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

FILED
MAY 24 1993
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 58589,
FILED BY Southern Nevada Water Authority,
ON March 9, 19 93, TO APPROPRIATE THE
WATERS OF Muddy River and its tributaries

PROTEST

Comes now Colorado River Board of California
Printed or typed name of protestant
whose post office address is 770 Fairmont Avenue, Suite 100, Glendale, California 91203-1035
Street No. or P.O. Box, City, State and Zip Code
whose occupation is ....., and protests the granting
of Application Number 58589, filed on March 9, 19 93
by Southern Nevada Water Authority to appropriate the
Printed or typed name of applicant
waters of Muddy River and its tributaries 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:

REFER TO ATTACHMENT I (Re: Application 58589 (Muddy River) and 58590 and 58591 (Virgin River))

THEREFORE the protestant requests that the application be Denied for lack of jurisdiction
(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 Gerald R. Zimmerman
Agent or protestant
Gerald R. Zimmerman, Executive Director
Printed or typed name, if agent
Address 770 Fairmont Avenue, Suite 100
Street No. or P.O. Box No.
Glendale, California 91203-1035
City, State and Zip Code No.

Subscribed and sworn to before me this 22nd day of May 1993

Donna Lee Brunton
Notary Public
State of California
County of Los Angeles

OFFICIAL SEAL
DONNA LEE BRUNTON
Notary Public-California
LOS ANGELES COUNTY
My Commission Expires
November 6, 1995

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

TEL

ATTACHMENT I

Re: Application 58589 (Muddy River) and 58590 and 58591 (Virgin River)

The Colorado River Board of California, which is the state agency charged with the protection of California's rights and interests in the water and power resources of the Colorado River, wishes to inform you of its concerns regarding the above referenced applications.

Initially, we note that two of the three applications refer to the use of Lake Mead as a means of transporting the water to the point of diversion. Article III(c) of the 1964 Decree in Arizona v. California (376 U.S. 540, 1964) enjoins the State of Nevada, its officers, attorneys, agents, and employees and all users of water from the mainstream of the Colorado River in Nevada, from diverting or purporting to authorize the diversion of water from the mainstream, the diversion of which has not been authorized by the United States for use in Nevada. Furthermore, at this time, no regulations exist which would allow the use of this federal facility (Lake Mead) for such purposes. To do so would require, at a minimum, consultation with the Lower Division states of Arizona and California as well as the Upper Division states and a contract with the Secretary of the Interior for diversion of water within Nevada's basic Colorado River mainstream apportionment and/or within its apportionment of excess or surplus Colorado River water. As such, consideration of these two applications by the Nevada State Engineer's Office could result in no legal entitlement to either use Lake Mead as a means of transporting the water in question or to confer a right on the applicant to divert or use said water.

In any case, the granting of the three applications for additional uses of water pursuant to these applications, individually or collectively, could exceed Nevada's "equitable share" of the Muddy and Virgin Rivers and infringe on California's prior rights to the historic contributions those rivers have made to the mainstream of the Colorado River in the Lower Colorado River Basin. California's right to protect its senior mainstream uses against such tributary diversions was not affected by the Boulder Canyon Project Act of 1928 or the Supreme Court's decision and decree in Arizona v. California, 373 U.S. 546 (1963), 376 U.S. 540 (1964), whether diverted from a tributary or the Colorado River mainstream.

There are three means by which disputes over sovereign rights to the waters of interstate stream systems may be resolved. The first alternative is by agreement through an interstate compact approved by Congress. The second approach is through litigation in an original action in the Supreme Court by which the Court will make an "equitable apportionment" among the contending states. The third alternative is federal legislation.

California's preferred approach is to settle interstate differences on the Colorado River by agreement. We understand that there may be some interests in negotiations taking place among Nevada, Arizona and Utah looking toward a possible compact on the Virgin River, which is to be commended. However, any compact allocating the waters of that river among those three states would not preclude California, a non-party, from asserting its senior rights to the historic inflow of that river to the mainstream. Consequently, if Nevada desires to resolve comprehensively and finally the respective rights of the Lower Colorado River Basin states to the waters of tributaries within Nevada by agreement, California should be a party to any compact negotiations.

Resolution of the above stated issues must occur before the requests to divert water contained in the referenced applications, Numbers 58589, 58590, 58591, are finally determined. Moreover, resolution of the two applications involving diversion at Lake Mead cannot even occur through administrative proceedings of the State of Nevada. In view of the foregoing, the Colorado River Board of California protests the subject applications to appropriate waters of the Muddy and Virgin Rivers.