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

FILED
APR 08 2009
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IN THE MATTER OF APPLICATION NUMBER.....77635.....,
FILED BY.....JACKRABBIT PROPERTIES LLC.....,
ON.....NOVEMBER 21, 2008....., TO APPROPRIATE THE
WATERS OF .....UNDERGROUND.....

PROTEST

Comes now.....John Espil Sheep Co.....
Printed or typed name of protestant

whose post office address is..2889 Granville Drive, Sparks NV, 89436.....
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is ...Ranching..... and protests the granting

of Application Number .77635....., filed on ..November 21, 2008.....

by .....Jackrabbit Properties LLC.....to appropriate the

waters of ....Underground.....situated in ..Washoe.....
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 Exhibit "A" attached hereto and by this reference incorporated herein.....

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 .....Gordon H. DePaoli.....
Agent or protestant

.....Gordon H. DePaoli.....
Printed or typed name, if agent

Address.....6100 Neil Road, Suite 500.....
Street No. or P.O. Box No.

.....Reno, NV 89511.....
City, State and Zip Code No.

Subscribed and sworn to before me this .....8th.....day of.....April....., 20.09.....

JOANNE McMASTER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-3411-2 - Expires May 10, 2009

.....Joanne McMaster.....
Notary Public

State of....Nevada.....

County of ...Washoe.....

$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

EXHIBIT "A"/ APPLICATION NOS. 77634, 77635, AND 77969

The Protest Grounds are as follows:

1. The proposed changes in point of diversion and places of use under Application Numbers 77634, 77635, and 77969 would conflict with existing water rights, including without limitation, water rights held by the John Espil Sheep Company;
2. The proposed changes in point of diversion and place of use under the Applications threaten to prove detrimental to the public interest;
3. The proposed changes would conflict with existing water rights and threaten to prove detrimental to the public interest because applicant seeks to change the type of use of the water rights at issue from irrigation to municipal and industrial and seeks to transfer the entire duty of such water rights not merely the consumptive use component;
4. The applicant has not provided proof of its intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence;
5. The applicant has not provided proof of its financial ability and reasonable expectation to actually construct the necessary work and apply the water to the intended beneficial use with reasonable diligence;
6. Applicant seeks an interbasin transfer of groundwater because the proposed point of diversion is in Basin 021 while the proposed place of use is in a different basin and the relevant statutory considerations of NRS §533.370(6) determine that the State Engineer should reject the applications pursuant to that section;
7. The applicant has not justified the need to import water to the hydrographic basins where its proposed places of use are located ;
8. Applicant's proposed action is not environmentally sound as it relates to Basin 021 from which water is to be exported;
9. Applicant's proposed action is not an appropriate long term use and will unduly limit future growth and development of Basin 021; and
10. The Protestant reserves the right to supplement this protest as additional information becomes available concerning Application Numbers 77634, 77635, and 77969.

Conflict with Existing Rights

The proposed changes in point of diversion and place of use under Application Numbers 77634, 77635, and 77969 would conflict with Protestant's use of water under its numerous existing water rights in Basin 021. Applications 77634, 77635, and 77969 seek to change the point of diversion for large groundwater appropriations within the Smoke Creek Desert Groundwater Basin (Basin No. 021). The Protestant, John Espil Sheep Co., has numerous water rights in Basin 021, including Permit No. 11443 (Certificate No. 4594), Permit No. 16523 (Certificate No. 5389), Permit No. 16810 (Certificate No. 5840), Permit No. 38125 (Certificate No. 13069), Permit No. 48156 (Certificate No. 13076), Permit No. 7142 (Certificate No. 2168), Permit No. 2705 (Certificate No. 1974), as well as Proof No. 0511, Proof No. 05108, and Permit No.

§533.3703 to consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the place of diversion, manner of use or place of use complies with the provisions of N.R.S. §533.370(5). Consideration of these factors clearly shows that applicant's proposed changes would violate the provisions of that section by conflicting with existing rights and threatening to prove detrimental to the public interest. The water rights at issue in Applications Numbers 77634, 77635, and 77696 are permitted for irrigation purposes. Water not consumed by such irrigation use returns to either the surface waters or groundwater of Basin 021 and is thus available for use by other appropriators. Applicant seeks to change the manner of use of the water rights to municipal and domestic and to transfer the entire duty of those rights without regard to consumptive use.

Applicant's proposed changes would conflict with existing rights. The existing consumptive use of the water rights for irrigation results in the return of the non-consumptive use component of such water rights to the waters of Basin 021 where they are available to other appropriators. Applicant's proposed changes in manner of use and place of use would make the non-consumptive use portion of the irrigation water rights unavailable. Applicant's proposed changes in place of use would conflict with existing rights by removing the entire duty of the irrigation water rights at issue from Basin 021 so that the non-consumptive use component of such water would no longer be available for use by other appropriators.

Applicant's proposed changes would threaten to prove detrimental to the public interest. As noted above applicant's proposed changes would remove the entire duty of the irrigation water rights at issue from Basin 021. The non-consumptive use component of those water rights would no longer return to the waters of Basin 021. Applicant's proposed changes would threaten to prove detrimental to the public interest because such non-consumptive use water would no longer be available to riparian habitats and wildlife or for groundwater recharge in Basin 021.

Applicant's Proposed Action is Speculative

The applicant has not provided proof of its intention in good faith to construct facilities necessary to apply the water at issue to the intended beneficial municipal use within a reasonable time period.

The applicant has not provided proof of its reasonable expectation to construct the necessary works and apply the water at issue to the intended beneficial municipal use with reasonable diligence.

Applicant fails to specify the intended beneficial use, stating only that such use is to be for municipal purposes within the proposed place of use. Under the Nevada Supreme Court's decision in *Bacher v. State Engineer*, 146 P.3d 793, 799 (Nev.2006), to avoid violating Nevada's anti-speculation doctrine, an applicant seeking an interbasin groundwater transfer must have an agency or contractual relationship with the party intending to put the water to beneficial use. Applicant has not shown any requisite formal relationship with a party intending to put the water to beneficial use.

Applicant fails to specify exactly what party intends to put the water to beneficial use and fails to specifically identify projects requiring the additional water indicating only that proposed usage is related to Washoe County planning studies showing a demand for additional municipal water resources to supply existing and projected growth. Although

an applicant need not be the party putting the water to beneficial use it must have a formal relationship with the party intending to put the water to beneficial use. Applicant fails to indicate any such formal relationship with whatever parties intend to put the water to use for, as applicant specifies, municipal purposes to supply existing and projected growth.

Applicant has Not Justified the Need to Import Water to the Hydrographic Basins where the Proposed Places of Use are Located

The applicant fails to justify the need to import water to the hydrographic basins where the proposed places of use are located. Applicant does not specify the hydrographic basins where its proposed places of use are located. Applicant does not specifically identify any project for which a specific quantity of water is needed, nor does applicant show how any such quantity of needed water would be reduced by existing water rights. Without such specificity, under N.R.S. §533.370(6)(a) and the decision of the Nevada Supreme Court in *Bacher v. State Engineer*, 146 P.3d 793 (Nev.2006), a reasonable mind cannot accept as adequate, and the State Engineer cannot reach a valid conclusion supported by substantial evidence, that applicant has demonstrated the need to import water to the hydrographic basins where applicant's proposed places of use are located.

Applicant's Proposed Action is Not Environmentally Sound

As noted above, applicant proposes to divert nearly one quarter (1/4) of the total estimated perennial yield of Basin 021, a total of nearly four thousand (4,000) acre feet per year, to use in other basins. The environmental impact of a water exportation scheme of this relative magnitude will have negative repercussions on the environment within Basin 021. The scale and severity of the environmental impact upon Basin 021 is apparent. Basin 021 currently contains numerous springs and flowing artesian wells that are the source of water for riparian environments and wildlife within Basin 021. The exportation of one quarter of Basin 021's estimated perennial yield is likely to have a severe impact on riparian environments and wildlife within the Basin.

Applicant's Proposed Action is not an Appropriate Long-Term Use and Will Unduly Limit Future Growth And Development of Hydrographic Basin 021

As noted above, applicant proposes to divert nearly one quarter (1/4) of the total estimated perennial yield of Basin 021, a total of nearly four thousand (4,000) acre feet per year, to use in other basins. The export of such a substantial portion of the total perennial yield of Basin 021 will unduly limit future growth and development of Basin 021 by greatly reducing the amount of water available within Basin 021 for such future growth and development. Such large scale exportation is not an appropriate long-term use because applicant has not demonstrated a need for such water for specific beneficial purposes at the proposed places of use.