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

FILED
AUG 23 2004
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 71170.

FILED BY KAY BROTHERS
OF SOUTHERN NEVADA WATER AUTHORITY
ON MAY 6, 2004
TO APPROPRIATE THE UNDERGROUND WATERS

PROTEST

Comes now Colonel Walter D. Givhan, on behalf of Nellis Air Force Base, United States Air Force, whose post office address is 99 ABW/CC, 4430 Grissom Ave Ste 110, Nellis AFB, NV 89191-6520, whose occupation is Base Commander, and protests the GRANTING OF Application Number 71170 filed on May 6, 2004, by Kay Brothers of the Southern Nevada Water Authority, to appropriate underground waters, situated in Clark 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. The United States Air Force will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights of **Nellis Air Force Base, Indian Springs Air Force Auxiliary Facility, or the Nevada Test and Training Range.**

Signed _____
Agent or protestant

Colonel Walter D. Givhan
Printed or typed name, if agent

Address 4430 Grissom Ave, Suite 110
Street No. or P.O. Box No.

Nellis AFB NV 89191-6520
City, State and Zip Code

Subscribed and sworn to before me this 20th day of August, 2004.

_____
Notary Public

State of Nevada

County of Clark

My Commission expires 5 FEB 2005.

JAMES D. COLEY
Notary Public, State of Nevada
Appointment No. 01569101
My Appt. Expires Feb. 5, 2005

IN THE MATTER OF APPLICATIONS 71170
EXHIBIT A

Protest by Colonel Walter D. Givhan on behalf of
Nellis Air Force Base

GENERAL

I. The mission of the United States Air Force at the Indian Springs Air Force Auxiliary Facility (ISAFAF) is to provide a unique environment to train U.S. and allied combat pilots against realistic threats and targets currently encountered in various locations around the world. Indian Springs also provides direct support to conduct advanced weapons and tactics training, and is the site for remotely piloted vehicle testing and training. ISAFAF is part of the Nevada Test and Training Range (NTTR) and is the gateway to the Southern ranges located within Clark, Nye and Lincoln Counties. ISAFAF currently has a population of approximately 1100 but current plans will expand the number of personnel over the next several years. Land withdrawn for NTTR provides a secure, flexible range for large-scale military testing and training that is not duplicated anywhere else within the United States. This land is critical to preparing flight crews from the United States and its Allies for developing and maintaining battle skills in today's highly complex threat environments, as well as testing new weapons systems and platforms.

II. The NTTR was originally established by Executive Order 8578 in 1940 as the Las Vegas Bombing and Gunnery Range. The range operated under the authority of numerous Executive Orders and Public Land Orders until 1958 when operating authority was established in compliance with the Engle Act under PL 87-310. The NTTR public lands withdrawal was most recently renewed by Public Law 106-65, the Military Lands Withdrawal Act of 1999.

III. The US Air Force is entitled to federal reserved water rights for reserved lands within ISAFAF, Nellis Air Force Base (Nellis AFB) and the Nevada Test and Training Range. The priority dates for reserved rights are senior to the appropriation sought by this application. The US Air Force federal reserved water rights have not been judicially quantified.

FINDINGS

I The applications filed on behalf of the South Nevada Water Authority propose to appropriate water from the Indian Springs Valley Hydrographic Basin (Basin 161). The Nevada Department of Conservation and Natural Resources found that the perennial yield of the Indian Springs Valley is equal to 727 afy. (Reference the Nevada Department of Conservation and Natural Resources information, dated 1988 and Feb-Mar 2000; DWR Water Rights Database). While the stated perennial yield in the Indian Springs Basin is 727 afy, certificated and permitted rights total 2,003 afy, which does not account for federal reserved water rights, or water rights required for natural, biological resources in the area through evapotranspiration, and otherwise.

II. The Indian Springs Valley Basin is therefore already over-prescribed, yet the application filed on behalf of the Southern Nevada Water Authority proposes to withdraw up to an additional 16,000 afy, an amount for which there is no unallocated resources. The withdrawals proposed by these applications would further reduce the flows in the Indian Springs Basin, an already over-allocated Basin.

III. The applications for water rights filed on behalf of the Southern Nevada Water Authority fail to meet the requirements of the 1996 Nevada State Engineer's guidelines for approval of water rights applications, as reviewed and approved by the Nevada Supreme Court in *Pyramid Lake Paiute Tribe v. Washoe Co*, 918 P.2d 697 (Nev. 1996). The guidelines require that the applications for water rights be in the public interest. These applications fail that test.

IV. The "public interest," as it relates to the ISAFAF, NTTR and Nellis AFB and their water resources, is of critical concern to both the federal government and the State of Nevada (through the state engineer). Approval of these applications would be contrary to the "public interest" set forth by federal proclamation and by guidelines promulgated by the Nevada State Engineer.

CONCLUSIONS

I. Nevada Revised Statute, 533.370(3), states that the Nevada State Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest..." Based on the mandate set forth in 533.370(3), N.R.S., the state engineer should reject this application for the following reasons.

A. The Indian Springs Basin is currently over-allocated, and additional allocations could adversely affect the mission of the United States Air Force within ISAFAF, the NTTR or Nellis AFB.

B. There is a lack of empirical data to support additional allocations. Without understanding the impact additional allocations will have on both short- and long-term interests, these allocations could cause irreparable harm.

C. There appears to be a movement underway by various entities to secure water rights. Other applicants have also filed for rights within this valley which should be considered in conjunction with the subject application as aggregate impacts versus individual applications. The need to accurately measure and understand groundwater and recharge rates is imperative.

The approval and development of this application will impair the senior water rights of the United States because:

A. The proposed appropriation could potentially reduce the flow of existing wells operating at ISAFAF, the NTTR and Nellis AFB

The public interest would not be served by granting a permit to this application because:

A. The water and water-related resources of ISAFAF, the NTTR and Nellis AFB are of high national importance and would be diminished or impaired as a result of this application.

II. The USAF reserves the right to amend this exhibit as more information becomes available.

REFERENCES CITED

Nevada Department of Conservation and Natural Resources, 1988.

Nevada Division of Water Resources Water Rights Database, printed in February – March 2000.