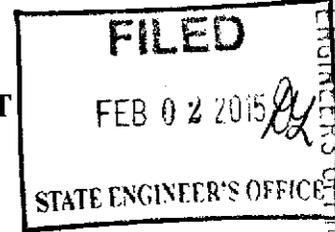


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

In the Matter of Application Number 84515,
filed by the City of Fernley on November 5,
2014, to Change the Place and Manner of Use
of a Portion of Truckee River Water
Appropriated under the *Orr Ditch Decree Claim*
No. 3

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 84515, filed on November 5, 2014 by the City of Fernley, to recharge, store, and recover water underground using a portion of water appropriated under the Truckee River Decree Claim No. 3; *United States vs. Orr Water Ditch Co., et al., In Equity No. A3*, for the following reasons and on the following grounds, to wit:

1. The Application should be denied pursuant to NRS 534.250(2)(a) because the Applicant has not demonstrated that it has the technical and financial capability to build and operate the proposed project, based on the following points:

A. The Applicant cannot meet the requirement to demonstrate that it has the financial capability to operate the proposed project which it estimates to be at least \$10 million, and therefore has not and cannot satisfy the requirements of NRS 534.250(2)(a).

B. The Applicant cannot meet the requirement to demonstrate that it has the technical capability to build and operate the proposed project pursuant to NRS 534.250(2)(a), which the Application states will require construction of diversion structures, treatment facilities and other infrastructure, and which will cost at least \$10 million.

2. The Application should be denied pursuant to NRS 534.250(2)(b) because the Applicant does not have a right to use the proposed source of water for groundwater recharge, storage, and recovery, based on the following points:

A. The source of water proposed for groundwater recharge (Orr Ditch Decree, Claim No. 3) is Newlands Project water, and the right to the use of that water was established, and is governed by, the Reclamation Act of 1902 and subsequent opinions, including the opinion that the Secretary of the Interior "has no authority under this Act to withdraw lands for reservoir sites with a view to the use of the water impounded therein for domestic purposes." Op. Asst. Atty. Gen, 33 L.D. 415 (1905). Furthermore, there are no provisions in the *Orr Ditch Decree* or the Newlands Project Operating Criteria and Procedures that allow for direct diversion irrigation water rights (3.5 acre-feet or 4.5 acre-feet per acre annually), to be stored and carried over for use in subsequent years.

B. Although Newlands Project water is generally allowed to be used for municipal and industrial (M&I) purposes under Pub. Law 101-618, the Applicant currently does not have the right to use Newlands Project water for M&I purposes, and it will not obtain that right unless or until it meets

all requirements of the Federal Government to use Newlands Project water for M&I purposes. Pursuant to NRS 534.250(2)(b), the State Engineer cannot issue a permit for the Applicant's proposed project unless a determination is made that the Applicant has the right to use the proposed source of water for recharge. The Applicant has not demonstrated that such a determination has been made, and the Application should therefore be denied.

C. On information and belief, the Applicant is not the owner of the lands upon which the Applicant proposes to operate the groundwater recharge, storage, and recovery project. The Applicant has not demonstrated that it has obtained permission from the owners of the proposed place of use for the proposed recharge, storage, and recovery operations.

3. The Application should be denied pursuant to NRS 534.250(2)(c) because the Applicant has not demonstrated that proposed project is hydrologically feasible. The conclusions of the Applicant's prior "Feasibility Study" and addendum thereto admit that additional studies must be completed to determine the feasibility of the proposed recharge, storage, and recovery project. Additional studies and data needed to determine feasibility, as specified in the Applicant's own reports, include: groundwater modeling, geological investigations, geochemical modeling and evaluation, infiltration testing, more accurate and current water elevation values, and pilot programs. The Applicant has not provided such documentation and has therefore not demonstrated hydrologic feasibility as required by NRS 534.250(2)(c), and without completion of these additional studies, hydrologic feasibility cannot be verified, as acknowledged in the conclusions of the reports submitted by the Applicant.

4. The Application should be denied pursuant to NRS 534.250(2)(e) because the Applicant has not demonstrated that the proposed project will not cause harm to users of the land or water within the area of hydrologic effect, based on the following points:

A. The use of Newlands Project water for a groundwater recharge, storage, and recovery project on Federal lands is an action requiring Federal approval and involves Federal control and responsibility, and therefore requires compliance with the National Environmental Policy Act (NEPA), pursuant to 43 CFR 46.100(a), for proper assessment of potential environmental impacts associated with the proposed project. NEPA analysis is required in order to address the potential for the project to cause harm to users of the land or other water within the area of hydrologic effect. The required NEPA analysis has not been undertaken. The USBR, or that agency acting jointly with the BLM, would be the lead agency to prepare the environmental document.

B. The use of Newlands Project water for purposes other than irrigation is an action requiring Federal approval and involves Federal control and responsibility, and therefore requires compliance with NEPA, pursuant to 43 CFR 46.100(a), for proper assessment of potential environmental impacts associated with the proposed project. The required NEPA analysis has not been undertaken. The USBR would be the lead agency to prepare the environmental document.

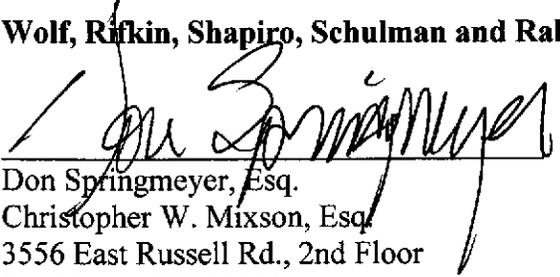
C. The Application will cause harm to other users of land and water within the area of hydrologic effect, and the Applicant has not provided any evidence to demonstrate that its project will not cause harm. In fact, the conclusions of the Applicant's prior "Feasibility Study" submitted with previous similar applications states "this investigation *did not consider* current environmental impacts, water quality, water rights, easements and Right of Ways, and construction costs..." (emphasis added).

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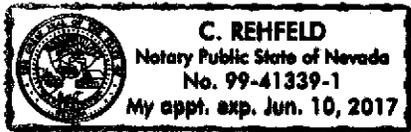
C. and, adversely impacting the rights of the Pyramid Lake Paiute Tribe and others, due to the connection, both legal and physical, between groundwater and surface water in and between the Fernley Area Basin, the Tracy Segment Basin, and the Dodge Flat Basin.

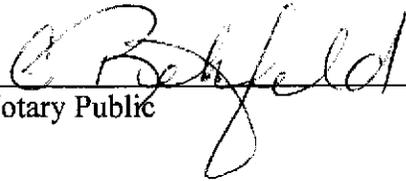
THEREFORE the Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

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 Pyramid Lake Paiute Tribe

Subscribed and sworn to before me this 30th day of January, 2015.





Notary Public

State of Nevada

County of Clark

My Commission Expires: June 10, 2017

\$30 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE - ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

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