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

FILED
APR 12 2010
STATE ENGINEER'S OFFICE

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STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATION NUMBER.....79440...,

FILED BY.....WASHOE COUNTY.....,

ON.....FEBRUARY 1, 2010....., TO APPROPRIATE THE

WATERS OF .....UNDERGROUND.....

} PROTEST

Comes now.....John Espil Sheep Co.....
Printed or typed name of protestant

whose post office address is..2889 Granville Drive, Sparks NV, 89436.....
Street No. Or P.O. Box, City, State and Zip Code.

whose occupation is ...Ranching..... and protests the granting

of Application Number .79440....., filed on ..February 1, 2010.....

by .....Washoe County, a political subdivision of the State of Nevada.....to appropriate the

waters of ....Underground.....situated in ..Washoe.....
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 hereto and by this reference incorporated herein.....

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 ...Gordon H. DePaoli.....
Agent or protestant

.....Gordon H. DePaoli.....
Printed or typed name, if agent

Address.....6100 Neil Road, Suite 500.....
Street No. or P.O. Box No.

.....Reno, NV 89511.....
City, State and Zip Code No.

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

JOANNE McMASTER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 93-3411-2 - Expires May 10, 2013

Joanne McMaster
Notary Public

State of....Nevada.....

County of ...Washoe.....

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

ALL COPIES MUST CONTAIN <u>ORIGINAL</u> SIGNATURE.

EXHIBIT "A" TO PROTEST OF JOHN ESPIL SHEEP CO. TO APPLICATION NOS. 79438, 79439, 79440, 79441, 79442, 79443, 79444, 79445, 79446, 79447, 79448, 79449 and 79450

The Protest Grounds are as follows:

1. The appropriations proposed in Applications Numbers 79438, 79439, 79440, 79441, 79442, 79443, 79444, 79445, 79446, 79447, 79448, 79449, and 79450 will conflict with existing water rights, including without limitation, water rights held by the John Espil Sheep Company;

2. The proposed appropriations under these Application threatens to prove detrimental to the public interest;

3. The proposed appropriations would conflict with existing water rights and threaten to prove detrimental to the public interest because applicant seeks to appropriate all unappropriated groundwater in Smoke Creek Desert Groundwater Basin (Basin No. 021) for municipal and industrial use outside Basin No. 021;

4. Applicant's application must be rejected because there is no unappropriated groundwater in Basin No. 021, the proposed source of supply and in any case, until the ordered adjudication of water rights for Smoke Creek Desert Groundwater Basin No. 021 is complete and the current rights of water users in that basin finally determined, no new appropriations should be granted;

5. The applicant has not provided proof of its intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence;

6. The applicant has not provided proof of its financial ability and reasonable expectation to actually construct the necessary work and apply the water to the intended beneficial use with reasonable diligence;

7. Applicant seeks an interbasin transfer of groundwater because the proposed point of diversion is in Basin No. 021 while the proposed place of use is in a different basin and the relevant statutory considerations of NRS §533.370(6) determine that the State Engineer should reject the application pursuant to that section;

8. The applicant has not justified the need to import water to the hydrographic basins where its proposed place of use is located;

9. Applicant's proposed action is not environmentally sound as it relates to Basin No. 021 from which water is to be exported;

10. Applicant's proposed action is not an appropriate long term use and will unduly limit future growth and development of Basin No. 021; and

11. The Protestant reserves the right to supplement this protest as additional information becomes available concerning Applications Numbers 79438, 79439, 79440, 79441, 79442, 79443, 79444, 79445, 79446, 79447, 79448, 79449, and 79450.

<u>Conflict with Existing Rights</u>

The appropriations proposed in Applications Numbers 79438, 79439, 79440, 79441, 79442, 79443, 79444, 79445, 79446, 79447, 79448, 79449, and 79450, would conflict with Protestant's use of water under its numerous existing water rights in Basin No. 021. These applications seek to appropriate all unappropriated groundwater within the Smoke Creek Desert

Groundwater Basin (Basin No. 021). The Protestant, John Espil Sheep Co., has numerous water rights in Basin No. 021, including Permit No. 11443 (Certificate No. 4594), Permit No. 16523 (Certificate No. 5389), Permit No. 16810 (Certificate No. 5840), Permit No. 38125 (Certificate No. 13069), Permit No. 48156 (Certificate No. 13076), Permit No. 7142 (Certificate No. 2168), Permit No. 2705 (Certificate No. 1974), as well as Proof No. 0511, Proof No. 05108, and Permit No. 60585. They also include vested water right V09784 and vested rights in the Sheephead Springs field.

The proposed appropriations would conflict with Protestant's existing water rights because the appropriation of all unappropriated groundwater in Basin No. 021 will likely result in a significant draw-down of the local water table that will adversely impact the numerous area springs that are the source of many of Protestant's vested water rights and conflict with Protestant's use of those existing rights.

Additionally, applicant's proposed appropriations, if approved, are likely to result in a draw-down of the local water table that would adversely impact the surface flow of nearby Smoke Creek and conflict with Protestant's use of existing rights to the surface flow of Smoke Creek for stock-watering, including stock-watering under Protestant's vested water right No. V09784.

Threatens to Prove Detrimental to the Public Interest

Applicant's proposed appropriations threaten to prove detrimental to the public interest. The Protestant notes that the perennial yield for Basin No. 021 is estimated at sixteen thousand (16,000) acre feet. Applicant proposes to appropriate all unappropriated groundwater in Basin No. 021 and divert it for use outside hydrographic Basin No. 021, when that water contributes to the flow of springs and surface streams and the height of the water table in Basin No. 021. The appropriation and diversion of all the entire unappropriated perennial groundwater yield of Basin No. 021 to other hydrographic basins alone raises issues under N.R.S. §533.370(5).

Granting these applications for appropriation would result in the pumping of an undetermined duty at a rate if 5 cubic feet per second from a limited number of wells. Applicant's proposed appropriations raise issues under N.R.S. §533.370(5). There are numerous springs and flowing wells in the area of the proposed single well point of diversion. Applicant's proposed appropriations will cause the entire unappropriated perennial groundwater yield of Basin No. 021 to be removed from Basin No. 021 at unsustainable rates. These appropriations threaten to prove detrimental to the public interest because such appropriation and interbasin transfer is likely to negatively impact local water tables and harm existing flowing wells and springs in the area.

No Unappropriated Water in the Proposed Source of Supply

Applicant's application must be rejected because there is no unappropriated groundwater available in Basin No. 021, applicant's proposed source of supply. Applicant proposes to remove groundwater from Basin No. 021 at unsustainable rates, and from a source of supply

containing no unappropriated groundwater, and as such must be rejected under N.R.S. 533.370(5).

In any case, until the ordered adjudication of water rights for Smoke Creek Desert Groundwater Basin No. 021 is complete and the current rights of water users in that basin finally determined, it is impossible to know the extent, if any, of unappropriated groundwater present in the Basin. Accordingly, no new appropriations, and certainly no new appropriations that seek to appropriate all unappropriated groundwater in the Basin should be decided until adjudication is complete.

Applicant's Proposed Action Is Speculative

The applicant has not provided proof of its intention in good faith to construct facilities necessary to apply the water at issue to the intended beneficial municipal use within a reasonable time period.

The applicant has not provided proof of its reasonable expectation to construct the necessary works and apply the water at issue to the intended beneficial municipal use with reasonable diligence.

Applicant has Not Justified the Need to Import Water to the Hydrographic Basins Where the Proposed Places of Use Are Located

The applicant fails to justify the need to import water to the hydrographic basins where the proposed places of use are located. Applicant does not specify the hydrographic basins where its proposed places of use are located. Applicant does not specifically identify any project for which a specific quantity of water is needed, nor does applicant show how any such quantity of needed water would be reduced by existing water rights. Without such specificity, under N.R.S. §533.370(6)(a) and the decision of the Nevada Supreme Court in *Bacher v. State Engineer*, 146 P.3d 793 (Nev.2006), a reasonable mind cannot accept as adequate, and the State Engineer cannot reach a valid conclusion supported by substantial evidence, that applicant has demonstrated the need to import water to the hydrographic basins where applicant's proposed places of use are located.

Applicant's Proposed Action Is Not Environmentally Sound

As noted above, applicant proposes to appropriate and divert the entire unappropriated perennial groundwater yield of Basin No. 021, for use in other basins. The environmental impact of a water exportation scheme of this relative magnitude will have negative repercussions on the environment within Basin No. 021. The scale and severity of the environmental impact upon Basin No. 021 is apparent. Basin No. 021 currently contains numerous springs and flowing artesian wells that are the source of water for riparian environments and wildlife within Basin No. 021. Exportation of the entire unappropriated perennial groundwater yield of Basin No. 021 is likely to have a severe impact on riparian environments and wildlife within the Basin.

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Applicant's Proposed Action Is Not an Appropriate Long-Term Use and Will Unduly Limit Future Growth And Development of Hydrographic Basin No. 021

As noted above, applicant proposes to appropriate and divert the entire unappropriated perennial groundwater yield of Basin No. 021, for use in other basins. The export of the entire unappropriated perennial groundwater yield of Basin No. 021 will unduly limit future growth and development of Basin No. 021 by removing all remaining unappropriated groundwater, if any such unappropriated groundwater exists, from Basin No. 021 thus making any such water entirely unavailable for future growth and development within Basin No. 021. Such large scale exportation is not an appropriate long-term use because applicant has not demonstrated a need for such water for specific beneficial purposes at the proposed places of use.