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

FILED
AUG 20 2004
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 71167
FILED BY KAY BROTHERS, AGENT FOR THE
SOUTHERN NEVADA WATER AUTHORITY
TO APPROPRIATE THE WATERS OF UNDERGROUND

PROTEST

Comes now Maureen Hunemuller, on behalf of the United States Department of the Energy, National Nuclear Security Administration, whose address is 232 Energy Way, North Las Vegas, 89030, whose occupation is Deputy Manager, to protest the granting of Application Number 71167 filed on May 6, 2004 by Kay Brothers, Agent for the Southern Nevada Water Authority to appropriate the waters of underground, situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

THEREFORE the protestant requests that the application be denied.

Signed Maureen Hunemuller
Agent or protestant

Maureen Hunemuller
Printed or typed name, if agent

Address 232 Energy Way
Street No. or P.O. Box No.

North Las Vegas, NV 89030
City, State and Zip Code No.

Subscribed and sworn to before me this 19th day of August, 2004.

Notary Public - State of Nevada
County of Clark
CORY WERNIKOVE
My Appointment Expires
June 6, 2008
No: 96-3080-1

Notary Public

State of Nevada

County of Clark

My Commission expires 6/6/2008.

IN THE MATTER OF APPLICATIONS
71167, 71168, 71169, 71170, 71171, 71172, 71173

EXHIBIT A

Protest by the United States of America, Department of Energy
National Nuclear Security Administration,
Nevada Site Office

GENERAL

I. The National Nuclear Security Administration, Nevada Site Office (NNSA/NSO) administers the Nevada Test Site (NTS) which was withdrawn from public use to support a critical national security mission.

II. In administering the NTS, NNSA/NSO is entitled to use its federally reserved water rights associated with the land withdrawals comprising the NTS for its continuing NTS mission and purposes.

III. The NTS entitlement to federally reserved water rights was specifically affirmed in Cappaert v. U.S., 426 U.S. 128, 96 S. Ct. 2062, 48 L.Ed.2d.523(1976), and further acknowledged in the court's dismissal of an action filed by Nevada to require the U.S. to comply with NRS 534.020-534-190 when appropriating water on federally reserved lands (Nevada ex rel. Shamberger v. United States, 279 F.2d. 699(9th Cir.,1960)).

IV. The priority dates for the NTS federally reserved water rights are senior to the appropriations sought by the applicant. These rights have not been judicially quantified.

V. Among the areas of the NTS associated with underlying groundwater are Frenchman Flat, Yucca Flat, Rock Valley and Mercury Valley.

VI. The Indian Springs Basin from which the applicant has applied for an appropriation is part of the Ash Meadows Groundwater Subsystem, which is hydrographically connected to areas of the NTS, including Mercury Valley, Frenchman Flat, Yucca Flat, Jackass Flat and Rock Valley, among others.

VII. Scientific studies on the NTS have indicated groundwater ages in excess of 10,000 years. Results of such studies imply that a substantial recharge to existing groundwater is not a reasonable expectation given the modern desert environment.

FINDINGS

I. This application requests an appropriation of water from the Indian Springs Valley basin. The perennial yield of this valley is approximately 727 acre-ft./yr (about 1 cfs), according to the statistics of the Nevada Department of Conservation and Natural Resource. Of the state identified 8,024 acre ft./yr of surface and groundwater already appropriated (per the Nevada state water rights database), approximately 2,005 acre ft./yr. is estimated from ground water. Based on these published statistics, the estimated perennial yield has been exceeded by existing water appropriations

II. The combined volume of water appropriations applied for from the Indian Springs basin by the applicant are 16,000 acre feet per year. Since appropriations from this basin are already identified at a volume in excess of perennial yield, the implementation of any further appropriation from this basin would be expected to draw down groundwater reserves from connected basins, including those underlying the NTS.

CONCLUSIONS

I. Based on the above, it is reasonable to assume that the combination of water appropriations requested by the applicant will impact the NNSA/NSO's federally reserved water rights associated with the NTS.

II. Approval and development of the water appropriations sought by the applicant could be expected to both draw down the existing groundwater from adjacent hydrographic basins underlying the NTS, thereby impermissibly impacting the NTS federally reserved water rights, as well as potentially intercepting any further recharge to those NTS basins which would otherwise result from a northerly movement of water from the Indian Springs Valley basin.

III. Any impact to NNSA/NSO's federally reserved water rights at the NTS would be detrimental to the public interest (NRS 533.370, Section 4), i.e., specifically to the critical NTS national security mission, as well as impacting associated and secondary missions and purposes.

IV. Thus, the proposed use is inconsistent with the inherent rights of the U.S. Government to the extent that it would affect the availability of water for the federal purposes mentioned above.

V. The NNSA/NSO reserves the right to amend this Protest should further information become available.