

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

FILED
FEB 08 2002
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 68096
FILED BY Dean A. Rhoads and Sharon Rhoads
ON October 15, 2001, TO APPROPRIATE THE
WATERS OF an underground source (Eureka County)

PROTEST

Comes now Eureka County
Printed or typed name of protestant

whose post office address is P.O. Box 677, Eureka, Nevada 89316
Street No. or P.O. Box, City, State and Zip Code

whose occupation is municipal government/political subdivision of the State of Nevada, and protests the granting

of Application Number 68096, filed on October 15, 2001

by Dean A. Rhoads and Sharon Rhoads
Printed or typed name of applicant

waters of an underground source situated in Eureka
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:

Exhibit "A" attached hereto and incorporated herein by this reference

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 Karen Peterson
Agent or protestant

Karen A. Peterson, Esq.
Printed or typed name, if agent
Address Allison, MacKenzie, Hartman, Soumbeniotis & Russell
PO Box 646 Street No. or P.O. Box No.
Carson City, Nevada 89702-0646
City, State and Zip Code No.

Subscribed and sworn to before me this 8th day of February, 2002

Notary Public - State of Nevada
County of Lyon
ELAINE GARRISON
My Appointment Expires
October 19, 2005

Elaine Garrison
Notary Public

State of Nevada

County of Carson City

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

nao

EUREKA COUNTY'S EXHIBIT "A"

GROUNDS OF PROTEST

Application No. 68096 filed by Dean A. Rhoads and Sharon Rhoads, should be denied based upon the following grounds:

1. The Boulder Flat Groundwater Basin #61 is over appropriated and there is no unappropriated water at the proposed source.

2. In Ruling # 5011, the State Engineer noted that natural recharge to the Boulder Flat Groundwater Basin has been estimated at 11,584, 14,000 and 30,000 acre-feet annually, and permitted and certificated water rights far exceed that amount. Between Newmont and Barrick, the maximum amount of water allowed to be pumped in this groundwater basin is 146,426 acre-feet annually, and this does not take into consideration other water rights in the groundwater basin. (Ruling # 5011, page 8). The State Engineer held that the applicant in that case, Newmont Gold Company, would be confined to the existing 2,000 million gallons annually water rights cap on consumptive use and therefore, in effect, the State Engineer was not granting any additional consumptive use from the groundwater basin. (*Id.*, page 9). The State Engineer concluded as a matter of law in Ruling # 5011 that mining is identified as a preferred use of ground water under Nevada Water Law within this groundwater basin. (*Id.*, page 13). The State Engineer also concluded that since he was requiring these appropriations to be contained with the consumptive use cap on water already appropriated by the Applicant from the groundwater basin, he did not consider these water rights to be an additional appropriation of water. (*Id.*).

Based upon the findings and conclusions made in Ruling # 5011, there is no water available from the proposed source of supply without exceeding the perennial yield or safe yield of the basin and the application must be rejected pursuant to NRS 533.371.

In addition, Application No. 68096 seeks an appropriation of water for irrigation use. Because the basin is over appropriated, because mining is the preferred use of water in this basin and because the State Engineer did not even grant any additional consumptive use for mining as a preferred use in Ruling # 5011, the subject application cannot be granted under the State Engineer's preferred use designation for this basin.

EUREKA COUNTY'S EXHIBIT "A"

GROUND OF PROTEST (CONTINUED)

Application No. 68096 filed by Dean A. Rhoads and Sharon Rhoads, should be denied based upon the following grounds (continued):

3. To the knowledge of protestant, the subject application seeks a new appropriation of water and is not an application for a secondary use under a mining company's dewatering permit(s). If the application seeks a secondary use of the mine dewatering water, the application is not appropriate mitigation pursuant to the previous rulings, permits, stipulations, water monitoring plans and water management plans issued by the State Engineer to the mining companies conducting dewatering operations in Basin 61. In addition, Protestant is informed and believes that the place of use or a portion of the place of use stated in Application No. 68096 may be or is the same location or place of use as the place of use filed in proofs of beneficial use by Barrick or Newmont under other application(s). The State Engineer cannot issue duplicate water rights for the same use at the same location or place of use to different applicants.
4. Protestant respectfully reserves the right to revise this protest and to submit additional evidence relevant to its points of protest and any additional matters that may be relevant as such evidence and information become available.