

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

IN THE MATTER OF APPLICATION NUMBER 54056,
FILED BY Las Vegas Valley Water District,
ON October 17, 1989, TO APPROPRIATE THE
WATERS OF Underground Sources

} PROTEST

Comes now the County of White Pine and the City of Ely, State of Nevada

Printed or typed name of protestant

whose post office address is P. O. Box 1002, Ely, Nevada 89301

Street No. or P. O. Box, City, State and Zip Code

whose occupation is Political Subdivision, State of Nevada and protests the granting

of Application Number 54056, filed on October 17, 1989

by the Las Vegas Valley Water District to appropriate the

Printed or typed name of applicant

waters of Underground Sources situated in Clark

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 Attached

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

Dan L. Papez
Agent or protestant

Name

Dan L. Papez, Agent

Printed or typed name, Agent

Address

P. O. Box 240

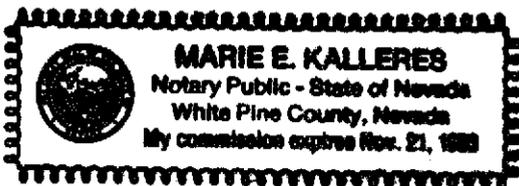
Street No. or P. O. Box No.

Address

Ely, Nevada 89301

City, State and Zip Code No.

Subscribed and sworn to before me this 5TH day of July, 1990.



Marie E. Kalleres
Notary Public

State of

Nevada

County of

White Pine

CB

REASONS AND GROUNDS FOR PROTEST

The City of Ely and The Board of County Commissioners, White Pine County, State of Nevada, do hereby protest the above referenced application upon the following grounds:

1. Upon information and belief Protestant asserts that there is not sufficient unappropriated groundwater in the subject Basin to provide the water sought in the Instant Application and all other pending applications involving the utilization of surface and ground water from that Basin.

2. Upon information and belief Protestant asserts that the appropriation of this water when added to the already approved appropriations to dedicated users in the subject Basin will exceed the annual recharge and safe yield of the basin. Appropriation and use of this magnitude will lower the water table and degrade the quality of water from existing wells, cause negative hydraulic gradient influences, further cause other negative impacts and will adversely affect existing rights adverse to the public interest.

3. That the groundwater sought in the instant Application interferes with existing water rights in the subject basin.

4. The granting or approval of the instant Application would conflict with or tend to impair existing water rights in the subject Basin in that it would exceed the safe yield of the subject Basin and unreasonably lower the static water level and sanction water mining which is contrary to public policy in the State of Nevada.

5. That the appropriation of the water sought in the instant Application, when added to the other pending Applications and to the already approved appropriations and dedicated uses in the subject Basin, will lower the static water level in subject Basin, will adversely affect the quality of the remaining ground water and will further threaten springs, seeps and phreatophytes which provide water and habitat critical to the use and survival of wildlife, grazing livestock and other surface existing uses.

6. This Application is one of approximately 147 applications filed by the Las Vegas Valley Water District seeking a combined appropriation of approximately 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 or damage environmental, ecological, scenic and recreational values that the State holds in trust for all its citizens.

7. 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.

8. 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 impact, and long term impacts on the water resource, threatens to prove detrimental to the public interest.

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 and management 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. That the withdrawal of the ground water sought in this Application and/or in conjunction with withdrawal of groundwaters sought in other Applications in the subject Basin included in the water importation project will exceed the annual recharge and safe yield of the basin and will cause the loss of surface plant communities that provide forage and habitat for wildlife and forage for livestock, thus eliminating those uses of the basin.

11. That the granting of this Application together with the companion Applications filed as part of the water importation project will necessitate the Applicant to locate well sites, build road and power lines to each well site, causing surface disturbance and degradation of the environment, including loss of wildlife habitat, wildlife populations, and grazing lands for livestock.

12. 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, and that such waste of water is contrary to public policy in the State of Nevada.

13. 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 or demonstrated that it can obtain 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, and therefore cannot show that the water will ever be placed in beneficial use.

14. 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 and frustrate efforts of water demand management in the Las Vegas Valley Water District service area.

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

16. The above-reference Application should be denied because the Application fails to adequately include the statutorily required information, to wit;

- (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.

17. The subject Application should be denied because it individually and cumulatively with other Applications will exceed the safe yield of the subject Basin thereby adversely affect 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.

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

- a. cumulative environmental and socioeconomic impacts of the proposed extractions;
- b. mitigation measures that will reduce such 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 Las Vegas Valley Water District service area.

19. That this Application should be denied because the Applicant has failed to provide to Protestant relevant information regarding this Application and other Applications which comprise this project as required by N.R.S. 533.363. That the failure to provide such relevant information denies Protestant due process of law under Chapter 533, N.R.S., in that said relevant information may provide Protestant with further meaningful grounds of protest, and that Protestant may be forever barred from submitting such further grounds of protest because the protest period may run before Applicant provides such required information. That the failure of Applicant to provide such information denies Protestant with meaningful opportunity to submit protests to this Application and other Applications included in this project as allowed by Chapter 533, N.R.S.

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

21. The subject Application should be denied because previous and current conservation programs instituted by the Las Vegas 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 socioeconomic 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.

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

23. The granting or approval of the above-referenced Application would be detrimental to the public interest and is 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.

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

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

26. The subject Application should be denied because the current per capita water consumption rate for the the Las Vegas Valley Water District currently 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, which avoid the negative impacts on rural areas of origin and have not been considered.

27. That the State Engineer has previously denied other groundwater Applications submitted by other Applicants in the subject basin, said Applications having been prior in time to the instant Application and those associated with the water importation project. That the grounds of denial for prior Applications should apply equally to the instant Application and if appropriate, should provide grounds to deny the instant Application.

28. Inasmuch as water extraction and the 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 develope as a result of further study.

29. The undersigned additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every other protest to this Application and/or to any Application filed that is included in this project and filed pursuant to N.R.S. 533.365.

July 9, 2001

Susan Joseph-Taylor, Chief
Hearing and Adjudication Section
Nevada Division of Water Resources
123 W. Nye Lane, Suite 246
Carson City, Nevada 89706-0818

Subject: City of Ely, Nye County, Town of Pahrump and White Pine County Withdrawal of Protests Filed with the State Engineer Relative to Las Vegas Valley Water District Applications 54055, 54056, 54057, 54058 and 54059

Dear Ms. Joseph-Taylor:

The purpose of this letter is to notify you that the City of Ely, the County of Nye, the County of White Pine and the Town of Pahrump withdrawal their protests of Las Vegas Valley Water District Applications 54055, 54056, 54057, 54058 and 54059.

As you know, the Las Vegas Valley Water District (District) filed 145 ground water applications, (including the subject five applications) in October 1989 in order to implement the District's Cooperative Water Project (Project). The stated purpose of the Project was to transfer ground water associated with the applications, via a massive pipeline system, from portions of Nye, White Pine, Lincoln and Clark Counties to the Las Vegas Valley. This water was to be used to accommodate growth and development in the Las Vegas Valley.

The District and the Southern Nevada Water Authority state in their most recent water resource plan that the Cooperative Water Project is not a priority for additional water resources. Enclosed is a February 16, 2001, letter to me from Kay Brothers, director of resources with the Southern Nevada Water Authority, stating the District's Cooperative Water Project ground water applications located in Clark County, including Coyote Spring Valley, are no longer considered a part of the Project. At the July 3, 2001, regularly scheduled meeting of the Las Vegas Valley Water District Board of Directors (Board) the Board confirmed Ms. Brothers' February 16, 2001, letter (Agenda Item 14).

In light of Ms. Brother's February 16, 2001, letter and the Board's action July 3, 2001, relative to Ms. Brother's letter, the Counties of Nye and White Pine, the City of Ely and the Town of Pahrump withdraw their protests (filed in 1990) of the subject ground water applications pursuant to NAC 533.150. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Steve Bradhurst". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Steve Bradhurst

● Enclosure

cc: City of Ely
Lincoln Count Board of Commissioners
Nye County Board of Commissioners
White Pine County Board of Commissioners
Town of Pahrump



February 16, 2001

PATRICIA MULROY
GENERAL MANAGER

DAVID A. DONNELLY, P.E.
DEPUTY GENERAL MANAGER
ENGINEERING/OPERATIONS

RICHARD J. WIMMER
DEPUTY GENERAL MANAGER
ADMINISTRATION

CHARLES K. HAUSER
GENERAL COUNSEL

Stephen T. Bradhurst
Planning and Management Consultant
P.O. Box 1510
Reno, Nevada 89505

Dear Mr. Bradhurst:

SUBJECT: LAS VEGAS VALLEY WATER DISTRICT GROUND-WATER APPLICATIONS IN COYOTE SPRING VALLEY, CALIFORNIA WASH VALLEY, HIDDEN VALLEY AND GARNET VALLEY

This is to confirm our discussion of February 13, 2001, regarding whether or not the Las Vegas Valley Water District (District) ground-water applications in Coyote Spring Valley, California Wash, Hidden Valley and Garnet Valley filed with the Nevada State Engineer (State Engineer) as part of the Cooperative Water Project (CWP) are still a part of the CWP.

As you know, the District initiated the CWP in October 1989 when it filed with the State Engineer a number of applications to appropriate water in Clark, Lincoln, White Pine and Nye Counties. None of the ground-water applications associated with the CWP have gone to hearing with the State Engineer.

Recently, by reason of proposed development in an area near the Interstate 15 corridor in Clark County, including plans to construct power plants in this area, the State Engineer decided to initiate action on applications to appropriate ground water in water basins near Interstate 15 between Las Vegas and Moapa. To date, the State Engineer has held pre-hearing conferences for ground-water applications in Coyote Spring Valley and California Wash Valley. Some of the ground-water applications in these valleys are CWP applications filed by the District.

The purpose of this letter is to inform you, and therefore your clients that the District's ground-water applications located in Clark County, and more specifically in Coyote Spring Valley, California Wash Valley, Hidden Valley and Garnet Valley, are no longer considered a part of the CWP. The reason for this lies in the fact that the District has entered into various agreements with parties, the purpose of which is to utilize the ground water associated with these applications for specific projects in Clark County that are not related to the CWP.

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Mr. Stephen T. Bradhurst
February 16, 2001
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It is my understanding that it is likely that most, if not all, of your clients will not have disagreements with the District's ground-water applications located in Clark County, and therefore in the aforementioned water basins, as long as the applications are not related to the CWP. Be advised that if any of your clients do not oppose these applications at State Engineer hearings that such inaction will not create a precedence; hence, be utilized against these entities at any future administrative or judicial proceedings relative to CWP ground-water applications. Stated differently, your clients will not be waiving any legal right whatsoever as a result of their lack of participation at State Engineer administrative or judicial proceedings involving the District's ground-water applications in Coyote Spring Valley, California Wash Valley, Hidden Valley and Garnet Valley. Again, as set forth above, these applications are not part of the CWP.

As you are aware, the District and the Counties of Lincoln, Nye and White Pine entered into a certain Memorandum of Understanding dated April 1999. Nothing contained in this letter is intended to supersede or alter that document.

You are free to present this letter stating the District's position on its ground-water application in the four water basins to whomever or whichever agencies you so desire.

Sincerely,



Kay Brothers,
Director, SNWA Resources

KB:vw

c: David A. Donnelly, Deputy General Manager, Engineering/Operations