

12-27-04
Protest not timely
filed. For info. only.
AD

BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES

IN THE MATTER OF APPLICATION)
NUMBER 71604 FILED BY APPLICANT)
UNITED STATES OF AMERICA, FISH AND) PROTEST
WILDLIFE SERVICE)
_____)

COMES NOW THE CITY OF FALLON, a political subdivision of the State of Nevada, organized under Chapter 266 of N.R.S., whose address is 55 West Williams Avenue, Fallon, Nevada 89406, with the responsibility to protect the health, safety and welfare of the residents of the City and to protect and guard against threats to the City's public assets and hereby protests the granting of Application 71604 filed by the United States of America, Fish and Wildlife Service, to change the place of use of a portion of appropriated waters of Truckee and Carson Rivers situated in Churchill County, State of Nevada, for the following reasons and on the grounds, to wit:

1. Granting this application would conflict with, injure, and impair existing water rights owned by the City of Fallon which supply its municipal water system upon which its 8,500 residents rely for their drinking water. Fallon's municipal water utility has been operated by the City since

the early 1900's, supplying drinking water from groundwater wells to the citizens and businesses of Fallon. Fallon's supply of groundwater for its municipal water utility relies on Nevada water rights including but not limited to Permit No.(s) 19859, 19860, 26168, 40869 and 55507.

2. The application, if granted, would be detrimental to the public interest of the State of Nevada because it would remove water resources from areas of the Lahontan Valley which the United States Geological Survey has determined recharges the groundwater aquifer, identified as the Carson Desert Basin 101 by the State Engineer, consequently impairing the existing groundwater system upon which the City of Fallon relies to supply its residents drinking water.

3. The application, if granted, would present a hazard and danger to the health, safety and welfare of the residents of the City of Fallon and the surrounding community at large because it would jeopardize the sole drinking water supply of the City's 8,500 residents, said result being directly contrary to the public interest of the State of Nevada, which is to enhance public municipal drinking water supplies. Pyramid Lake Pauite Tribe of Indians v. Washoe County, 112 Nev. 743, 918 P.2d 699 (1996).

4. The application, if granted, would violate the Safe Drinking Water Act as enforced by the State of Nevada through the Nevada Department of Environmental Protection and the Nevada Bureau of Health Protection Services because its depletion of groundwater quantity would have a corresponding negative affect on groundwater quality upon which the City of Fallon's municipal water supply relies.

5. Consistent with the above, and with the open court representation on November 7, 2002 by counsel for the Nevada State Engineer before the United States Ninth Circuit Court of Appeals concerning State Engineer Ruling 4979, in United States v. Alpine Land + Reservoir Company, 341 F.3d 1172 (9th Cir., 2003), Nevada law at NRS 533.368 requires a hydrologic and environmental study to determine the cumulative consequences of this application and related applications to the City's existing public water system and the City's existing water rights and Nevada's public interest.

6. The State Engineer issued Order No. 1116 on August 22, 1995 which curtails groundwater appropriations within Carson Desert Basin 101, which constitutes a moratorium on all groundwater development (above 4,000 g.p.d. for preferred uses), for the reason that the cumulative affects of water right acquisitions by this applicant and others under

the Truckee-Carson Pyramid Lake Settlement Act, Public Law 101-618, specifically under the Wetlands Acquisition Program render uncertain the amount of groundwater recharge making a sustained yield analysis impossible. The moratorium will continue until further study by the State Engineer, thus approval of this application is inconsistent with the moratorium policy of the State Engineer. Approval of this application without first knowing the affects upon recharge only adds to the uncertainty which underwrites the moratorium and intensifies the need for extending the moratorium, which confirms the necessity of a prerequisite hydrologic and environmental study under NRS 533.368.

THEREFORE, the City of Fallon respectfully requests that Application 71604 be **denied** and an Order be entered by the State Engineer to that end.

DATED: This 22nd day of December, 2004.

THE CITY OF FALLON

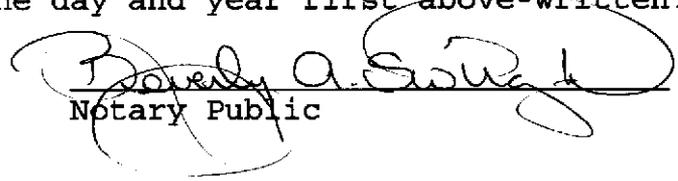


FERN A. LEE, Deputy City Clerk

STATE OF NEVADA)
 : ss.
County of Churchill)

On this 22nd day of December, 2004, personally appeared before me, a Notary Public, in and for the county and state aforesaid, FERN A. LEE, known to me or who proved to me to be the person, described in and who executed the above and foregoing instrument; who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above-written.


Notary Public

