

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

IN THE MATTER OF APPLICATION NUMBER, 77861
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

STATE ENGINEER'S OFFICE

2009 APR 10 AM 11:25

RECEIVED

PROTEST

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 77861 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

 CHRISTINE L. MULKERNS
NOTARY PUBLIC
STATE OF NEVADA
NYE COUNTY
APPT. No. 06-109782-14
MY APPT. EXPIRES DEC. 7, 2010

[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.**

OK

Exhibit "A"
Protest of Tonopah Public Utilities to UNITED STATES OF AMERICA
U.S. DEPARTMENT OF ENERGY APPLICATION 77861

The United States of America, U.S. Department of Energy under Application 77861 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 77861, 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. 77861, 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 77861 filed by United States of America, U.S. Department of Energy. Application 77861 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 77861

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 shts 3:4

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-5)
Name of stream, lake, underground, spring or other sources.
2. The amount of water applied for is 1.0 cfs not to exceed 110 acre-feet per year (See Attachment A) 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 Construction (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 _____

STATE ENGINEER
2009 JAN 20 AM 10:39

141-224

ATTACHMENT A**Water Appropriation Permit Application Supplemental Information**YMP Well Identifier RaV-5:

This application to temporarily appropriate the waters of the State of Nevada is being filed by the United States of America, U.S. Department of Energy (DOE) in order to provide water for meeting the DOE's responsibilities under the Nuclear Waste Policy Act of 1982, as amended. This application is being filed to appropriate water 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. Once construction is completed the permit will be withdrawn.

Item 2. The total annual duty from 4 points of diversion applied for in Basin 141 will not exceed 110 acre-feet per year. It is anticipated that the total use of water within Basin 141 during the construction period will not exceed 129 acre-feet. An annual duty that is near the maximum anticipated need is requested because it is likely that a large proportion of the total water demand will be used during the first one to two years of construction.

Item 3. Construction uses will include, but are not limited to, geotechnical and hydrological investigations, road construction, facility construction, rail construction, dust suppression, quarry operations, construction camp operations, and other related site uses.

Item 6. The place of use is any portion of Sections that are within one-half mile of the rail alignment, access roads, and facilities within the basin of origin and adjacent basins, as shown in Basin 141 Map Sheet 4 of 4. The place of use is defined as all quarter-quarter sections within the following sections:

T.4N., R.49E., Sections: 25, 26, 34, 35, 36; T.3N., R.48E., Sections: 13, 23, 24, 25, 26, 27, 34, 35; T.3N., R.49E., Sections: 2, 3, 4, 5, 7, 8, 9, 17, 18, 19; T.2N., R.44E., Sections: 7, 18, 19, 20, 29, 32; T.2N., R.47E., Sections: 25, 35, 36; T.2N., R.48E., Sections: 3, 4, 8, 9, 10, 16, 17, 18, 19, 20, 30, 31; T.1N., R.43E., Sections: 24, 25, 26, 27, 33, 34, 35; T.1N., R.44E., Sections: 4, 5, 9, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30; T.1N., R.45E., Sections: 19, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36; T.1N., R.46E., Sections: 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; T.1N., R.47E., Sections: 1, 2, 3, 10, 11, 15, 16, 20, 21, 29, 30, 31, 32; T.1S., R.42E., Section: 36; T.1S., R.43E., Sections: 3, 4, 8, 9, 16, 17, 20, 21, 28, 29, 30, 31, 32; T.2S., R.42E., Sections: 1, 2, 10, 11, 12, 14, 15, 22, 23, 26, 27, 34, 35; T.3S., R.42E., Sections: 2, 3, 10, 11.

T.2S. R.43E. Sec 6

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 the approximately 6,000 acre-feet of groundwater required for construction of the railroad. DOE anticipates that about 90 percent of the water will be needed at some time during the first one to two years of construction for compaction of the rail roadbed and for dust suppression. The remainder of the water will be used throughout the construction phase for the activities described in Item 3 above. It is likely that all wells within a basin will be operated during the six- to twelve-month period when the roadbed is being constructed within a basin. Fewer wells may be operated within a basin, and likely will be pumped at a lower rate, during the remainder of construction.

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email*

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