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

FILED
12 APR 2010
STATE ENGINEER'S OFFICE

RECEIVED
2010 APR 12 PM 3:24
STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATION NUMBER 79271
FILED BY Southern Nevada Water Authority
ON January 28, 20 10, TO APPROPRIATE THE
WATERS OF Snake Valley Hydrographic Area #95

PROTEST

Comes now Millard County, a political subdivision of the State of Utah
Printed or typed name of protestant

whose post office address is 50 South Main, Fillmore, Utah 84631
Street No. or PO Box, City, State and ZIP Code

whose occupation is by and through the Millard County Board of Commissioners and protests the granting

of Application Number 79271, filed on January 28, 20 10

by Southern Nevada Water Authority to appropriate the

waters of underground in Snake Valley Hydrographic Area #195 situated in White Pine
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 Attachment

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 Daron P Smith
Agent or protestant

Daron P. Smith, Chairperson Millard County Board of Commissioners
Printed or typed name, if agent

Address 50 South Main
Street No. or PO Box

Fillmore, Utah 84631
City, State and ZIP Code

435-864-3901
Phone Number

Subscribed and sworn to before me this 8TH day of April, 20 10

Connie H. Stott
Notary Public

CONNIE H. STOTT
NOTARY PUBLIC • STATE of UTAH
316 S. 200 E.
DELTA, UT 84624
COMM. EXP. 6-21-2010

State of UTAH
County of MILLARD

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

REASONS AND GROUNDS FOR MILLARD COUNTY'S PROTEST AGAINST APPLICATION NO. 79271, FILED JANUARY 28, 2010 BY SOUTHERN NEVADA WATER AUTHORITY

1. Granting the application will deplete and diminish the water resources, specifically groundwater, which is available to Millard County and its businesses and residents.

2. Granting the application will have a negative impact on the citizens of Millard County, Utah by depletion of the underground water aquifers and natural surface waters. Due to the recurring drought conditions throughout west Millard County, there is reduced recharge to the aquifers in this area and reduced surface water accumulations.

3. Granting the application will concentrate the use of water and lower the water table to such an extent that it will substantially reduce groundwater-dependent vegetation, which will destabilize soils and contribute to blowing dust resulting in reduced air quality in Millard County and northward into other Utah counties. Air quality is specifically impacted by the alkali nature of the soils in the area resulting in public health impacts and other social costs. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation.

4. In addition to the other effects of groundwater table drawdown, granting the application will eliminate specific sources and the overall available supply of groundwater in the hydrographic basin to support both existing economic activities and potential future economic growth. Existing economic activities that would be undermined include livestock and other ranching uses, agriculture, domestic uses, mining and prospecting uses, tourism and recreational uses. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, as well as potential future energy development. As a result, the proposed change(s) will have a negative impact on grazing, agriculture, mining, recreation, natural habitat, scenery and general aesthetics.

5. Based on the interconnectivity of the hydrogeologic structures in the Great Basin as identified by the USGS BARCASS report and other such investigations and reports, granting this application will cause long-term detrimental effects on other ground water resources and flows in other parts of Millard County and other Utah counties, negatively impacting the agricultural industry of Millard County and other Utah Counties.

6. Granting the application and other applications filed contemporaneously therewith, will lower the static water level in the area of Millard County in the vicinity of the proposed underground pumping. Such changes will adversely affect the quality of the remaining ground water and will further threaten springs, seeps, and phreatophytes which provide water and habitat critical to the use and survival of wildlife species.

7. Granting the application will cause economic harm to Millard County including but not limited to depletion of the county tax base in the area and potential damage to the ability of agricultural interests to develop and expand in the area of the proposed underground pumping under the application and the other applications filed contemporaneously therewith.

8. Granting the application will conflict impermissibly with and impair existing senior water rights and protectable interests in domestic and agricultural wells in the basin of origin and other hydrologically connected basins within the same interbasin flow system.

9. The State Engineer previously has found that there is too much uncertainty, too little sound data and too great a risk of unsustainable over-appropriation in the interbasin flow system of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. Sufficient data gathering and evaluation have not been completed and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the interbasin flow system and associated carbonate rock province, including the basin targeted by this application.

10. Given the lack of growth in the Las Vegas area due to the recent economic downturn there, and due to the fact that the applicant recently announced in the BLM EIS that it intends to use the groundwater available under this and the companion applications as a backup if other resources fail, the application should be denied absent clear proof satisfactory to the State Engineer that applicant intends in good faith to the carry out the groundwater development project and construct the work necessary to complete the project and put the groundwater to beneficial use with reasonable diligence, as required by NRS 533.370(1)(c)(1).

11. NRS 533.370(1)(c)(2) requires applicant to provide satisfactory proof to the State Engineer of the applicant's financial ability and reasonable expectation actually to construct the groundwater project and apply the water to the intended beneficial use with reasonable diligence. Those requirements are not attainable under the current Las Vegas area economic downturn with its resulting economic difficulties for applicant and its member municipalities and districts, and applicant will have failed this statutory requirement outright if the economic downturn continues much longer, requiring that the application be denied outright.

12. There is no groundwater left in the hydrographic area targeted by the application that can be safely appropriated above and beyond that which is already appropriated; therefore, under NRS 533.370(5) the application should be denied.

13. The use of groundwater proposed and targeted by the application conflicts with existing water rights or with protectable interests in existing domestic wells as set forth in NRS 533.024. Therefore, under NRS 533.370(5) the application should be denied.

14. The use of groundwater proposed and targeted by the application threatens to prove detrimental to the public interest. Therefore, under NRS 533.370(5) the application should be denied.

15. Given the severity and duration of the economic downturn in the Las Vegas area and the resulting halt to economic growth, the applicant cannot justify the need to import water from another basin. Therefore the interbasin transfer of water targeted in the application should be denied as required by NRS 533.370(6)(a).

16. Granting the application will deplete the quantity and quality of water flow in various springs and seeps throughout the basin targeted by the application and will thereby diminish and otherwise damage riparian areas and the riparian vegetation, riparian wildlife, migrating birds and livestock that depend upon those riparian areas. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.

17. Granting the application will unreasonably deplete the water table throughout the basin targeted by the application and will thereby diminish and otherwise damage the phreatophytic vegetative species that depend on the water table as well as the wildlife and livestock that depend on those phreatophytic species. As stated in paragraph 3 above, this phreatophytic plant loss will destabilize soils and contribute to dust and other air quality problems. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.

18. As stated in the previous paragraphs, granting the application will unduly limit the future growth and development in the basin of origin from which the water will be exported. Accordingly under NRS 533.370(6)(d), the interbasin application targeted in the application should be denied.

19. If the application is not denied outright, then any permitted use under this application should be conditioned upon and preceded by sufficient comprehensive studies of groundwater resources in the area and the impacts on those resources and by limited incremental ground water pumping and withdrawals at intermittent levels. No additional pumping and export of water should be allowed unless the intermittent staged pumping and exports prove beyond a reasonable doubt not to damage any and all of the resources of Millard County mentioned above.