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

IN THE MATTER OF APPLICATION NUMBER 54009
FILED BY Southern Nevada Water Authority
ON October 17, 1989, ~~20~~, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

FILED
MAR 28 2011
STATE ENGINEER'S OFFICE

Comes now Col. James R. Byrne
Printed or typed name of protestant

whose post office address is 4430 Grissom Avenue, Suite 100, Nellis AFB, NV 89191-6520
Street No. or PO Box, City, State and ZIP Code

whose occupation is Staff Judge Advocate and protests the granting

of Application Number 54009, filed on October 17, 1989, ~~20~~

by Southern Nevada Water Authority to appropriate the

waters of underground situated in Clark, Lincoln, White Pine, and Nye
Underground 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 Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The United States Air Force will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights for Creech Air Force Base and the southern portion of the Nevada Test and Training Range.

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

Col. James R. Byrne
Printed or typed name, if agent

Address 4430 Grissom Avenue, Suite 101
Street No. or PO Box

Nellis AFB, NV 89191-6520
City, State and ZIP Code

702-652-5470
Phone Number

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Subscribed and sworn to before me this 28 day of March, 20 11

DOROTHEA MAXVILLE
NOTARY PUBLIC
STATE OF NEVADA
Date Appointment Exp: 10-22-2011
Certificate No: 99-38624-1

Notary Public

State of Nevada
County of Clark

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

IN THE MATTER OF APPLICATIONS *53987-53992 and 54003-54021*

EXHIBIT A

Protest by Colonel James R. Byrne on behalf of
Nellis Air Force Base

GENERAL

I. The mission of the United States (U.S.) Air Force at Creech Air Force Base (AFB) is to provide a unique environment to train U.S. and allied combat pilots against realistic threats and targets currently encountered in various locations around the world. Creech AFB also provides direct support to conduct advanced weapons and tactics training and is the site for remotely piloted vehicles testing and training. Creech AFB is part of the Nevada Test and Training Range (NTTR) and is the gateway to the southern ranges located within Clark, Nye and Lincoln Counties. Creech AFB currently has a population of approximately 2,300 but future plans will expand the number of personnel over the next several years. Land withdrawn for NTTR provides a secure, flexible range for large-scale military testing and training that is not duplicated anywhere within the U.S. This land is critical to preparing flight crews from the U.S. and our Allies for developing and maintaining their battle skills in today's highly complex threat environments, as well as testing new weapons systems and platforms.

II. The NTTR was originally established by Executive Order (EO) 8578 in 1940 as the Las Vegas Bombing and Gunnery Range. The range operated under the authority of numerous Executive Orders (EO) and Public Land Orders (PLO) until 1958 when operating authority was established in compliance with the Engle Act under PL 87-310. The NTTR public lands withdrawal was most recently renewed by Public Law 106-65, the Military Lands Withdrawal Act of 1999.

III. The U.S. Air Force is entitled to federal reserved water rights for reserved lands within Creech AFB, Nellis AFB and the NTTR. The priority dates for reserved rights are senior to the appropriation sought by this application. The U.S. Air Force federal reserved water rights have not been judicially quantified.

MAR 2 3 2011

FINDINGS

I. The applications filed on behalf of the Southern Nevada Water Authority (SNWA) propose to appropriate groundwater from the Indian Spring Valley Hydrographic Basin (Basin 161), Three Lakes Valley – North (Basin 168), Three Lakes Valley – South (Basin 211), Tikappo Valley – North (Basin 169A), and Tikapoo Valley – South (Basin 169B). The Nevada Department of Conservation and Natural Resources found that the perennial yield of the Indian Springs Valley (Basin 161) is equal to 500 acre-feet per year (AFY). While the stated perennial yield in the Indian Springs Valley Basin is 500 AFY, certificated and permitted rights total 1,380.47 AFY, which does not even account for

federal reserved water rights, or surface water rights required for natural and biological resources in the area.

II. The Indian Springs Valley Basin is therefore already over-prescribed, yet the application filed on behalf of SNWA proposes to withdraw an additional 30,406.61 AFY, an amount for which there is no unallocated resources. The withdrawals proposed by these applications would further reduce the flows in the Indian Springs Valley Basin, an already over-allocated basin.

III. The applications for water rights filed on behalf of SNWA fail to meet the requirements of the 1996 Nevada State Water Engineer's guidelines for approval of water rights applications, as reviewed and approved by the Nevada Supreme Court in *Pyramid Lake Paiute Tribe v. Washoe Co.*, 918 P.2d 697 (Nev. 1996). The guidelines require that the applications for water rights be in the public interest. These applications fail that test.

IV. The "public interest," as it relates to Creech AFB, NTTR, Nellis AFB and their water resources, is of critical concern to both the federal government and the State of Nevada (through the State Engineer). Approval of these applications would be contrary to the "public interest" set forth by federal proclamation and by guidelines promulgated by the Nevada State Engineer.

CONCLUSIONS

I. Nevada Revised Statute, 533.370(3), states that the Nevada State Water Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest…" Based on the mandate set forth in 533.370(3), N.R.S., the State Water Engineer should reject this application for the following reasons.

A. The Indian Springs Valley Basin is currently over allocated, and additional allocations could adversely affect the mission of the U.S. Air Force within Creech AFB and the southern portion of the NTTR.

B. There is a lack of empirical data to support additional allocations. Without understanding the impact additional allocations will have on both short and long term interests, these allocations could cause irreparable harm.

C. There appears to be a movement underway by various entities to secure water rights. Other applicants have also filed for rights within this valley which should be considered in conjunction with the subject applications as aggregate impacts versus individual applications. The need to accurately measure and understand groundwater and recharge rates is imperative.

The approval and development of these applications will impair the senior water rights of the U.S. because:

A. The proposed appropriation could potentially reduce the flow of existing wells operating at Creech AFB and Point Bravo.

The public interest would not be served by granting permits to these applications because:

A. The water and water-related resources of Creech AFB and the southern portion of the NTTR are of high importance due to national security and would be diminished or impaired as a result of these applications.

II. The U.S. Air Force reserves the right to amend this exhibit as more information becomes available.

REFERENCES CITED

Nevada Department of Water Resources Home Page, http://www.water.nv.gov/, 2010.