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

IN THE MATTER OF APPLICATION NO. 77858)
FILED BY U.S. DEPARTMENT OF ENERGY)
ON JANUARY 20, 2009, TO APPROPRIATE THE)
PUBLIC WATERS OF Ralston Valley)

FILED
APR 14 2009
PROTEST
STATE ENGINEER'S OFFICE

RECEIVED
2009 APR 14 PM 2:35
STATE ENGINEERS OFFICE

COMES NOW Wayne N. Hage, Executor, Estate of E. Wayne Hage and Agent for Executor, Herbert Nichols, Executor for the Estate of Jean N. Hage, whose Post Office address is P.O. Box 513, Tonopah, Nevada 89049, whose occupation is Cattle Ranching and Hay Farming, and protests the granting of Application Number 75858, filed on January 20, 2009 by The U.S. Department of Energy to appropriate the waters of Underground situated in Ralston Valley, Nye 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: Wayne N Hage executor
Wayne N. Hage
Executor and agent of Protestants
P.O. Box 513
Tonopah, Nevada 89049
(775) 482-4187

STATE OF NEVADA)
) ss.
Carson City)

SUBSCRIBED and SWORN to before me this 14 day of April, 2009.

Gloria K Lash
NOTARY PUBLIC

GLORIA K. LASH
NOTARY PUBLIC
STATE OF NEVADA
No.88-0298-5 My Appt. Exp. Dec. 20, 2010

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EXIBIT "A"

1. This Application is one of over 100 applications filed by the U.S. Department of Energy seeking to appropriate some 6,000 acre feet in Nye County and extensive amounts in Lincoln and Esmeralda Counties. Because the places of use under applications in one basin overlap with the place of use under applications in adjoining basins these are applications for inter-basin transfers. Diversion (and export) of such a quantity of water will, upon information and belief, unreasonably lower the static water level in the basin of diversion, adversely effecting the quality of remaining groundwater and threatening the continued existence of vested water rights situated in wells, springs, seeps, and dry lakes beds.
2. The U.S. Supreme Court has ruled in New Mexico v. U.S., 438 U.S. 696 (1978), that the federal government has no claim for federal reserved water rights for the purposes of use referenced by the Applicants.
3. More particularly, the granting of the subject application will interfere with the 23 separate vested and certificated surface and underground water rights owned by Pine Creek Ranch through the Estates of E. Wayne Hage and Jean N. Hage, situated in groundwater basin number 141 within the boundaries of the Ralston, McKinney, and Silver King allotments in Ralston Valley. Pursuant to NRS 533.510 Prior rights not affected which states, "NRS 533.485 to 533.510, inclusive, do not affect the validity of rights to the use of water for watering livestock or other purposes acquired under the previously existing laws of this state or by decree or impair any existing vested or decreed right to the use of water for that purpose."
4. The vested water rights belonging to the Estates of E. Wayne Hage and Jean N. Hage have been recognized under Fifth Judicial District Court Decree 5038 and a finding of fact in the published decision of United States Court of Federal Claims, Case Number 91-1470L. These property rights are recognized under the local laws and customs of this state, and are recognized, acknowledged, and confirmed by the United States Supreme Court.
5. There is no unappropriated water available in the proposed source. NRS 533.370 § 5 states, "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectible interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer **shall** reject the application and refuse to issue the requested permit.
6. If the U.S. Department of Energy permits are granted, the water table will be lowered, interfering with the use of our vested rights by forcing us to deepen our present wells and increase our pumping costs.
7. Our vested waters which are located in wells and, naturally flowing springs upon which we rely to water livestock may be dried up if the U.S. Department of Energy is permitted to remove water from the ground basin.
8. The U.S. Department of Energy applications are in direct conflict with the public welfare of this state (NRS 533.025), particularly when considered with other applications filed concurrently by this Applicant, which are for the construction

and maintenance of the proposed Yucca Mountain Railroad and relate to the proposed storage of nuclear waste in this state.

9. If the application is granted it will conflict with existing rights or with protectible interests in existing domestic wells. The Applicant's wells and the place of beneficial use will harm and interfere with the vested water rights belonging to the Estates of E. Wayne Hage and Jean N. Hage have been recognized under Fifth Judicial District Court Decree 5038 and a finding of fact in the published decision of United States Court of Federal Claims, Case Number 91-1470L.
10. The Estates of E. Wayne Hage and Jean N. Hage demand that a hearing be granted before any application is can be approved so that an offer of proof may be submitted.
11. The application shall be denied based on the intended use of the water. The applicant has stated that the "water is needed for construction purposes from January 1st to December 31st of each year," however applicants application is for the use of this water every year indefinitely. It is highly doubtful that any construction could last this long.
12. The place of beneficial use of the water is currently the subject of ongoing litigation in two courts between applicant and protester. Until the final conclusion of all the ongoing litigation it will not be known whether applicant will be allowed to place the water to beneficial use without harming the rights of the Estates of E. Wayne Hage and Jean N. Hage.
13. For these reasons the Estates of E. Wayne Hage and Jean N. Hage pray that the protests are denied.