

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

FILED
JUL 13 2001
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 66526
FILED BY FALCON CAPITAL, LLC
ON MAY 8, 2001, TO APPROPRIATE THE
WATERS OF OPHIR CREEK AND TRIBUTARIES

PROTEST

Comes now Washoe County
Printed or typed name of protestant

whose post office address is P.O. Box 11130, Reno, NV 89520-0027
Street No. or P.O. Box, City, State, and Zip Code

whose occupation is a political subdivision of the State of Nevada, and protests the granting
of Application Number 66526, filed on May 8, 2001,

by Falcon Capital, LLC to appropriate the
waters of Ophir Creek and Tributaries situated in Washoe
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:

Please refer to attached Exhibit "A".

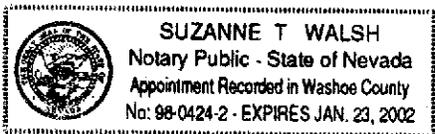
THEREFORE the protestant requests that the application be denied
Denied, issued subject to prior rights, etc., as the case may be
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed [Signature]
Agent or Protestant

Vahid Behmaram, Water Rights Supervisor
Printed or typed name, if agent

Address Washoe County Dept. of Water Resources
Street No. or P.O. Box No.
P.O. Box 11130, Reno, NV 89520-0027
City, State, and Zip Code No.

Subscribed and sworn to before me this 6th day of July, 2001.



[Signature]
Notary Public

State of Nevada

County of Washoe

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

EXHIBIT "A"

Applications 66526, 66527, 66528, and 66529

Washoe County protests granting of these applications based on the following grounds:

- 1) Granting of these applications is contrary to public interest
- 2) Granting of these applications is detrimental to existing rights

However, Washoe County would agree to withdraw these protests if the subject water resources are to remain appurtenant to lands within Washoe Valley Hydrographic Basin, as a result of an acquisition or other process, which would negate the need to proceed with these export applications. Withdrawals of the protests are subject to the withdrawal of Applications 66526, 66527, 66528, and 66529.

The above referenced applications collectively propose to divert 4710.10 acre-feet annually from Winters, Davis, Ophir, and Browns Creeks for in-stream flow purposes. The applicant is proposing to allow this water to flow through the Washoe Lake Reservoir system into the Steamboat Creek and ultimately into the Truckee River system. The applications also state that upon passing Vista Gauge these waters would become return flow water and subject to consumption by downstream users.

The duty requested under these applications does not consider the actual yield of these streams, which may not be fully available in most years. The Thiel Engineering report dated May 2000 in support of these applications describes the lack of any gauging data on these streams.

The applications as filed are requesting a change in both the consumptive and the non-consumptive portions of these water rights. The non-consumptive component of these water rights has historically flowed through this system and has been appropriated under the Truckee River Decree. The State Engineer's Ruling dated June 5, 1985, on Applications 35202 et. al. in part states:

"The Truckee River Decree specifically sets forth the rights or entitlement of the surplus flows of the tributaries to Washoe and Little Washoe Lakes"

The conveyance of water as proposed by these applications will greatly increase the seepage and evaporation losses along the way. These losses will have a direct impact on the amount of return flow credit past Vista Gauge. Evaporation losses from the lake are estimated at 23,000 acre-feet annually (Arteaga-Nicholes 1984).

Administration of the system to insure the conveyance of these waters past higher priority water rights holders/users along the way is nearly an impossible task.

Washoe County Development Code specifically discourages the State Engineer from approving any export of water resources from the South Valley's Area Plan, which includes all of Washoe Valley Hydrographic Basin. Export of these resources could reduce inflow to the Washoe Lake Reservoir system, which could impact ground water gradients. These changes to the ground water gradient could result in negative impacts to both the quantity and quality of the ground water resources in Washoe Valley Hydrographic Basin.

Transfer of these resources out of this basin could have severe negative impacts on the wetlands and wildlife habitats within Scripps Wildlife Area in Washoe Valley Hydrographic Basin. The State Engineer's Ruling dated June 5, 1985, on Applications 35202 et. al. in part states:

"Depletion of flows to the lakes will adversely impact the recreational and wildlife values of the valley and, therefore, would not be in the public interest."

The depletion of the flows to the lake could result from the applicant's effort to more efficiently convey the water through the system. The Thiel Engineering report dated May 2000 in support of these applications describes the methods of conveyance of these waters to Steamboat Creek as "pipeline, ditch and weir, Washoe Lake, or a combination of the three scenarios".

The unknown quantity of these waters that may ultimately reach the Truckee River could be of such poor water quality that it could be detrimental to the quality of the Truckee River and damage the efforts of this community in improving the quality of the waters within the Truckee River.

Washoe County will be further analyzing the impacts of the changes proposed by Application 66529 for the waters of Browns Creek. The natural channel and flow of Browns Creek is in the Pleasant Valley Hydrographic Basin. Washoe County may withdraw its protest against this particular application if it is determined that Application 66529 will not result in negative impacts as anticipated by other applications described above.