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

FILED
15 APR 2010
STATE ENGINEER'S OFFICE

RECEIVED
2010 APR 15 PM 1:34
STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATION NUMBER 79402
FILED BY Virgin Valley Water District
ON February 01, 20 10, TO APPROPRIATE THE
WATERS OF an Underground Source

PROTEST

Comes now the U.S. Department of Interior, Bureau of Land Management, Caliente Field Office
Printed or typed name of protestant

whose post office address is P.O. Box 237; Caliente, NV 89008
Street No. or PO Box, City, State and ZIP Code

whose occupation is Public Land Management and protests the granting

of Application Number 79402, filed on February 01, 20 10

by Virgin Valley Water District to appropriate the

waters of an Underground Source 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:

Please 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 [signature]
Agent or protestant

Victoria Barr, Field Manager
Printed or typed name, if agent

Address P.O. Box 237
Street No. or PO Box

Caliente, NV 89008
City, State and ZIP Code

775-726-8109
Phone Number

ALICIA HANKINS
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 03-82359-17
MY APPT. EXPIRES JUNE 12, 2011

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

[signature]
Notary Public

State of Nevada
County of White Pine

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Attachment for BLM Protest to Application 79402

The U.S. Department of the Interior, Bureau of Land Management, Ely District Office (BLM) protests application 79402 for the following reasons and on the following grounds, to wit:

Application 79402 requests permission to appropriate 10 cfs (7239.7 AFY) from an underground source on public land managed by the BLM and to export said water outside its hydrographic basin to places of use in southern Nevada and the State of Arizona. Application 79402 is one of 15 filed by Virgin Valley Water District to withdraw a total of 147 cfs (106,423.59 AFY) from underground sources in the Virgin River Valley groundwater basin. The total amount of water requested in the 15 applications is greater than the system yield and far exceeds the perennial yield for the Virgin River Valley (Groundwater Basin 222). Withdrawal of groundwater from the Virgin River Valley would impact basin-wide water table levels and prove deleterious to existing approved use of surface and groundwater resources.

The portion of the Virgin River Valley basin that occurs in the Ely District possesses approximately 43 known springs on public land used in parts of 13 BLM grazing allotments. These springs are considered Public Water Reserves by the BLM since they qualify under the Executive Order 107 signed in 1926. In the case of the 43 springs in the Ely District BLM's portion of the Virgin River Valley, BLM was informed and believes PWR 107 provides reserved protection for the maintenance of flows required for stock watering uses from public springs and water holes.

Lowering of the groundwater table in the Virgin River Valley is a reasonable expectation considering the volume of water requested *in toto* for withdrawal by the Virgin Valley Water District. Effects to surface water resources would include the diminution or complete loss of flow from springs and concomitant loss of range value to BLM, grazing permittees, and citizens of the State of Nevada and the United States of America.

Large-scale withdrawal of groundwater would negatively affect riparian vegetation in and around surface water sources and would alter or destroy wildlife habitat across the Virgin River Valley basin. Wildlife species directly affected includes, but is not limited to; the federally threatened Desert Tortoise and State of Nevada imperiled Desert Valley Kangaroo Mouse. Other federal and State of Nevada sensitive plant and animal species dependent upon surface water resources are found in the Virgin River Valley.

The requested point of diversion associated with Application 79402 is located on BLM managed public lands. As of the date of this application, the Virgin Valley Water District does not have a valid right-of-way authorizing access on public land or for the purpose of constructing works to pump and transport water across public land.

BLM requests that Application 79402 be denied on the grounds that it separately and in conjunction with 14 other applications, would:

1. Conflict with existing rights by adversely affecting federal reserved rights to protect and maintain public use of springs and water holes on public land and adversely affecting certificated rights for stock watering beneficial uses. Existing permitted or reserved rights for stock watering would be placed in jeopardy as surface and groundwater sources are depleted through basin dewatering and/or lowering of the water table to such a degree that water from surface sources or wells would be unavailable for use.

   The proposed withdrawal, in combination with other applications in the Virgin River Valley basin by the same applicant, would apparently exceed basin recharge and sustainability rates. As such, it is reasonable to expect approved surface water uses would be adversely affected and in conjunction with 15 other applications to withdraw and export water from the Virgin River Valley would *in toto* reach a point where water tables are lowered to an extent that natural surface water sources will cease to exist.

   It is reasonable to expect that all 15 applications by the Virgin Valley Water District would not have to be granted before a point would be reached where no unappropriated water is available from the Virgin River Valley basin. That is, the applicant is asking for permission to use water that simply would not exist in the Virgin River Valley basin.

2. The proposed appropriation and use threatens to prove detrimental to the public interest. The Virgin River Valley basin within the Ely District BLM is managed in the multiple-use doctrine for the benefit of the public both nationally and locally. Thirteen grazing allotments are used on public land within the boundaries of the Virgin River Valley basin. BLM believes it would prove detrimental to the public interest for water resources to be impacted to the extent that values placed upon the rangelands in the Virgin River Valley by the BLM, grazing allotment permittees, and citizens of the United States of America are adversely affected. Existing approved uses on public lands for the grazing of livestock would become nullified by withdrawal of water from the basin and the drying-up of surface water sources on public land.

   The surface water resources that would be depleted through water withdrawal actions would affect federally listed and State of Nevada listed plant and animal species of concern. BLM is required to ensure the continued existence of species listed by the Secretary of Interior, under the authority of the Endangered Species Act, and to ensure that the species and their critical habitat are not placed in jeopardy. BLM believes that the magnitude of water withdrawal proposed by the Virgin Valley Water District would place federally listed and State of Nevada species of concern in jeopardy by eliminating surface water resources and associated habitat.