



Meeting Date: 9/06/2017  
Agenda Item: # \_\_\_\_\_

**Mission Statement**

To provide our growing dynamic community excellent municipal services to make Fernley a great place to live, work, and play. Together, we enhance the desirability, safety, friendliness, aesthetics and quality of life in our city.

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**FERNLEY CITY COUNCIL MEETING - STAFF REPORT**

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**REPORT TO:** Mayor & City Council

**REPORT FROM:** Paul Taggart, Special City Water Attorney

**REPORT THRU:** Daphne Hooper, City Manager

**REVIEWED BY:** Paul Taggart, Special City Water Attorney

**REVIEWED BY:** Denise Lewis, Finance Director

**AGENDA ITEM:** Possible action to authorize the execution of a Stipulation and Order in United States District Court Case No. 3:73-CV-00035-LDG (an appeal by the Pyramid Lake Paiute Tribe of Nevada State Engineer Ruling 6327).

**ACTION REQUESTED:** X Consent \_\_Ordinance \_\_Resolution \_\_Motion \_\_Receive/File

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**RECOMMENDED ACTION BY CITY COUNCIL**

Staff recommends the following action:

“I move to authorize the Special City Water Attorney to execute the Stipulation and Order in United States District Court Case No. 3:73-CV-00035-LDG on behalf of the City of Fernley and take all other action required to implement the terms and conditions of the Stipulation and Order.”

**Key Points:**

1. Fernley filed change applications with the State Engineer to allow it to re-allocate the City’s groundwater rights among the City’s existing wells. The applications were protested by the Pyramid Lake Paiute Tribe (“PLPT”).
2. State Engineer Ruling 6327 approved Fernley’s applications.
3. The PLPT appealed Ruling 6327 in the *Orr Ditch* court.
4. The parties have agreed to have the case remanded back to the State Engineer to hold a “technical session” to consider PLPT’s concerns with the applications and issue a new ruling.

## **POLICY REFERENCE**

<i>Nevada Statutes:</i>	N/A
<i>Fernley Municipal Code:</i>	N/A
<i>Policies &amp; Procedure Manual:</i>	N/A
<i>Community Assessment:</i>	N/A
<i>Other:</i>	N/A

## **SUPPORTING INFORMATION**

On December 19, 2011, Fernley filed 4 applications (Nos. 81398, 81399, 81400, and 81401) with the State Engineer seeking to change the points of diversion of certain of the City's groundwater rights. The purpose of the change applications was to allow Fernley to re-allocate water rights between its existing wells.

The applications were protested by the PLPT. The PLPT alleged 12 grounds supporting their protest. On April 6, 2012, Fernley filed an Answer to the Protests addressing each of the 12 points raised by the PLPT.

On December 2, 2015, the State Engineer issued Ruling 6327 approving Fernley's applications and over-ruling PLPT's protest. No hearing was held by the State Engineer prior to the issuance of Ruling 6327. Nevada law does not mandate that a hearing be held on a protested application. Instead, the State Engineer has discretion to decide whether a hearing is warranted.

On December 31, 2015, the PLPT appealed Ruling 6327 to the Federal District Court with jurisdiction over the enforcement of the *Orr Ditch* Decree. In its Petition, the PLPT alleged that (1) the issuance of Ruling 6327 allows Fernley to receive water to which it is not legally entitled, and (2) that the changes proposed will diminish the waters and flow of the Truckee River. The PLPT also alleged that the findings and conclusions of the State Engineer are erroneous and based on misapplications of governing law.

Since the filing of PLPT's appeal, the parties have engaged in settlement negotiations. As a result of those negotiations, the parties have agreed that Ruling 6327 be remanded to the State Engineer so that he can convene a "technical session" with the parties. This technical session will provide PLPT and Fernley the opportunity to present additional evidence to the State Engineer supporting the parties' respective positions. After the technical session, the State Engineer will issue a new ruling in the case.

Pursuant to the draft Stipulation, the scope of the technical session will be limited to PLPT's claims that the proposed changes will harm, injure, or otherwise conflict with the rights and interests on the PLPT.

The PLPT and the State Engineer have approved the draft Stipulation and Order and authorized their respective attorneys to execute it. Taggart & Taggart, Ltd. seeks authorization from the City Council to execute the draft Stipulation and Order on behalf of the City of Fernley.

**FINANCIAL INFORMATION**

**FISCAL IMPACT:**

1. Is There A Fiscal Impact? Yes

2. Is it Currently Budgeted? Yes

If Budgeted, Which Line Item/Account?

510-810-698

**FISCAL SYNOPSIS:**

The costs associated with implementing the proposed Stipulation and Order are included within the City's existing contract with Taggart & Taggart, LTD.

**ATTACHED INFORMATION**

Draft Stipulation and Order  
State Engineer Ruling 6327  
PLPT Petition for Judicial Review of Ruling 6327