

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

In the Matter of Application Number 54008, Filed by the Las Vegas Valley Water District on October 17, 1989, to appropriate the waters of White Pine County.

PROTEST

Comes now THE CITY OF CALIENTE whose post office address is POST OFFICE BOX 158, CALIENTE, NEVADA 89008 whose occupation is MUNICIPALITY/WATER PURVEYOR, and protest the granting of Application Number 54008, filed on October 17, 1989 by the Las Vegas Valley Water District to appropriate the waters of underground situated in White Pine County, State of Nevada, for the following reasons and on the following grounds, to wit:

(See Attachment)

THEREFORE the protestant requests that the application be DENIED and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

George T. Rowe
George T. Rowe, Mayor

Address

P.O. Box 158
Caliente, Nevada 89008

Subscribed and sworn to before me this 9th day of

July, 1990.

Mona D. Prince
State of Nevada
County of Lincoln

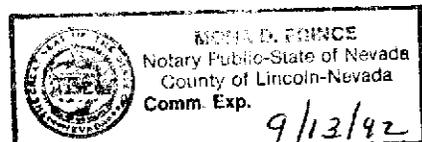


EXHIBIT "1"

1. This application should be denied on the basis that rights to the use of the public waters of the State of Nevada are restricted to so much water as may be necessary, when reasonably and economically used for beneficial purposes. Las Vegas Valley Water District has allowed the water to be used for waste and purposes other than reasonable and economic beneficial use.

2. The Statutes of Nevada provide the beneficial use shall be the basis, the measure and the limit of the right to the use of water in this State. Actual consumption is the measure of beneficial use and water that is wasted is not put to such use. This applicaiton should be denied based on the long history of applicant allowing water to be wasted.

3. This application should be denied because the State Engineer is restricted to allowing only that quantity of water to a user which shall reasonably be required for the beneficial use to be served. The State Engineer must, therefore, make his determinations of quantity based on all water now available to applicant and requested in all applications of record.

4. This application should be denied unless the applicant can clearly and with scientific certainty demonstrate that vested rights shall not be impaired or affected.

5. This application is one of 147 applications filed by the Las Vegas Valley Water District seeking a combined appropriation of some 860,000 acre feet of ground and surface water for municipal use in the Las Vegas Valley Artesian Basin. Diversion and export of such a quantity of water will deprive the county and area of origin of the water needed for its environment and economic well being and will unnecessarily destroy environmental, ecological, scenic and recreational values that the State hold in trust for all its citizens.

6. The granting or approving of the subject application in the absence of comprehensive planning, including but not limited to environmental impact considerations, socioeconomic impact considerations, and a water resource plan consideration for the general Las Vegas Valley area such as has been required by the Public Service Commission of private purveyors of water, is detrimental to the public welfare and interest.

7. The granting or approving of the subject application in the absence of comprehensive water resource development planning, including but not limited to, environmental impacts, socioeconomic impacts, and long term impacts on the water resource, threatens to prove detrimental to the public interest.

8. The granting or approval of the above-referenced application would conflict with or tend to impair all existing rights the source of which is the deep carbonate aquifer of eastern Nevada because it would exceed the safe yield of the subject aquifer, lower the pressure within the aquifer which accounts for hundred of seeps, springs and artesian water sources such as Panaca Big springs, Crystal Springs, etc. (Special mention of these two does not limit the reference), would lower the static water level and would sanction water mining.

9. Granting or approval of the above-referenced Application would be detrimental to the public interest in that it individually and cumulatively with other applications of the water exploration project would:

(1) Likely jeopardize the continued existence of endangered and threatened species recognized under the Endangered Species Act and related state statutes;

(2) Prevent or interfere with the conservation of those threatened or endangered species;

(3) Take or harm those endangered species; and

(4) Interfere with the purpose for which the Federal lands are managed under Federal statutes including, but not limited to, the Federal Land Use Policy Act of 1976.

10. The approval of the subject application will sanction and enhance the willful waste of water allowed, if not encouraged, by the Las Vegas Valley Water District.

11. The subject Application seeks to develop the water resources of, and transport water across, lands of the United States under the jurisdiction of the United States Department of Interior, Bureau of Land Management. This application should be denied because the Las Vegas Valley Water District has not obtained right-of-way for water development on public lands and the transportation of water from the proposed point of diversion to the service area of the Las Vegas Valley Water District in Clark County.

12. The Application should be denied because it individually and cumulatively will increase the waste of water and lack of effective conservation efforts in the Las Vegas Valley Water District service area.

13. The Las Vegas Valley Water District lacks the financial capability of transporting water under the subject permit as a prerequisite to putting the water to beneficial use and accordingly, the subject Application should be denied.

14. The above-referenced Application should be denied because the application fails to include the statutorily required:

- (1) Description of proposed works;
- (2) The estimated cost of such works;
- (3) The estimated time required to construct the works and the estimated time required to complete the application of water to beneficial use; and
- (4) The approximate number of persons to be served and the approximate future requirement.

15. The subject application should be denied because it individually and cumulatively with other Applications will exceed the safe yield of the 184-6A Basin thereby adversely affecting phreatophytes and create air contamination and air pollution in violation of State and Federal Statutes, including but not limited to, the Clean Air Act and Chapter 445 of the Nevada Revised Statutes.

16. The application cannot be granted because the applicant has failed to provide information to enable the State Engineer to grant the public interest properly. This application and related applications associated with this major withdrawal out in the basin transfer project cannot properly be determined without an independent, formal and publicly-reviewable assessment of:

- a. cumulative impacts of the proposed extractions;
- b. mitigation measures that will reduce the impacts of the proposed extractions;
- c. alternatives to the proposed extractions, including but not limited to, the alternatives of no extraction and mandatory and effective water conservation in the LVVWD service area.

17. The undersigned additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every other protest to the aforementioned applications filed pursuant to NRS 533.365.

18. Inasmuch as a water extraction and trans basin conveyance project of this magnitude has never been considered by the State Engineer, it is therefore impossible to anticipate all potential adverse affects without further study. Accordingly, the protestant reserves the right to amend the subject protest to include such issues as they develop as a result of further study.

13 A. The subject application is in an aquifier basin that is fed in full or in part by the Snake Range Watershed. This Watershed is that of the Great Basin National Park. Even a threat of damage to or reduction of water to that watershed would cause irreparable damage to the entire population of the United States; would be against public interest of the State of Nevada and the United States; would be contrary to public trust and would serve the lesser public interest of Clark County at the expense of the greater interest of the public as a whole.

ADDENDUM 1

By ruling #3398 dated November 20, 1986, In the Matter of Additionally Applications 49333 and 49334, by ruling #3173 dated April 15, 1985 In the Matter of Application 48075, and similar rulings to which reference is made, the Nevada State Engineer adopted as policy that applicants furnish data concerning water conservation measures and amount of water to be recycled. Unless the same is demanded of and furnished by the applicant herein an unconstitutional unequal application of law and public policy will have occurred. This application should be denied for failure to furnish the information or at least held in abeyance until the information is furnished.

EXHIBIT "1A"

This applicaiton is in Lake Valley Nevada. By decision dated September 10, 1981, the State Engineer denied applications No. 38520, 38525, 38569, 40363 and 43592. The Decision in part reads:

". . . The estimated annual recharge of the ground water reservoir in Lake Vally is 13,000 acre-feet.

". . . The total amount of water currently appropriated in Lake Valley is 24,173 acre-feet per year.

". . . Pumpage in excess of 12,000 acre-feet will eventually result in storage depletion from principal aquifiers, substantial water level declines, and land subsidence.

Should additional water be allowed for appropriation . . . (it would) detrimentally affect prior ground water rights, the State Engineer is required by law to order withdrawals (of water) be restricted to conform with priority rights."

APPLICATION NO. 54008

LIST OF REASONS TO PROTEST THE LAS VEGAS VALLEY WATER DISTRICT
APPLICATIONS TO APPROPRIATE GROUND AND SURFACE WATER FROM
CENTRAL, EASTERN AND SOUTHERN NEVADA

1. This Application is one of 145 applications filed by the Las Vegas Valley Water District seeking to appropriate 804,195 acre feet of ground water primarily for municipal use within Clark County. Diversion and export of such quantity of water will: lower the static water level in Spring Valley Basin; adversely affect the quality of remaining ground water; and further threaten springs, seeps and phreatophytes which provide water and habitat critical to the survival of wildlife and grazing livestock.

2. The appropriation of this water when added to the already approved appropriations and existing uses in the Spring Valley Basin will exceed the annual recharge and safe yield of the basin. Appropriation and use of this magnitude will: lower the static water level and degrade the quality of water from existing wells and cause negative hydraulic gradient influences as well as other negative impacts.

3. This Application is one of 146 applications filed by the Las Vegas Valley Water District seeking a combined appropriation of some 864,195 acre feet of ground and surface water primarily for municipal use in Clark County. Diversion and export of such a quantity of water will deprive the area of origin of the water needed to protect and enhance its environment and economic well being, and the diversion will unnecessarily destroy environmental, ecological, scenic and recreational values that the State holds in trust for all its citizens.

4. The granting or approving of the subject Application in the absence of comprehensive planning, including but not limited to environmental impact considerations, cost considerations, socioeconomic impact considerations, and a water resource plan (such as is required by the Public Service Commission of private purveyors of water) for the Las Vegas Valley Water District Service area is detrimental to the public welfare and interest.

5. The granting or approval of the above-referenced Application would conflict with or tend to impair existing rights in the Spring Valley Basin because if granted it would exceed the safe yield of the subject basin and unreasonably lower the static water level and sanction water mining.

6. The granting or approval of the above referenced Application would be detrimental to the public interest in that it, individually and together with the other applications of the water importation project, would:

- (a) Likely jeopardize the continued existence of endangered

and threatened species recognized under the federal Endangered Species Act and related state statutes;

(b) Prevent or interfere with the conservation of those threatened or endangered species;

(c) Take or harm those endangered or threatened species; and

(d) Interfere with the purpose for which the federal lands are managed under federal statutes including, but not limited to, the Federal Land Use Policy Act of 1976.

7. The approval of the subject application will sanction and encourage the willful waste of water that has been allowed, if not encouraged, by the Las Vegas Valley Water District.

8. The subject Application seeks to develop and transport water resources on and across lands of the United States under the jurisdiction of the United States Department of Interior, Bureau of Land Management. This application should be denied because the Las Vegas Valley Water District has not obtained necessary legal interest (e.g., right-of-way) in the federal land such that the applicant may extract, develop and transport water resources from the proposed point of diversion to the proposed place of use.

9. The Application should be denied because it individually and cumulatively with other applications of the water importation project will perpetuate and may increase the inefficient use of water in the Las Vegas Valley Water District service area and frustrate efforts at water demand management in the Las Vegas Valley Water District service area.

10. The Las Vegas Valley Water District lacks the financial capability for developing and transporting water under the subject permit which is a prerequisite to putting the water to beneficial use.

11. The above-referenced Application should be denied because it fails to include the statutorily required:

(a) Description of the place of use;

(b) Description of the proposed works;

(c) The estimated cost of such works; and

(d) The estimated time required to put the subject water to beneficial use.

12. The subject Application should be denied because it individually and cumulatively with other applications of the proposed project will exceed the safe yield of the Spring Valley Basin thereby adversely affecting phreatophytes and creating air contamination and air pollution in violation of State and Federal

Statutes, including but not limited to, the Clean Air Act and Chapter 445 of the Nevada Revised Statutes.

13. The Application cannot be granted because the applicant has failed to provide information to enable the State Engineer to safeguard the public interest properly. The adverse effects of this Application and related applications associated with the proposed water appropriation and transportation project (largest appropriation of ground water in the history of the State of Nevada) cannot properly be evaluated without an independent, formal and publicly-reviewable assessment of:

- (a) cumulative impacts of the proposed extraction;
- (b) mitigation measures that will reduce the impacts of the proposed extraction;
- (c) alternatives to the proposed extraction, including but not limited to, the alternatives of no extraction and aggressive implementation of all proven and cost-effective water demand management strategies.

14. The subject application should be denied because the population projects upon which the water demand projections are based are unrealistic and ignore numerous constraints to growth, including traffic congestion, increased costs of infrastructure and services, degraded air quality, etc.

15. The subject application should be denied because previous and current conservation programs instituted by the Las Vegas Valley Water District are ineffective public-relations oriented efforts that are unlikely to achieve substantial water savings. Public policy and public interest considerations should preclude the negative environmental and socio-economic consequences of the proposed transfers on areas of origin when the potential water importer has failed to make a good-faith effort to efficiently use currently available supplies.

16. The subject Application should be denied because the enormous costs of the project will result in water rate increases of such magnitude that demand will be substantially reduced, thereby rendering the water transfer unnecessary.

17. The granting or approval of the above-referenced Application would be detrimental to the public interest and not made in good faith since it would allow the Las Vegas Valley Water District to lock up vital water resources for possible use sometime in the distant future beyond current planning horizons.

18. The subject Application should be denied because current and developing trends in housing, landscaping, national plumbing fixture standards and demographic patterns all suggest that the simplistic water demand forecasts upon which the proposed transfers are based substantially overstate future water demand needs.

19. The subject application should be denied because the current per capita water consumption rate for the Las Vegas Valley Water District is double that of similarly situated southwestern municipalities. This suggests enormous potential for more cost-effective supply alternatives, including demand management and effluent re-use. These alternatives have not been seriously considered by the Las Vegas Valley Water District.

20. Inasmuch as a water extraction and transbasin conveyance project of this magnitude has never been considered by the State Engineer, it is therefore impossible to anticipate all potential adverse affects without further information and study. Accordingly, the protestant reserves the right to amend the subject protest to include such issues as they may develop as a result of further information and study.

21. The undersigned additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every other protest to the subject application filed pursuant to NRS 533.365.