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STATE ENGINEER'S OFFICE

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

FILED
APR 09 2010
STATE ENGINEER'S OFFICE

In the Matter of Application Number 79450
Filed By Washoe County on February 1, 2010
for Permission to Appropriate the Public
Waters of the State of Nevada

PROTEST

Comes now The Pyramid Lake Paiute Tribe of Indians, whose post office address is P.O. Box 256, Nixon, Nevada 89424, whose occupation is a federally recognized Tribe of Indians, the governing body of the Pyramid Lake Indian Reservation, organized pursuant to the Indian Reorganization Act of 1934, with a Constitution and By-laws approved by the Secretary of Interior, and protests the granting of Application Number 79450, filed on February 1, 2010 by Washoe County for permission to appropriate the public waters of the State of Nevada, for the following reasons and on the following grounds, to wit:

1. Application No. 79450 is one of thirteen applications (Application Nos. 79438-79450) recently filed to appropriate the same amount of water, from the same proposed points of diversion, for the same speculative water exportation scheme, as proposed under pending, protested Application Nos. 63992-64004. Application Nos. 63992-64004 were filed to appropriate the same amount of water, from the same proposed points of diversion, for the same speculative water exportation scheme, as was proposed under Application Nos. 50191 et al. Application Nos. 50191 et al. were denied by the State Engineer under Ruling #4599 on the ground that approval of the applications would be detrimental to the public interest. Application Nos. 79438-79450 should be denied for the same reason and upon the same findings.

2. The applicant's supplemental answer to "Question 12" does not provide sufficient details for the proposed project or proposed water usage, to support or explain the statement that the 20-year average consumptive use will not exceed the perennial yield of the groundwater basin. The application should be denied for the applicant's failure to provide a detailed description of the project which would allow the public, interested parties, protestants, and the State Engineer to make a proper evaluation of the potential impacts of approving the transfer.

3. Application 79450 appears to be duplicative of Application 64004 in that it seeks to appropriate the same amount of water, from the same proposed point of diversion, for the same purpose and place of use. The applicant's supplemental answer to "Question 13" also implies a duplicative filing. The applicant should be required to withdraw previous Application No. 64004 or the current Application No. 79450.

4. Application Nos. 79438-79450 seek to appropriate more groundwater than the perennial yield of the basin as currently recognized by the State Engineer.

5. Application Nos. 79438-79450 seek to appropriate more groundwater than the safe yield of the basin.

6. On information and belief, the proposed point of diversion is located on public land managed by the U.S. Bureau of Land Management.

7. On July 22, 2009, the State Engineer granted a Petition for the Adjudication of the water rights in the Smoke Creek Desert Hydrographic Basin #21, and therefore the application should not be considered, and certainly not granted, until the conclusion of the adjudication of the basin.

8. The application involves an interbasin transfer and should be rejected pursuant to NRS 533.370(6) for, among other reasons, the applicant's failure to:

A. identify the specifics of the proposed project, including the basin(s) into which water will be imported,

B. justify the need to import water to the other basin(s),

C. demonstrate that a conservation plan(s) has been adopted and effectively carried out for the other basin(s),

D. demonstrate that the proposed export of water from the Smoke Creek Desert Basin is environmentally sound, and

E. demonstrate that the proposed action is an appropriate long-term use which will not limit growth and development in the Smoke Creek Basin.

9. The application for interbasin transfer should also be rejected pursuant to NRS 533.370 for the lack of information regarding:

A. access to the use of public/private lands necessary for the construction of the works of diversion and the means of conveyance,

B. financial ability to construct the works and apply the water to the intended use with reasonable diligence,

C. technical feasibility to construct the works and apply the water to the intended use with reasonable diligence, and

D. justification for the quantity of water required for the proposed project.

10. Granting the application would threaten to prove detrimental to the public interest.

11. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application - by way of example Fernley's Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 - and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

12. Granting the application would threaten to prove detrimental to the public interest and the interests and reserved water rights of the Pyramid Lake Paiute Tribe for the reasons stated above, and because among other things, it would:

A. deplete water from the Pyramid Lake by depleting the underflow from the Smoke Creek Desert Basin to the Pyramid Lake Basin;

B. degrade or impair water quality in the Pyramid Lake Basin as a result of increasing groundwater withdrawals from the Smoke Creek Desert Basin;

C. adversely affect regional groundwater levels to the detriment of Pyramid Lake and the groundwater resources of the Pyramid Lake Paiute Tribe;

D. have a detrimental effect on the quality of the Pyramid Lake Paiute Tribe's groundwater resources;

E. prevent or interfere with the conservation or recovery of the two principal fish in the lower Truckee River and Pyramid Lake, the endangered cui-ui and the threatened Lahontan cutthroat trout, in violation of (i) the Endangered Species Act, 16 U.S.C. §1531 et seq., and (ii) Nevada law protecting the cui-ui;

F. adversely affect the recreational value of Pyramid Lake;

G. interfere with the purposes for which the Pyramid Lake Indian Reservation was established;

H. deplete the supply of water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

I. affect the suitability of irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

J. increase the cost of supplying irrigation water within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin;

K. adversely affect springs and flowing wells within the Pyramid Lake Indian Reservation portion of the Smoke Creek Basin; and

L. otherwise adversely affect the interests of the Tribe.

13. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

THEREFORE this Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.

Wolf, Rifkin, Shapiro, Schulman and Rabkin, LLP

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3556 East Russell Rd., 2nd Floor
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Tel: (702) 341-5200
Agents for the Tribe

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

C. Rehfeld
Notary Public

C. REHFELD
Notary Public State of Nevada
No. 99-41339-1
My appt. exp. June 10, 2013

State of Nevada

County of Clark

My Commission Expires: June 10, 2013

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