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

IN THE MATTER OF APPLICATION NUMBER 82641T
FILED BY Desert Pearl Farms, LLC
ON March 18, 20 13

PROTEST

FILED
MAY 17 2013
STATE ENGINEER'S OFFICE

Comes now John Ritter on behalf of Ritter Enterprises, LLC
Printed or typed name of protestant

whose post office address is 288 Pete Henrichs Road, Yerington, NV 89447
Street No. or PO Box, City, State and ZIP Code

whose occupation is Farming and protests the granting

of Application Number 82641T, filed on March 18, 20 13

by Desert Pearl Farms, LLC for the

waters of an underground source situated in Lyon County
an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:
See Attachment 1

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THEREFORE the Protestant requests that the application be Denied
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed
Agent or protestant

Therese A. Ure, Schroeder Law Offices, P.C. (Agent)
Printed or typed name, if agent

Address 440 Marsh Avenue
Street No. or PO Box

Reno, NV 89509
City, State and ZIP Code

(775) 786-8800
Phone Number

counsel@water-law.com
E-mail

State of Nevada
County of Washoe

Subscribed and sworn to before me on 5/16/2013

by Ashley Robbins

ASHLEY ROBBINS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-12-16
Certificate No: 12-6803-2

Signature of Notary Public Required

Notary Stamp or Seal Required

**+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

**In the Matter of Temporary Application Number 82641T (Protest)**

Attachment 1: Protest Grounds

1. Recent trend on the Walker River region is to dedicate primary Walker River surface water rights to the Walker River Acquisition Program thereby transferring water off agricultural lands and letting it flow to Walker Lake. This trend is leading to less recharge of the ground water aquifers in the Yerington area. Given the state of the Walker River Region hydrographic basin, the State Engineer should require a study prior to granting additional withdrawals from this stressed aquifer.

2. If granted, the Application will conflict with existing water rights of use.

3. If granted, the Application will conflict with, cause injury to, and impact protestant's water rights of use, including but not limited to Permit 18806 (Certificate 5979) and Permit 27839 (Certificate 8755).

4. If granted, the Application will conflict with protectable interests in existing domestic wells.

5. If granted, the Application will prove detrimental to the public interest.

6. This Application is in conflict with and will be detrimental to the public interest as this stressed ground water table will suffer further draw down causing a strain on the water resource in this hydrographic basin.

7. If granted, the Application will cause an unreasonable lowering of the static water level at appropriators' points of diversion.

8. Granting of this water permit will work an unreasonable lowering of the water table based upon its effect on the area economy and economics of pumping water.

9. While in the same hydrographic basin, Applicant is attempting to shift the ground water use in the basin by transferring water use from the southern part of the valley to the northern part of the valley, approximately 10 or more miles. It is unlikely that the ground water withdrawal at the underlying point of diversion is from the same aquifer as that proposed for the point of diversion. The State Engineer should require a basin study to determine aquifer location and water availability.

10. Additional ground water use in the area around the proposed point of diversion was already denied (see Application 31742) on the grounds that "the appropriation of additional ground water for irrigation and use of the water applied for and requested from the area described ... would tend to impair the value of existing rights and be otherwise detrimental to the public interest and welfare."

Applicant in this matter is attempting to withdraw a high volume of ground water (that was not already in use in the area) that will impair existing right and be detrimental to the public interest. The application should be denied as to that amount of water being proposed for withdrawal is new to this location and point of diversion/appropriation, and because of the prior denial of a similar ground water request.

11. If the use is granted, this use will adversely affect the cost of water use for other holders of water in the hydrographic basin, including the likelihood of increased pumping from lowered water table access depths, and the likelihood of drilling wells deeper into the aquifer.

12. If this Application is granted, the permit must contain express conditions to ensure existing appropriations will be satisfied. Examples of express conditions are attached as Attachment 2 for consideration.

13. Primary versus Supplemental Rights: From a preliminary review, it is unclear if this Application is for a change to primary or supplemental ground water use, or whether the underlying permit is stacked/overlapped with another water use.

The State Engineer should not allow the change of only one portion of a stacked water use, otherwise the State Engineer is permitting an enlargement of water uses, new water uses, and water spreading, contrary to the law.

Only primary ground water uses, that are not "stacked" or otherwise overlapped with surface (whether or not primary or supplemental), should be allowed to be changed under existing water law. Any change application that involves other "stacked" rights of use must require that all stacked rights transfer or be cancelled.

14. Applicant notes that a portion of the proposed place of use is currently irrigated by Walker River Decree, Claim 2 and 138, and portions of supplemental underground water under Permit 19599 (Certificate 5997).

Thus there is already water use at the proposed place of use. Applicant is attempting to stack and expand water use by placing additional water on top of water righted ground.

Applicant states that they "intend" to strip the water off this ground upon approval of the permit, yet there is no guarantee that Applicant will do so. No permit should be granted unless and until all water rights currently appurtenant to the place of use are removed and stripped from the land.

If a permit is issued prior to stripping the underlying rights, the underlying rights should become primary rights to the newly transferred water uses which will then be supplemental behind both existing uses.

15. The proposed place of use is a 356.27 acre area. An area larger than the area wherein the water rights being proposed for transfer can cover (186.582 acres proposed for transfer). The application is lacking a substantially accurate description of the proposed place of use.

16. Applicant drilled the well proposed under this transfer 2-3 months ago, and is currently using water under the application without a permit to irrigate approximately 160 acres (or four quarter-quarter sections). Note: Applicants filed temporary applications for permits, 82638T through 82642T, but according to the State Engineer's online database, no permits have been granted. The State Engineer should not condone illegal water use by granting this application.

17. The underlying rights to Applications may have issues of abandonment and forfeiture.

18. If granted, and given that the use is for irrigation, water use should be limited to the irrigation season and not year round.

19. There is pending before the Federal District Court the issue of whether the surface and ground water in the Walker Basin are hydrologically connected. Should the federal court decide this issue and determine a connection, there is no water available. This application should be denied or at a minimum stayed until that issue is finally determined.

# ATTACHMENT 2

ATTACHMENT 2

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

[redacted]

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: [redacted]

SOURCE OF WATER: A WELL [redacted] IN [redacted] CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 38.0 ACRES

MAXIMUM RATE: 0.48 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: [redacted]

WELL LOCATION: [redacted] W.M.; [redacted] FEET NORTH AND [redacted] FEET EAST FROM W¼ CORNER, [redacted]

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

[redacted]

TOWNSHIP [redacted] SOUTH, RANGE [redacted] EAST, W.M.

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Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.

B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

A. Associate each measurement with an owner's well name or number and a Department well log ID; and
B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
C. Specify the method of measurement; and
D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

**STANDARD CONDITIONS**

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

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Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued August 6, 2009

E. Timothy Ward

for Phillip C. Ward, Director
Water Resources Department

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