

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

IN THE MATTER OF APPLICATION NUMBER, 77859
FILED BY, UNITED STATES OF AMERICA, U. S. DEPARTMENT OF ENERGY
ON JANUARY 20, 2009, TO APPROPRIATE THE
WATERS OF UNDERGROUND (RAV-1) (NYE COUNTY)

FILED
APR 10 2009
STATE ENGINEER'S OFFICE
PROTEST
RECEIVED
2009 APR 10 AM 11:24
STATE ENGINEER'S OFFICE

Comes now TONOPAH PUBLIC UTILITIES c/o Jack Osburn
Printed or typed name of protestant
whose post office address is P.O. BOX 151, TONOPAH, NEVADA 89049
Street No. Or P.O. Box, City, State and Zip Code.
whose occupation is Maintenance Utility Supervisor and protests the granting
of Application Number 77859 filed on January 20, 2009
by UNITED STATES OF AMERICA, U.S. DEPARTMENT OF ENERGY to appropriate the
waters of UNDERGROUND situated in NYE
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

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 [Signature]
Agent or protestant

JACK OSBURN
Printed or typed name, if agent

Address P.O. Box 151
Street No. or P.O. Box No.

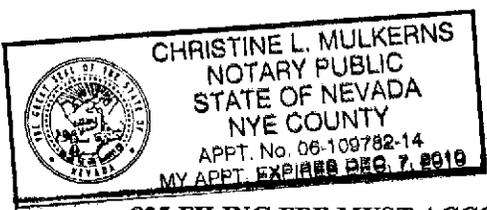
TONOPAH, NEVADA 89049
City, State and Zip Code No.

Subscribed and sworn to before me this 27th day of March, 2009

[Signature]
Notary Public

State of NEVADA

County of NYE



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

[Handwritten initials]

Exhibit "A"
Protest of Tonopah Public Utilities to UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY APPLICATION 77859

The United States of America, U.S. Department of Energy under Application 77859 proposes to utilize ground water from the Ralston Valley Hydrographic Groundwater Basin No. 141 for the construction of a rail line to Yucca Mountain, which will probably take up to 10 years, but may take longer depending on funding and other issues.

A request for denial is based on the following concerns.

The Town of Tonopah and Tonopah Public Utilities (TONOPAH), water right owners within Ralston Valley located within the vicinity of Application 77859, is concerned that continued increase of groundwater pumpage will harm their existing municipal water supplies. The Town of Tonopah and Tonopah Public Utilities is asking the State to protect the Tonopah's senior priority permitted and certificated municipal groundwater rights.

Ralston Valley is a designated basin. The State Engineer issued a Notice of Curtailment of Water Appropriation and Designation of Preferred Use of Ground Water with regard to the Ralston Valley Ground Water Basin on August 15, 1980. Twenty nine years has passed since this designation. A comprehensive perennial yield and recharge analysis should be required by the Nevada State Engineer of the entire Ralston Valley Hydrographic Basin No. 141 before new appropriations can be considered.

The Notice of Curtailment further provides:

Most of the available ground water of suitable chemical quality for municipal purposes occurs in the alluvium in the above described area and ground water pumped from said area is used by the Town of Tonopah for a municipal supply. The safeguarding of the aforementioned limited water supply necessitates and demands that municipal use be declared a preferred use of the ground water resource of the above described area and that no additional permits be granted within the restricted area to appropriate ground water.

In Application No. 77859, United States of America U.S. Department of Energy seeks to appropriate additional water in the Ralston Valley Basin in the amount of 1.0 cfs not exceed 110 acre-feet per year to be used for construction. Thus, granting the application will impact existing rights held by the Tonopah i.e., Permit Nos. 45148, 45159, 45150, 45151, 45221 and 54929.

In Ruling No. 5004, the State Engineer denied an application to appropriate water where there was no reasonable expectation of beneficial use for the municipal purposes of Tonopah under the application. At this time, the same circumstances exist here with regard to Application 77859 filed by United States of America, U.S. Department of Energy. Application 77859 should be denied on the basis Tonopah Public Utilities provides water service to the Tonopah Town site and the Tonopah Airport property and this application seeks to use water from Basin 141 that conflicts with the intent of the Notice of Curtailment.

Exhibit "A"
Protest of Tonopah Public Utilities to UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY APPLICATION 77859

The Town of Tonopah and Tonopah Public Utilities do not desire to hinder United States of America, U.S. Department of Energy's (DOE) development efforts. However, Tonopah Public Utilities' prior existing rights used to provide a municipal water supply and its water system must not be detrimentally impacted by DOE's efforts. If DOE can show that impacts associated with its proposed pumping will not impact existing rights and an agreement can be reached with Tonopah Public Utilities' service territory in conformance with the Town of Tonopah's and Tonopah Public Utilities' municipal and water resource growth plans, this protest may be withdrawn.

APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF NEVADA

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office JAN 20 2009

Returned to applicant for correction _____

Corrected application filed _____ Map filed JAN 20 2009 under 77858 sht 1

The applicant United States of America, U. S. Department of Energy

1551 Hillshire Drive of Las Vegas

Street Address or P.O. Box City or Town

Nevada 89134 hereby make(s) application for permission to appropriate

State and Zip Code

the public waters of the State of Nevada, as hereinafter stated. (If applicant is a corporation, give date and place of incorporation; if a copartnership or association give names of members.)

1. The source of water is Underground (RaV-3/p)
Name of stream, lake, underground, spring or other sources.
2. The amount of water applied for is .5 cfs not to exceed 2 acre-feet per year second feet.
One second foot equals 448.83 gallons per minute.
 - (a) If stored in reservoir give number of acre-feet _____
3. The water to be used for Industrial (See Attachment A)
Irrigation, power, mining, commercial, domestic or other use. Must limit to one major use.
4. If use is for:
 - (a) Irrigation, state number of acres to be irrigated _____
 - (b) Stockwater, state number and kind of animals _____
 - (c) Other use (describe fully in No. 12.) _____
 - (d) Power:
 - (1) Horsepower developed _____
 - (2) Point of return of water to stream _____

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141-114

- 5. The water is to be diverted from its source at the following point: (Describe as being within a 40-acre subdivision of public survey, and by course and distance to a found section corner. If on unsurveyed land, it should be so stated.)
 Within the SW 1/4 SE 1/4 of Section 27, T.1N., R.45E., M.D.B. & M. (unsurveyed), or at a point from which the southwest corner of Section 34, T.1N., R.45E., M.D.B. & M., bears S. 29° 51' 15" W. a distance of 7,076 feet.

(See Basin 141 Map Sheet 1 of 4)

- 6. Place of use: (Describe by legal subdivision. If on unsurveyed land, it should be so stated.)

Within the SW 1/4 SE 1/4 of Section 27, T.1N., R.45E., M.D.B. & M. (unsurveyed).

(See Basin 141 Map Sheet 1 of 4)

- 7. Use will begin about January 1 and end about December 31 of each year.
Month and Day Month and Day

- 8. Description of proposed works. (Under the provisions of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e. diversion structure, ditches and flumes, drilled well with pump and motor, etc.)

Drilled and cased well, vertical turbine pump and motor, pipeline, and above-ground holding tank(s).

- 9. Estimated cost of works: \$350,000

- 10. Estimated time required to construct works: 3 years
(If well completed, describe works.)

- 11. Estimated time required to complete the application of water to beneficial use: 10 years

- 12. Provide a detailed description of the proposed project and its water usage (use attachments if necessary):
(Failure to provide a detailed description may cause a delay in processing.)

See Attachment A (RaV-3/p).

13. Miscellaneous remarks:

The United States of America, U.S. Department of Energy is filing this permit application as a matter of comity.

Ned_Larson@ymp.gov
E-mail Address

(702) 794-1454
Phone No.

**APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT**

Ned B. Larson
Type of permit sought
 By *Ned B. Larson*
Signature, applicant or agent

United States of America, U.S. Dept. of Energy
Company Name

1551 Hillshire Drive
Street Address or P.O. Box

Las Vegas, NV 89134
City, State, Zip Code

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\$250 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

ATTACHMENT A**Water Appropriation Permit Application Supplemental Information**YMP Well Identifier RaV-3/p:

This application to permanently appropriate the waters of the State of Nevada in Basin 141 is being filed by the United States of America, U.S. Department of Energy (DOE) in order to provide water for use at a railroad siding to meet the DOE's responsibilities under the Nuclear Waste Policy Act of 1982, as amended.

Item 3. Industrial uses will include, but are not limited to, facility maintenance, wildfire suppression, and other related site uses.

Item 12. The DOE will construct a 333-mile-long railroad from the existing Union Pacific mainline in Caliente, Nevada to Yucca Mountain. That railroad will be used to transport spent nuclear fuel, high-level radioactive waste, and other materials to a geologic repository at Yucca Mountain. The DOE will also allow commercial shippers to use the rail line to ship general freight, subject to obtaining a Certificate of Public Convenience and Necessity from the Surface Transportation Board and other necessary regulatory approvals.

Up to 103 wells will be used along the rail line to obtain water required for construction and operation of the railroad. Well RaV-3/p and 12 other wells will be retained and used during operation of the railroad. Well RaV-3/p, which will be located at a siding, will be used for maintenance of the railroad, wildfire suppression, and other related uses.

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