728 is a new appropriation for groundwater from the fully appropriated Dodge Flat Basin and should be denied for reasons stated in this protest, without consideration of expired Permit Nos. 67949 and 70975.

3. The Protestant Pyramid Lake Paiute Tribe asserts federally reserved groundwater rights in the Dodge Flat Hydrographic Basin, which is partially within the boundaries of the Pyramid Lake Indian Reservation. The Tribe's federally reserved groundwater rights in the Dodge Flat Basin will be harmed by the granting of Application No. 81728 for the reasons, among others, stated in Protest Grounds 1 and 4 herein.

4. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the groundwater available in the basin, and the resulting

inability of the perennial yield to serve existing permits and commitments with groundwater, and in light of the obligations of the State Engineer pursuant to NRS Chapters 533, 534, and 278 to require that there be adequate plans to protect existing rights, uses and commitments of groundwater, and to exercise all appropriate authority and discretion to control over-demand on the source and to protect both the public and other right holders of both surface and groundwater rights.

5. Granting 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 depleting flows in the Truckee River and reducing inflows to Pyramid Lake, for the reasons stated above and because of the connection, both legal and physical, between groundwater and surface water in the basin, and which depleted Truckee River flows would operate to the detriment of the threatened and endangered species inhabiting Pyramid Lake and the lower Truckee River, and impair instream flows.

6. Granting the application would:

- A. deplete flows in the lower Truckee River and impair instream flows;
- B. degrade or impair water quality in the lower Truckee River;
- C. adversely affect regional groundwater levels and productivity of the Tribe's existing and planned wells in the Dodge Flat Basin and Wadsworth area;
- D. have a detrimental effect on groundwater quality in the Dodge Flat Basin and Wadsworth Area;
- 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 seq., 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. adversely affect the interests of the Tribe

7. Granting the application may 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

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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.

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

9. 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 this 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.

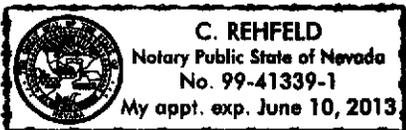
Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP

[Handwritten signatures]

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Tel: (702) 341-5200
Agents for the Tribe

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Subscribed and sworn to before me this 31 day of May, 2012.



C. Rehfeld
Notary Public

State of Nevada

County of Clark

My Commission Expires: 6/10/13

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