

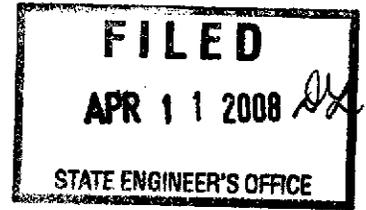
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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

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IN THE MATTER OF APPLICATION NUMBER 76617
FILED BY MICHAEL A. RUETH
ON JANUARY 11, 2008 TO APPROPRIATE THE
WATER OF UNDERGROUND (BASIN 215),

PROTEST



Comes now U.S. Silica Company, by and through its counsel Lionel Sawyer & Collins (the "Protestant"), whose post office address is 1700 Bank of America Plaza, 300 South Fourth Street, Las Vegas, Nevada 89101 whose occupation is silica production and protests the granting of Application Number 76617 (the "Application") filed on January 11, 2008, by Michael A. Rueth to appropriate the underground waters of Basin 215 situated in Clark County, State of Nevada for the following reasons and on the following grounds to wit:

According to United States Geologic Survey Open File Report 78-768, as reported by the Nevada State Engineer, the perennial yield of Basin 215 is 1,300 acre-feet annually. The available on-line records of the State Engineer as of April 10, 2008, indicated there are 7,216.71 acre-feet annually of active water right permits and certificates in Basin 215.¹ It is clear there is no unappropriated water in Basin 215. Thus, pursuant to Nevada Revised Statute ("NRS") § 533.370(5) the Application must be denied.

Further, the appropriation of 20 cubic feet per second (approximately 14,500 acre-feet annually) will likely create conflicts with existing rights which are located adjacent to the proposed point of diversion. Conflicts could include, but are not limited to, an unreasonable lowering of water levels. An application that conflicts with existing rights must be denied pursuant to NRS 533.370(5).

The point of diversion and place of use as defined in the Application appear to be located on land administered by the Bureau of Land Management. The applicant has shown no evidence that they control or have the right to access the land on which the water is to be placed to

¹ Exhibit 1 (Hydrographic Basin Summary By Application Status).

1 beneficial use. The State Engineer has on many occasions denied applications on the basis that
2 the appropriator does not own or control the land on which the point of diversion or place of use
3 is located and therefore cannot put the water to beneficial use (See State Engineer Ruling Nos.
4 3835, 5235, 5575).

5 The Protestant also questions the financial ability of the applicant to construct a 20 MW
6 geothermal power production facility involving wells of over 2,000 feet in depth. Such a project
7 will require a substantial amount of financial resources. As the appropriation is in excess of 10
8 cubic feet per second we request that the State Engineer require the applicant to comply with the
9 provisions of NRS 533.375(2).

10 The Protestant reserves the right to amend and supplement its protest of the Application
11 as more relevant information becomes available.

12 THEREFORE the Protestant requests that the Application be DENIED and that an order
13 be entered for such relief as the State Engineer deems just and proper.

14 Dated: April 11, 2008

15 LIONEL SAWYER & COLLINS

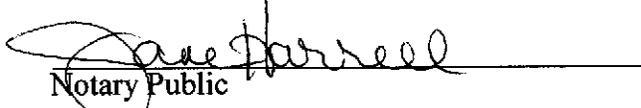
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17 By: 
18 Linda M. Bullen
19 Nevada Bar No. 7629
20 1700 Bank of America Plaza
21 300 South Fourth Street
22 Las Vegas, Nevada 89101

23 Douglas A. Cannon
24 Nevada Bar No. 9375
25 1100 Bank of America Plaza
26 50 West Liberty Street
27 Reno, Nevada 89501

28 ATTORNEYS FOR US SILICA COMPANY

Subscribed and sworn before me this 11th day of April, 2008




Notary Public
My commission expires: 5/15/2009

Nevada Division of Water Resources

Hydrographic Basin Summary By Application Status

Hydrographic Basin: 215 Yield: 1,300.00 AFA

Hydrographic Region: 13 COLORADO RIVER BASIN Reference: USGS Open File Report 78-768

Basin Name: BLACK MOUNTAINS AREA Remarks:

Status	Acre Feet	Million Gal.	Annual Duty Underground*	Acre Feet	Million Gal.	Annual Duty Geothermal*	Acre Feet	Million Gal.	Annual Duty Other-Groundwater*	Acre Feet	Million Gal.	Annual Duty Total*
VST	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RES	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
APP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RFA	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
PER	6,875.59	2,240.41	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,875.59	2,240.41	0.00
RLP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
RVP	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
CER	341.12	111.15	0.00	0.00	0.00	0.00	0.00	0.00	0.00	341.12	111.15	0.00
DEC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: RFA Status Includes Protested Applications (RFP's)