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

IN THE MATTER OF APPLICATION NUMBER 79375

FILED BY Virgin Valley Water District

ON February 1, 20 10, TO APPROPRIATE THE

WATERS OF Underground

FILED
PROTEST
APR 13 2010
STATE ENGINEER'S OFFICE

RECEIVED
2010 APR 13 AM 11:37
STATE ENGINEER'S OFFICE

Comes now Lincoln County Water District and Vidler Water Company Inc.
Printed or typed name of protestant

whose post office address is P.O. Box 206, Pioche NV 89043
Street No. or PO Box, City, State and ZIP Code

whose occupation is _____ and protests the granting

of Application Number 79375, filed on February 1, 20 10

by Virgin Valley Water District to appropriate the

waters of Underground situated in Tule Desert 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:

Please see 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 LeAnn Brandt
Agent ~~or protestant~~

LeAnn Brandt
Printed or typed name, if agent

Address 3480 GS Richards Blvd. Suite 101
Street No. or PO Box

Carson City, NV 89703
City, State and ZIP Code

775-885-5000 ext. 106
Phone Number

Subscribed and sworn to before me this 12th day of April, 20 10

Elizabeth Leisek
Notary Public

ELIZABETH LEISEK
NOTARY PUBLIC
STATE OF NEVADA
No.06-108485-2 My Appt. Exp. Sept. 7, 2010

State of Nevada

County of Washoe

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment to Protests of
Lincoln County Water District and Vidler Water Company, Inc.
to Applications 79372, 79374 and 79375

1. The Protestants, Lincoln County Water District ("LCWD") and Vidler Water Company, Inc. ("Vidler"), have existing permitted water rights and applications to appropriate water for municipal purposes in the Tule Desert Basin (221). Since 2000, the Protestants have developed multiple production wells and monitoring wells, implemented a monitoring program and continue to collect hydrologic data for ongoing hydrological studies in the basin. The granting of these applications would unduly impair LCWD and Vidler's existing water rights and applications and other senior water rights in the basin. The Protestants requests that the subject applications be denied.

2. The Applicant proposes to pump water from Lincoln County for use in Clark County, Nevada and Mojave County, Arizona. The Applicant has not provided a water service plan or any other technical demonstration of the need for the wells projected to be located within Lincoln County. Currently, the Virgin Valley Water District has approximately 12,115 acre feet of permitted groundwater rights. For many years it has only been using a small portion of these rights to serve its customers. Applicant should not be authorized to export water from Lincoln County for use in Clark County, Nevada or Mojave County, Arizona, particularly when the Applicant has not utilized or developed its existing permitted water rights. Applicant cannot show the need for the use of the water proposed to be appropriated in the applications.

3. Lincoln County has a Water Master Plan for Lincoln County. There are two projects supported by the water rights developed from the Tule Desert that have been identified under Lincoln County's Water Master Plan: the development of 13,000 acres under the Lincoln County Land Act and the development of the Toquop Energy Park. The total water demand for these projects at build out is estimated to range from 15,000 af/yr to 16,000 af/yr. Lincoln and Vidler are ready and willing to proceed with the development of the necessary water resources for the Toquop Energy Park and the land in the Lincoln County Land Act. There is a need for the water in Lincoln County and the State Engineer has already recognized the need to import water from Tule Desert for use in Lincoln County for the Toquop Energy Park and the Lincoln County Land Act.

4. The Applicant does not control the land to place the water to beneficial use and cannot show a need for beneficial use in the areas described in the applications' place of use.

5. There will be no water available to appropriate at the source for the Applicant's applications based upon existing permitted water rights and the LCWD and Vidler senior applications if granted.

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6. The only studies available to support the applications are reconnaissance level studies and estimates. The applications seeking appropriations are not based upon basin specific data showing recharge and/or discharge to adequately determine perennial yield available to appropriate. The State Engineer should require the Applicant to provide a comprehensive hydrologic study or studies showing there is recharge and/or discharge available to appropriate, the hydrologic properties of the proposed points of diversion, and impacts associated with the Applicant's proposed pumping. Until such studies are performed, impacts associated with sustained pumping of substantial water rights at the proposed points of diversion for Applicant's project are not known and may impact existing rights and protectable interests in domestic wells.

7. The proposed points of diversion for these applications lie in Basin 221, while the proposed place of use is Clark County, Nevada and Mojave County, Arizona. The applications call for a transfer of ground water out of the basin of origin for use in another basin. Applicant cannot show compliance with the requirements of the interbasin transfer statute, NRS 533.370(6), and *Bacher v. Office of State Engineer of State of Nevada*, 122 Nev. 1110, 146 P.3d 793 (Nev. 2006).

8. The works necessary to achieve beneficial use of the subject water rights are substantial and costly. The Applicant has not shown the State Engineer proof satisfactory of its financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonably diligence.

9. Protestants object to the export of water from Lincoln County for use in Clark County, Nevada or Mojave County, Arizona. The provisions of NRS 533.438 and NRS 533.4385 must be applied to any transfer and beneficial use of water from Lincoln County to Clark County or Mojave County, Arizona.

10. Any monitoring and management plan proposed by the Applicant must be substantive with supporting analytical data.

11. The Protestants request that the subject applications be denied.