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

IN THE MATTER OF APPLICATION NUMBER 79351
FILED BY Southern Nevada Water Authority (Agent Taggart, Ltd.)
ON January 28, 20 10, TO APPROPRIATE THE
WATERS OF underground (Three Lakes South)

PROTEST

FILED
APR 15 2010
STATE ENGINEER'S OFFICE

Comes now Stephen A. Mellington
Printed or typed name of protestant

whose post office address is National Nuclear Security Administration Nevada Site Office, 232 Energy Way, North Las Vegas NV89030
Street No. or PO Box, City, State and ZIP Code

whose occupation is Nevada Site Office Manager and protests the granting

of Application Number 79351, filed on January 28, 20 10

by Southern Nevada Water Authority to appropriate the

waters of underground (The Lakes South) situated in Lincoln
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)

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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.

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Signed Stephen A Mellington
Agent or protestant

Stephen A. Mellington, NNSA Nevada Site Office Manager
Printed or typed name, if agent

Address 232 Energy Way
Street No. or PO Box

North Las Vegas, NV 89030
City, State and ZIP Code

(702) 295-3211
Phone Number

Subscribed and sworn to before me this 13 day of April, 20 10

KELLY K. SNYDER
Notary Public State of Nevada
No. 07-3825-1
My appt. exp. June 5, 2011

Kelly K. Snyder
Notary Public

State of Nevada

County of Clark

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE MATTER OF APPLICATIONS
No. 79346, 79348, 79349, 79350, 79351 and 79353

EXHIBIT A

Protest by the United States of America, Department of Energy
National Nuclear Security Administration Nevada Site Office

GENERAL

I. The National Nuclear Security Administration, Nevada Site Office (NSO) administers the Nevada Test Site (NTS), which was withdrawn from public use to support a critical national security mission.

II. In administering the NTS, NSO is entitled to use its federally reserved water rights associated with the land withdrawals comprising the NTS for its continuing NTS mission and purposes.

III. The NTS entitlement to federally reserved water rights was specifically affirmed in Cappaert v. U.S., 426 U.S. 128, 96 S.Ct. 2062, 48 L.Ed. 2d. 253(1976), and further acknowledged in the court's dismissal of an action filed by Nevada to require the U.S. to comply with NRS 534.020-534.190 concerning appropriation of water on federally reserved lands (Nevada ex rel. Shamberger v. United States, 279 F.2d. 699(9th Cir., 1960).

IV. The priority dates for the NTS federally reserved water rights are senior to the appropriations sought by the applicant. These rights have not been judicially quantified.

V. Among the areas of the NTS associated with underlying groundwater are Frenchman Flat, Yucca Flat, Rock Valley and Mercury Valley.

VI. The Three Lakes South from which the applicant has applied for an appropriation is part of a regional groundwater system, which has a potential hydrological connection to areas of the NTS, including Mercury Valley, Frenchman Flat, Yucca Flat, Jackass Flat and Rock Valley, among others.

VII. Scientific studies on the NTS have indicated groundwater ages in excess of 10,000 years. Results of such studies imply that a substantial recharge to existing groundwater is not a reasonable expectation given the modern desert environment.

VIII. Hydrologic investigations conducted on the NTS suggest that aquifers of the NTS may have lateral connectivity over substantial distance.

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FINDINGS

I This application requests an appropriation of water from the Three Lakes South basin. The perennial yield of this valley is approximately 4600 acre ft./yr.(approx. 6.34 cfs), according to the statistics of the Nevada Department of Water Resources. Of the state identified 4,600 acre ft./yr. of surface and groundwater (per the Nevada state water rights database), approximately 7,226 acre ft./yr. has been appropriated. Based on these published statistics, the estimated perennial yield has been appropriated by existing water appropriations.

II. The combined volume of water appropriation applied from the Three Lakes South basin by the applicant is 52 cfs, or approximately 37,671 acre feet per year. Since appropriations from this basin are already identified at a volume in excess of perennial yield, the implementation of any further appropriation from this basin would be expected to draw down groundwater reserves from connected basins, including those underlying the NTS.

CONCLUSION

I. Based on the above, it is reasonable to assume that the combination of water appropriations requested by the applicant will impact the NSO's federally reserved water rights associated with the NTS.

II. Approval and development of the water appropriations sought by the applicant could be expected to both draw down the existing groundwater from adjacent hydrographic basins underlying the NTS, thereby impermissibly impacting the NTS federally reserved water rights, as well as potentially intercepting any further recharge to those NTS basins which would otherwise result from a northerly movement of water from the Three Lakes South basin.

III. Any impact to NSO's federally reserved water rights at the NTS would be detrimental to the public interest (N.R.S. 533.370, paragraph 5.), i.e., specifically to the critical NTS national security mission, as well as impacted associated and secondary missions and purposes.

IV. Thus, the proposed use is inconsistent with the inherent rights of the U.S. Government to the extent that it would affect the availability of water for the federal purposes mentioned above.

V. The NSO reserves the right to amend this Protest should further information become available.

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