

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

FILED
MAR 4 - 1991
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 55296
FILED BY City of Mesquite
ON September 18, 19 90, TO APPROPRIATE THE
WATERS OF Underground source

PROTEST

Comes now USDI Bureau of Land Management
Printed or typed name of protestant
whose post office address is Las Vegas Distric Office P.O. Box 26569 Las Vegas, Nv. 89126
Street No. or P.O. Box, City, State and Zip Code
whose occupation is Land Management, and protests the granting
of Application Number 55296, filed on September 18, 19 90
by City of Mesquite
Printed or typed name of applicant
waters of Underground source situated in Lincoln
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 Attachment

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 Ben F. Collins
Agent or protestant
Ben F. Collins Distric Manager
Printed or typed name, if agent
Address P.O. Box 26569
Street No. or P.O. Box No.
Las Vegas, Nv. 89126
City, State and Zip Code No.

Subscribed and sworn to before me this 27th day of February 19 91.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CAROLYN J. SPOON
My Appointment Expires October 9, 1994

Carolyn J. Spoon
Notary Public
State of Nevada
County of Clark

\$10 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

OR CB

The U.S. Department of the Interior, Bureau of Land Management protests the granting of the subject application for the following reasons and on the following grounds, to wit:

BLM is directed to implement water rights policy by: 1) "cooperating with the State Governments under the umbrella of State Law to protect water uses identified for public land management purposes", and 2) "to comply with the applicable state laws except as specifically mandated by Congress". The purposes mandated by Congress are defined by the Federal Land Policy and Management Act (FLPMA) and includes "multiple use" which is defined as "... the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people". Uses associated with multiple use include but are not limited to "recreation, range, wildlife, minerals, watershed and fish...". The Wild Horse and Burro Act, FLPMA, and the National Environmental Policy Act also recognize free wild horses and burros as resource uses under BLM management responsibility. Any application to the State Engineer of Nevada for a water permit, on BLM land, that interferes with the capability of the agency to provide water for the afore stated uses, within the legislated responsibilities of the agency, will be protested.

The Endangered Species Act requires all Federal departments and agencies to utilize their authorities to conserve species listed by the Secretary of the Interior or Secretary of Commerce as threatened or endangered. It further requires Federal agencies to ensure that the continued existence of listed species is not jeopardized and that designated critical habitat of listed species is not destroyed or adversely modified.

There are two fish species, endemic to the Virgin River, that are listed as endangered, the Virgin River roundtail chub (Gila robusta seminuda) and the woundfin minnow (Plagopterus argentissimus). In addition, the Virgin River spinedace (Lepidomeda mollispinis mollispinis) has been listed as a candidate for listing. The loss of aquatic habitat, construction of dams and reservoirs, water withdrawals, reduction in water quality and competition from non-native fish species are the major threats to the continuation of the species. Although these species are not currently inhabiting the location of the proposed withdrawal, they did historically range over the whole length of the river.

There is currently a potential to recover the lost habitat of the three fishes through riparian enhancement and stream flow improvements, resulting in their reestablishment along the Virgin River. If however, reduction of surface waters in the Beaver Dam Wash and consequently the Virgin River is allowed, the possibility of habitat recovery will be greatly reduced, if not eliminated. This expectation is further exacerbated when the cumulative impact of the additional proposed wells by the City of Mesquite, as well as, the Las Vegas Valley Water District is considered. A withdrawal of this magnitude will surely result in a reduction or elimination of flow in the Beaver Dam Wash and ultimately the Virgin River resulting in a reduction of what

remains of the range of the listed species.

By Executive Order 11990 (Protection of Wetlands) federal agencies are directed to take action to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial value of wetlands in carrying out programs affecting land use. As previously mentioned, pumping of water from this well may have an adverse impact on the surface flow in the Beaver Dam Wash. When combined with the other proposed withdrawals, Beaver Dam Wash, as well as, the Virgin River and nearby spring sources will surely realize a reduction or elimination of flow resulting in the loss of associated riparian areas.

The Beaver Dam Wash flows through the Barkley allotment. Within this allotment, the BLM has management responsibility for an annual average of 4,185 Animal Unit Months (AUM's) which will be adversely impacted by a reduction in the flow of the wash. Cattle (1,971 AUMs) and wildlife (2,214 AUMs) presently utilize the upland water sources, as well as, the wash.

Currently, there is insufficient information to ascertain the actual impacts to the various resources for which the BLM has management responsibility. Neither the Nevada State Engineer nor the City of Mesquite has prepared an analysis of all anticipated impacts associated with the city's filings. Until sufficient data is gathered and analysis performed, the extent of the impacts resulting from the pumping of this well, as well as, the cumulative impacts of pumping multiple wells cannot be realized.

Because of the impacts discussed above and those not identifiable at this time, due to insufficient information and analysis, the BLM protests the granting of this water appropriation.

The Bureau is currently preparing notices of Public Water Reserves (PWR) within the area of protest. These notices will be based only on the needs appropriated under PWR 107 and, will be sent to the State Engineer over the next several months prior to adjudication.