FILED
DEC 16 2004

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

IN THE MATTER OF APPLICATION NUMBER 71202
FILED BY THOMAS S. BUQO, TO APPROPRIATE
THE WATERS OF UNDERGROUND

PROTEST

Comes now Kathleen Carlson, 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 Manager, to protest the granting of Application Number 71202 filed on May 11, 2004 by Thomas S. Buqo 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.

RECEIVED
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Signed K S Carlson
Agent or protestant
Kathleen Carlson
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 15th day of December, 2004.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
PATRICIA L. [illegible]
Appt. No. 93-04[illegible]
My Appt. Expires Feb. 22, 2005

Notary Public
State of Nevada
County of Clark

My Commission expires February 22, 2005.

IN THE MATTER OF APPLICATIONS
71202, 71203, and 71204

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Nuclear Security Administration, Nevada Site Office (NNSA/NSO) administers the Nevada Test Site (NTS), which was withdrawn from public use to support a critical national security mission.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. NNSA/NSO, in administering the NTS, 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 Rock Valley (Application 71202), Mercury Valley (Application 71203), and Fortymile Wash and Jackass Flats (Application 71204).

VI. 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. There is no unappropriated water at the source.

II. The point of diversion is on property controlled by the U.S. Department of Energy and the application will not be able to prove upon the works of diversion.

III. Applicant cannot show he has the financial ability to put the water to beneficial use.

IV. Applicant cannot physically deliver the water from the proposed point of diversion to the place of use.

V. The appropriation, if granted, will conflict with and adversely impact the reserved rights of the U.S. Government and the water rights of other prior appropriations.

VI. The proposed appropriation has the potential to adversely impact wildlife on the NTS.

VII. Applicant does not own or otherwise have access to the points of diversion.

VIII. The proposed method of appropriation as set forth in paragraph 12 of the application is not a recognized method for putting water to beneficial use.

IX. The proposed application is for speculative purposes which are not recognized as a beneficial use under Nevada law.

X. The proposed use conflicts with existing water rights.

XI. The application proposes an inter-basin transfer of groundwater which does not meet the criteria for such transfers under Nevada water law.

CONCLUSIONS

I. Based on the above, the water appropriations requested by the applicant will impact the NNSA/NSO's federally reserved water rights associated with the NTS.

II. 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.

III. Thus, the proposed use is inconsistent with the inherent rights of the U.S. Government by affecting the availability of water for the federal purposes, as mentioned above.

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