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 3:33
STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATION NUMBER 79339,
FILED BY SOUTHERN NEVADA WATER AUTHORITY,
ON JANUARY 28TH, 2010, TO APPROPRIATE THE WATERS OF AN
UNKNOWN WELL IN RAILROAD VALLEY

PROTEST

Comes now Bureau of Land Management whose post office address is 50 Bastian Road, Battle Mountain, Nevada, 89820 whose occupation is Land Management and protests the granting of Application Number 79339, filed on JANUARY 28TH, 2010 by SOUTHERN NEVADA WATER AUTHORITY to appropriate the waters of UNKNOWN WELL situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

1.) BLM believes there is insufficient unappropriated water to grant these permits without causing injury to BLM water rights and decreasing habitat that is critical for BLM to adequately meet its mission statement and thereby, prove detrimental to the public interest (see attachment).

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 Gerald M. Smith
Agent or protestant

Gerald M. Smith

50 Bastian Road
Battle Mountain, Nevada 89820

Subscribed and sworn to before me this 7 day of April, 2010

NANCY LOCKRIDGE
Notary Public, State of Nevada
Appointment No. 07-1954-10
My Appt. Expires March 1, 2011

Nancy Lockridge
Notary Public

State of Nevada

County of Lander

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

Attachment

The Department of the Interior-Bureau of Land Management (BLM), Battle Mountain District Office is protesting water rights application numbers 79325, 79326 and 79327, filed by the Southern Nevada Water Authority (SNWA) to appropriate ground water in Railroad Valley – Southern Part (Hydrographic Basin 173A) and application numbers 79328 – 79345, also filed by SNWA to appropriate ground water in Railroad Valley – Northern Part (Hydrographic Basin 173B).

This application will withdraw a cumulative total of 22 cubic feet per second (15,928 acre-feet) of ground water annually in Basin 173A and 132 cubic feet per second (95,568 acre-feet) of ground water annually in basin 173B. The cumulative total amount of water requested under the said applications greatly exceeds the estimated annual perennial yield of both Hydrographic Basins. Pumping of large volumes of water from this relatively small area will capture natural recharge from the surrounding mountains, remove water from aquifer storage, reduce or eliminate discharge at several spring/seeps and their riparian areas, and result in excessive water table drawdowns and could negatively injure the 24 identified BLM water rights in basin 173A (permit numbers R06050, R06051, R06054 - R06064, R06066 - R06069, R06098, R06099, R06100 - R06102, R06110, R0611), the 23 identified BLM water rights in the basin 173B (permit numbers 9504, 44765, 48445, 49649, R05231, R05233 - R05237, R05244, R05876, R05878 – R05881, R05883, R05885, R06074 – R06076, V03183, V03184) and other potentially designated Public Water Reserves.

Removal of ground water would prove detrimental to the public interest by degrading habitat on BLM managed public lands. BLM is mandated under the Federal Land Policy and Management Act (FLPMA) of 1976 to manage public lands under a multiple use framework. FLPMA defined multiple use as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output."

Activities that degrade the condition of natural vegetation on public lands or impair management of special status species habitat are not consistent with provisions of the BLM Tonopah Resource Management Plan and other existing BLM policies. There are four Wildlife Management Areas (WMAs) in these hydrographic basins located within close proximity of the proposed water right applications. BLM has identified 24 springs in basin 173A and 214 springs in basin 173B. Water table drawdown resulting from the proposed pumping would damage the health and vigor of WMAs, riparian habitats and phreatophytic vegetation located in Railroad Valley. The WMAs and spring sites provide nesting sites and food resources for a number of breeding birds, waterfowl and native fishes, stopover sites for Neotropical and other migratory birds, and habitat for many bat species. BLM is required by the Endangered Species Act of 1973, as amended to ensure that no action on public lands jeopardizes a threatened, endangered, or proposed species. Threatened, endangered, and candidate species located in Railroad valley are included in (Table 1). In addition to federally listed species, BLM also protects by policy other special status plant and animal species, most notably species designated as "sensitive" by the Nevada BLM State Director. Sensitive species known or thought to occur in Railroad Valley are included in (Table 2). There are a number of other wildlife species not included in these tables that may be negatively affected from ground water drawdown that are known to occur in the Railroad Valley area.

The proposed pumping of large volumes of ground water in Railroad Valley could alter the direction or magnitude of exiting regional ground-water flow gradients near the Nevada Test Site. Historic underground testing of nuclear weapons released large quantities of radionuclides to ground water below some areas of the Nevada Test Site. A change in regional ground-water flow gradients could induce the transport of radionuclides from contaminated areas of the Nevada Test Site to adjacent public lands managed by BLM. Under provisions of its Tonopah Resource Management Plan, BLM will maintain the quality of waters presently in compliance with State and/or Federal water quality standards and minimize releases of hazardous materials to public lands.

The proposed point-of-diversion associated with this water right is located on BLM managed public lands. As of the date of this application, SNWA does not have a right-of-way for the wells or a valid right-of-way authorizing SNWA to transport water from the proposed point of diversion to the intended place-of-use.

Table 1. Threatened, endangered, proposed, and candidate species known to occur in Railroad Valley.

Fish	Common Name	Status
Crenichthys nevadae	Railroad Valley springfish	Threatened

Table 2. Sensitive species known or thought to occur in Railroad Valley

Mammals	Common Name
Myotis ciliolabrum	small-footed myotis
Myotis evotis	long-eared myotis
Myotis thysanodes	fringed myotis
Myotis volands	long-legged myotis
Myotis yumanensis	Yuma myotis
Corynorhinus townsendii	Townsend's big-eared bat
Antozous pallidus	pallid bat
Eptesicus fuscus	big brown bat
Lasionycteris noctivagans	silver-haired bat
Myotis californicus	California myotis
Myotis ciliolabrum	small-footed myotis
Myotis evotis	long-eared myotis
Myotis lucifungus	little brown myotis
Myotis volans	long-legged myotis
Ovis canadensi nelsoni	desert bighorn sheep
Birds	**Common Name**
Aquila chrysaetos	golden eagle
Asio otus	long-eared Owl

Athene cunucularia	burrowing Owl
Buteo regalis	ferruginous Hawk
Charadrius alexandrines	snowy plover
Falco mexicanus	prairie falcon
Grus Canadensis	sandhill Crane
Lanius ludovicianus	loggerhead shrike
Numenius americanus	long-billed Curlew
Pooecetes gramineus	vesper sparrow
Sphyrapicus nuchalis	red-napped Sapsucker
Verminvora luciae	lucy's Warbler
Vireo vicinior	gray Vireo
Fishes	**Common Name**
Gila bicolor ssp.	Railroad Valley tui chub
Gila bicolor ssp.	Hot Creek Valley tui chub