

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

**FILED**  
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In the Matter of Application Number )  
84003 Filed By TRI General Improvement )  
District on June 27, 2014, for Permission to )  
Change the Point of Diversion and Place of )  
Use of Water Appropriated under Permit )  
Number 65062 )

**PROTEST**

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 84003, filed on June 27, 2014 by TRI General Improvement District, for permission to change the point of diversion and place of use of water appropriated under Permit No. 65062, for the following reasons and on the following grounds, to wit:

1. The base water rights sought for change by Application No. 84003 have their origin in Application No. 65062 which was one of twelve applications (Application Nos. 65060 through 65071) filed by the applicant or its predecessor in 1999 to appropriate groundwater in the Tracy Segment Basin (Basin 83). All twelve applications were permitted by the State Engineer, and subject to Ruling #5747. The twelve Applications were permitted for a total combined duty not to exceed 2,700 acre-feet annually. Application No. 84003 requests to change 1,000 acre-feet annually, or 37% of the total combined duty allowed under all twelve Permit Nos. 65060 through 65071. Application No. 84003 should not be granted without a hearing to allow this protestant the right to present evidence in support of its protests, because Application No. 84003 now involves matters that were not addressed during the hearing on Application Nos. 65060 through 65071, which resulted in Ruling #5747, but which have been addressed by the State Engineer since that time, as shown below.

2. All twelve wells associated with Permit Nos. 65060 through 65071 were located within a range of approximately 2.5 miles to 5.0 miles away from the Truckee River. Application No. 84003 requests to change 1,000 acre-feet annually from the existing point of diversion (well) associated with Permit No. 65062 that is located over 2.5 miles from the Truckee River, to a proposed point of diversion (well) that is located between one-quarter and one-half mile from the river. If granted by the State Engineer and developed by the applicant, pumping 1,000 acre-feet annually from the proposed well is highly likely to have a greater impact on the Truckee River than pumping

from the existing well, and the Tribe requests an opportunity to provide evidence in support of its Protest in the course of an evidentiary hearing.

3. The proposed point of diversion for Application No. 84003 is an existing well located near the Truckee River that is the Permitted point of diversion for Permit No. 61778. The Proof of Beneficial Use for Permit No. 61778 was originally due on or before July 26, 2002 (over 12 years ago). Presumably, requests for extension of time to show proof of beneficial use have been filed on Permit No. 61778 for the past twelve years. The State Engineer should not continue to grant extensions of time for Permit No. 61778 and should not grant Application No. 84003 for any more water than has been put to beneficial use under Permit No. 61778 since the proof was originally due in 2002.

4. The proposed point of diversion for Application No. 84003 is an existing well located near the Truckee River that is the Permitted point of Diversion for Permit No. 61778. The Well Driller's Report for Permit No. 61778 (the proposed point of diversion for Application No. 84003) indicates that the well was drilled and screened in water-bearing course gravel and cobbles. The Lithologic Log for Permit No. 61778 provides evidence of a direct connection between water that would be pumped from the well and surface water flows in the Truckee River, and the Tribe requests an opportunity to provide evidence in support of its Protest in the course of an evidentiary hearing.

5. Permit Nos. 65060 through 65071 were granted conditioned upon a monitoring plan that the applicant was required to submit to the State Engineer, prior to any diversion of water. Application No. 84003 should not be approved until the monitoring plan required under Permit No. 65062 has been prepared and submitted to the State Engineer. The conditions for the monitoring plan required by the State Engineer under Permit No. 65062 are not applicable to Application No. 84003 and a hearing should be conducted to allow this protestant and others the right to present evidence regarding the monitoring plan required by the State Engineer.

6. The flow of the Truckee River is measured at various points by the U.S. Geological Survey ("USGS") and the Federal Water Master monitors diversions from the Truckee River. In support of Ruling #5747-A, and his granting of Application Nos. 65060 through 65071, the State Engineer noted that the flow of the Truckee River as it flows through the Tracy Segment is a gaining stretch of river, and the stream flow gains a net 11,000 acre-feet annually (Ruling #5747-A, pg. 23). What the State Engineer did not consider in Ruling #5747-A, is dry year conditions and the impact of well pumping on the Truckee River during dry years such as the current conditions. Based on USGS gauging data for the Truckee River at Vista and the Truckee River below Derby Dam, and the Federal Water Master's records of Truckee River Diversions, the Truckee River has been a losing reach since August 1, 2014 when diversions from the river to the Truckee

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Canal stopped. The Truckee River as it flows through the Tracy Segment is currently losing water, the Tribe's current calls for Truckee River water, including its call for its Claims 1 and 2 Orr Ditch Decree water, are not being met, groundwater pumping in the Tracy Segment is a contributing factor, and approving Application No. 84003 will further diminish flows in the Truckee River, in direct conflict with the Pyramid Lake Paiute Tribe's senior Claims 1 and 2 Orr Ditch Decree water rights. The Tribe requests that the State Engineer deny Application No. 84003, or allow the Tribe to present its evidence and arguments at a hearing concerning pumping from the applicant's wells and the well at the proposed point of diversion, and how that pumping is and will continue to impact flows in the Truckee River and the Tribe's senior Claims 1 and 2 Orr Ditch Decree water rights.

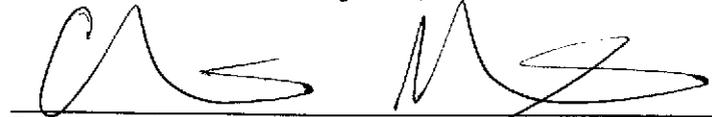
7. Ruling #5747, involving Application Nos. 65060 through 65071 was issued by the State Engineer in June 2007, at which time the State Engineer was not so inclined to entertain Protestants' arguments that there is a connection, legal and physical, between groundwater and surface water, and in that ruling reference was made to the State Engineer's long-standing position that Nevada water law provides for the appropriation of groundwater. In a more recent ruling, the State Engineer also noted that Nevada has historically regulated groundwater as a separate source from surface water and provided a "bright-line distinction" between groundwater and surface water. In that ruling (Ruling #6290 dated August 15, 2014), the State Engineer conceded that "...these bright-line distinctions are fading" and that "...the groundwater and surface water are hydrologically connected" citing *U.S. and Pyramid Lake Paiute Tribe of Indians v. Orr Ditch, et al.*, 600 F3d 1152 (9th Cir. 2010) and the 9th Circuit Court finding that the Orr Ditch Decree forbids groundwater allocations that adversely affect senior decreed rights to surface water flows in the Truckee River (Ruling #6290, pgs. 57-58). The Tribe requests that the State Engineer deny Application No. 84003, or allow the Tribe to present its evidence and arguments at hearing concerning pumping from the well at the proposed point of diversion and how that pumping will impact flows in the Truckee River and the Tribe's senior Claims 1 and 2 Orr Ditch Decree water rights.

8. 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 conflict with the Tribe's senior Claims 1 and 2 Orr Ditch Decree water rights, and would operate to the detriment of the threatened and endangered species inhabiting Pyramid Lake and the lower Truckee River.

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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



Don Springmeyer, Esq.  
Christopher W. Mixson, Esq.  
3556 East Russell Rd.  
Las Vegas, NV 89120  
Tel: (702) 341-5200  
Agent for the Tribe

Subscribed and sworn to before me this 8<sup>th</sup> day of September, 2014.

Laura Simar  
Notary Public

State of Nevada

County of Washoe

My Commission Expires: April 23, 2015



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