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

FILED
SEP 22 2005
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER. 72996

FILED BY U.S. Dept. Of the Interior, Bureau of Land Management

ON. September, 20.05..., TO APPROPRIATE THE WATERS OF Elephant Head #8

PROTEST

Comes now Nevada Department of Agriculture
Printed or typed name of protstant

whose post office address is 350 Capital Hill Blvd., Reno, Nevada 89502
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is State Government and protests the granting

of Application Number 72996, filed on July 7, 20 05

by U.S. Dept. Of the Interior, Bureau of Land Management to appropriate the

waters of Elephant Head #8 situated in Lander
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:

See Attachment

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 Don Henderson
Agent or protestant

Don Henderson, Director
Printed or typed name, if agent

Address.. 350 Capital Hill Blvd.
Street No. or P.O. Box No.

Reno, NV 89502
City, State and Zip Code No.

Subscribed and sworn to before me this 22 day of September 20 05

Deanna K. Kelly
Notary Public

DEANNA K. KELLY
NOTARY PUBLIC - NEVADA
Appt. Recorded in LYON CO.
No.98-3324-12 My Appt. Exp. July 16, 2006

State of Nevada

County of Carson

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

ATTACHMENT TO PROTEST OF APPLICATION 72996 .

The Nevada Department of Agriculture (hereinafter "Protestant") is an interested person (entity) given that the mission of the Department is to benefit and promote the welfare of all people of the state, and to encourage, advance and protect Nevada's agricultural industries. The range livestock industry is a major component of Nevada's agricultural industry and availability of water is usually the most limited and critical component for grazing in Nevada. Therefore, this protest is made on the following grounds.

1. NRS 533.030 requires that issued water rights must be put to a recognized "beneficial use." NRS 501.100 states, in part, that "Wildlife in this state not domesticated and in its natural habitat is part of the natural resources belonging to the people of the State of Nevada." NRS 501 further declares that administration of these wildlife populations is the responsibility of the State Wildlife Commission and the Nevada Department of Wildlife. Based on these authorities, the USDI Bureau of Land Management (BLM) cannot demonstrate beneficial use of the requested water. As such, this water right application will unduly complicate the respective role of each agency and should be denied.

2. NRS 533.085 establishes a policy where applications for new water rights cannot impair existing vested water rights. Pre-existing water rights encumber the surface waters that are the subject of the protested application and no information is contained in the application to indicate that approval of this application will not affect these existing rights. Therefore, granting this application would violate NRS 533.085

3. NRS 533.367 requires that before a person may obtain a water right from a spring source, he must ensure that wildlife which customarily use the water must have access to it. This statute eliminates the need for the Bureau of Land Management to be granted the permit.

4. In the past, the Department of Conservation and Natural Resources through the Division of Water Resources, has made adequate provisions for water for wildlife in granting of applications to private individuals and such provisions can be included at the time of final adjudication of the area.

5. Protestant does not protest the application for water for wild horses administered by BLM, however, any such application must be within a designated herd management area and must not be to the detriment of vested or other prior water rights. Application for water for wild horses by BLM should specifically designate wild horses as the purpose and not lump horses and wildlife under "wildlife purposes".