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

FILED
APR 13 2009
STATE ENGINEER'S OFFICE

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IN THE MATTER OF APPLICATION NUMBER.....77812.....,

FILED BY.....RAYMOND THOMPSON.....,

ON.....APRIL 13....., 2009...., TO APPROPRIATE THE

WATERS OF .....DRY LAKE VALLEY.....

} PROTEST

Comes now..... RAYMOND THOMPSON.....
Printed or typed name of protestant

whose post office address is..... P.O. Box 163, Caliente, NV 89008.....
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is .....farmer and rancher; and water rights owner in Dry Lake Valley..... and protests the granting

of Application Number .....77812....., filed on .....January 20....., 2009.....

by .....United States of America, Department of Energy.....to appropriate the

waters of .....an underground source.....situated in .....Dry Lake Valley.....
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 attached protest.....

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 .....
Agent or protestant

.....Greg Walch.....
Printed or typed name, if agent

Address.....400 S. Fourth St., 3rd Floor.....
Street No. or P.O. Box No.

.....Las Vegas, Nevada 89101.....
City, State and Zip Code No.

Subscribed and sworn to before me this .....13th.....day of.....April....., 2009.....

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MARIA STAFILATOS
Appt. No. 06-104158-1
My Appt. Expires Mar. 27, 2010

.....
Notary Public

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

County of .....Clark.....

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

ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

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RAYMOND THOMPSON'S PROTEST OF APPLICATION 77812

Protestant Raymond Thompson ("Thompson") hereby protests the U.S. Department of Energy's (the "Applicant") Application 77812 (the "Application") and requests that the State Engineer deny the Application on the following grounds:

1. The purpose for which Application was filed, specifically the use of the water in connection with construction of a rail line to Yucca Mountain for the transportation of radioactive waste, is no longer necessary following United States Secretary of the Energy Steven Chu's recent declaration that the Yucca Mountain project was no longer considered an option for housing the nation's radioactive waste. Accordingly, the Applicant will not be able to show good faith and reasonable diligence, nor the financial ability and reasonable expectation that the rail line will ever be constructed, that it will even have any beneficial purpose, or that the water will be placed to beneficial use in accordance with NRS 533.370(1).

2. In his Ruling No. 5307, the State Engineer denied similar applications by the Applicant for use at the Yucca Mountain project on the grounds that the use of the water for such a project was not a beneficial use of the public's water, and thus would threaten to prove detrimental to the public interest. Accordingly, the Application's proposed use of water in connection with and in furtherance of the Yucca Mountain project is not a beneficial use of the public's water, and would therefore threaten to prove detrimental to the public interest.

3. The Application seeks to appropriate ground water in the Dry Lake Valley Ground Water Basin (Basin 181) ("Dry Lake") that has a perennial yield of 12,700 afa. The current amount of permitted ground water permits in Dry Lake is 11,640 afa. Presently there are an additional 10,240 afa applied for in Dry Lake with an earlier priority date. Accordingly, there is no unappropriated water in Dry Lake available for appropriation by the Applicant in accordance with NRS 533.370(5).

4. The proposed point of diversion will conflict with Thompson's existing spring water rights.

5. The Application threatens to prove detrimental to the public interest because the diversion, if used for the stated purpose, threatens to degrade groundwater and air quality, threatens to undermine the local economy and lifestyle, and threatens the health and welfare of Nevadans in ways still being explored.

6. The proposed point of diversion and the place of use are located in separate basins. Accordingly, the approval of any such appropriation should be determined by the State Engineer in accordance with the interbasin transfer rules in NRS 533.370(6).

In determining whether an application for an interbasin transfer of ground water must be rejected, the State Engineer shall consider:

(a) Whether the Applicant has justified the need to import the water from another basin;

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant. *NRS 533.370(6).*

The Applicant cannot meet any of the criteria (a) through (d) under NRS 533.370(6), and therefore the Application should be denied.

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7. Inasmuch as (i) the Application was only recently filed, (ii) the Applicant has not provided evidence relating to any of the statutory criteria applicable to the approval of the Application, and (iii) there has been no exchange of evidence by Thompson and the Applicant, Thompson may not have stated with precision each of the potential bases for protesting the Application. Thompson therefore reserves his right to amend this protest as information is learned and potential effects evaluated.

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

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FILED
APR 09 2009
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IN THE MATTER OF APPLICATION NO. 77813)
FILED BY **U.S. DEPARTMENT OF ENERGY**) **PROTEST**
ON **January 20, 2009**, TO APPROPRIATE THE PUBLIC)
WATERS OF **Dry Lake Valley**)

COMES NOW Nye **County**, whose Post Office address is P.O. Box 153, Tonopah, Nevada 89049, whose occupation is a political subdivision of the State of Nevada, and protests the granting of Application No. 77813, filed on January 20, 2009 by **U.S. Department of Energy**, to appropriate the public waters of the State of Nevada, Dry Lake Valley, situated in Lincoln County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attached Exhibit "A"

THEREFORE: the Protestant requests that the Application be **denied** and that an Order be entered for such relief as the State Engineer deems just and proper.

Signed: _____
GEORGE N. BENESCH
Agent for Protestant
190 W. Huffaker Lane, Suite 408
Reno, Nevada 89511
(775) 827-3100

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

SUBSCRIBED and SWORN to before me this 8th day of April, 2009.

_____
NOTARY PUBLIC

BETTY MELARKEY
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 89-0049-2 - Expires March 10, 2010