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

FILED
APR 09 2009
STATE ENGINEER'S OFFICE

RECEIVED
2009 APR -9 AM 11:36
STATE ENGINEER'S OFFICE

In the Matter of Amended Application Number 77634 Filed By Jackrabbit Properties, LLC on February 2, 2009 for Permission to Change the Point of Diversion, Place of Use, and Manner of Use of Water Appropriated Under Permit No. 52137	**PROTEST**

Comes now The Pyramid Lake Paiute Tribe of Indians, whose post office address is P.O. Box 256, Nixon, Nevada 89424, whose occupation is a federally recognized Tribe of Indians, the governing body of the Pyramid Lake Indian Reservation, organized pursuant to the Indian Reorganization Act of 1934, with a Constitution and By-laws approved by the Secretary of Interior, and protests the granting of Amended Application Number 77634, filed on February 2, 2009 by Jackrabbit Properties, LLC for permission to change the point of diversion, place of use, and manner of use of water appropriated under Permit No. 52137, for the following reasons and on the following grounds, to wit:

1. The base water rights sought for transfer by Application No. 77634 originate from Application No. 52137 which was filed by John Torvik in May 1988 to appropriate groundwater for a 400-acre irrigation project. Application No. 52137 was permitted by the State Engineer in October 2002 for the irrigation project. The water rights were subsequently assigned to the current water right holder 8 months after the permit was issued (June 2003). Since October 2002, no steps were taken towards development of the irrigation project, including the filing of the Proof of Completion which was originally due in November 2004. Plans for the use of water for the irrigation project no longer exist, the necessity for the use of water for the irrigation project no longer exists, and therefore the right to divert ceased several years ago in accordance with NRS 533.045. The State Engineer should deny Application 77634 and cancel Permit 52137 pursuant to NRS 533.045.

2. Given the prolonged period of non-use under Permit No. 52137, this application to change the point of diversion, place of use, and manner of use should not be granted on the basis that the water rights under Permit No. 52137 have been forfeited, pursuant to NRS 534.090, and/or abandoned.

3. The application involves an interbasin transfer and should be rejected pursuant to NRS 533.370(6) for, among other reasons, the applicant's failure to:

A. identify the specifics of the proposed project, including the basin(s) into which water will be imported;

B. justify the need to import water to the other basin(s);

C. demonstrate that a conservation plan(s) has been adopted and effectively carried out for the other basin(s);

D. demonstrate that the proposed export of water from the Smoke Creek Desert Basin is environmentally sound; and

E. demonstrate that the proposed action is an appropriate long-term use which will not limit growth and development in the Smoke Creek Basin.

4. The application for interbasin transfer should also be rejected pursuant to NRS 533.370 for the lack of information regarding:

A. access to the use of public/private lands necessary for the construction of the works of diversion and the means of conveyance;

B. financial ability to construct the works and apply the water to the intended use with reasonable diligence;

C. technical feasibility to construct the works and apply the water to the intended use with reasonable diligence; and

D. justification for the quantity of water required for the proposed project.

5. The application requests to transfer the full duty of water previously permitted for irrigation. The application should be rejected, or at a minimum, be limited to the consumptive use portion of the existing water rights.

6. On information and belief, a Petition for Adjudication of the water rights in the Smoke Creek Desert Hydrographic Basin #21 was filed with the State Engineer's office in 2005. The application should not be considered, and certainly not granted,

until the issues involving the Petition for Adjudication have been properly addressed and resolved.

7. As of March 2009, the records of the State Engineer's office report the perennial yield of Smoke Creek Desert Hydrographic Basin #21 at 16,000 acre-feet, committed groundwater rights at approximately 12,200 acre-feet, and pending groundwater rights in excess of 57,600 acre-feet. Given the prolonged period of non-use under Permit No. 52137, this application to change the point of diversion for Permit No. 52137 should not be processed or ruled on until the conclusion of the adjudication of the Smoke Creek Basin, and should be considered in the context of all other pending water rights in the Hydrographic Basin #21.

8. Granting the application would threaten to prove detrimental to the public interest.

9. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application - by way of example Fernley's Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 - and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

10. Granting the application would threaten to prove detrimental to the public interest and the interests and existing water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because, among other things, it would:

A. deplete water from the Pyramid Lake by depleting the underflow from the Smoke Creek Desert Basin to the Pyramid Lake Basin;

B. degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater withdrawals from the Smoke Creek Desert Basin;

C. adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe.

D. have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe's groundwater resources;

E. prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the threatened Lahontan cutthroat trout, in violation of the Endangered Species Act, 16 U.S.C. §1531 et set., and Nevada law protecting the cui-ui;

F. adversely affect the recreational value of Pyramid Lake;

G. interfere with the purposes for which the Pyramid Lake Indian Reservation was established;

H. deplete the supply of water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

I. affect the suitability of irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

J. increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

K. adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

L. adversely affect the reserved groundwater rights of the Tribe within the Smoke Creek Basin; and

M. otherwise adversely affect the interests of the Tribe.

11. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

///

///

///

THEREFORE this Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Angius & Terry LLP

Don Springmeyer, Esq.
Christopher W. Mixson, Esq.
1120 N. Town Center Drive, Suite 260
Las Vegas, NV 89144
Tel: (702) 990-2017
Agents for the Tribe

Subscribed and sworn to before me this 7th day of April, 2009.

Carol R Nelson
Notary Public

State of Nevada

County of Clark

My Commission Expires: July 13, 2010

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

CAROL R. NELSON
Notary Public-State of Nevada
APPT. NO. 94-5471-1
My App. Expires July 13, 2010