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

FILED
JUL 01 2010
STATE ENGINEER'S OFFICE

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STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER.....79650.....,

FILED BY.....JACKRABBIT PROPERTIES LLC.....,

ON.....APRIL 30, 2010....., TO APPROPRIATE THE

WATERS OF .....UNNAMED SPRING.....

} 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 .79650....., filed on ..April 30, 2010.....

by .....Jackrabbit Properties LLC.....to appropriate the

waters of ....Unnamed Spring.....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 ...1ST.....day of....July....., 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 ORIGINAL SIGNATURE.

EXHIBIT "A"/ TO PROTEST TO APPLICATION NO.'S 79650 AND 79651

The Protest Grounds are as follows:

1. The applicant specifies and applicant's map shows the existing points of diversion for both water rights as located in California, and the Nevada State Engineer has no jurisdiction to approve changes to California water rights ;
2. The proposed changes in point of diversion and places of use under Application Numbers 79650 and 79651 will conflict with existing water rights, including without limitation, water rights held by the John Espil Sheep Company;
3. The proposed changes in point of diversion and place of use under the Application threatens to prove detrimental to the public interest;
4. The proposed changes would conflict with existing water rights and threaten to prove detrimental to the public interest because applicant seeks to change the type of use of the water rights at issue from irrigation to municipal and industrial and seek to transfer the entire duty of such water rights not merely the consumptive use component;
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. The Protestant reserves the right to supplement this protest as additional information becomes available concerning Application Numbers 79650 and 79651.

No Nevada State Engineer Jurisdiction

Applicant seeks to change the point of diversion of two water rights with existing points of diversion in California. Applicant's map submitted with its application clearly shows this. The Nevada State Engineer has no jurisdiction to approve any changes to California water rights with existing points of diversion in California.

Conflict with Existing Rights

The proposed changes in point of diversion and place of use under Application Numbers 79650 and 79651 would conflict with Protestant's use of water under its numerous existing water rights in Basin 021. Application Number 79650 and 79651 seek to change the point of diversion of water rights from an area geologically connected to the Smoke Creek Desert Groundwater Basin (Basin No. 021) to a point of diversion within Basin No. 021 and place of use outside Basin No. 021. The Protestant, John Espil Sheep Co., has numerous water rights in Basin 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.

In addition applicant's proposed changes if approved, are likely to adversely impact the surface flow of 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. These water rights of John Espil Sheep Company are nearest to the proposed POD for Application Numbers 79650 and 79651.

Threatens to Prove Detrimental to the Public Interest

Applicant's proposed changes threaten to prove detrimental to the public interest. Applicant proposes to divert a relatively significant portion of the flow of Smoke Creek, .20 cfs under application number 79650 and .20 cfs under application number79651, for a total of .40 cfs and an unspecified amount of water, per annum for use outside hydrographic Basin 021, when that water was previously used for irrigation within Basin 021. If applicant diverts .40 cfs over an entire year it would result in the diversion of approximately 289.5864 afa. The diversion of such a flow of water and an unspecified but possibly substantial amount of water to other hydrographic basins from the arid regions of Basin 021 alone raises issues under N.R.S. §533.370(5). This change threatens to prove detrimental to the public interest because such exportation is likely to negatively impact local water tables, harm existing flowing wells in the area, and significantly reduce the flow of Smoke Creek.

Applicant's Proposed Action would Conflict with Existing Rights and Threatens to Prove Detrimental to the Public Interest because They Seek to Transfer the Entire Duty of a Water Right Currently Permitted for Irrigation to Municipal and Industrial Uses Outside Hydrographic Basin 021 without Regard to the Consumptive Use Component of Such Irrigation Right

Applicant seeks to change the manner of use of the water rights at issue from irrigation to municipal and industrial and seeks to transfer the entire duty of such water rights for use outside of Basin 021. The State Engineer is authorized by N.R.S. §533.3703 to consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the place of diversion, manner of use or place of use complies with the provisions of N.R.S. §533.370(5). Consideration of these factors clearly shows that applicant's proposed changes would violate the provisions of that section by conflicting with existing rights and threatening to prove detrimental to the public interest. The water rights at issue in Application Numbers 79650 and 79651 are currently permitted for irrigation purposes. Water not consumed by such irrigation use returns to either the surface waters or groundwater of Basin 021 and is thus available for use by other appropriators. Applicant seeks to change the manner of use of the water rights to municipal and domestic and to transfer the entire duty of those rights without regard to consumptive use.

Applicant's proposed changes would conflict with existing rights. The existing consumptive use of the water rights for irrigation results in the return of the non-consumptive use component of such water rights to the waters of Basin 021 where it is available to other appropriators. Applicant's proposed changes in manner of use and place of use would make the non-consumptive use portion of the irrigation water rights

unavailable to other appropriators. Applicant's proposed change in place of use would conflict with existing rights by removing the entire duty of the irrigation water rights at issue from Basin 021 so that the non-consumptive use component of such water would no longer be available for use by other appropriators.

Applicant's proposed changes would threaten to prove detrimental to the public interest. As noted above applicant's proposed changes would remove the entire duty of the irrigation water rights at issue from Basin 021. The non-consumptive use component of those water rights would no longer return to the waters of Basin 021. Applicant's proposed changes would threaten to prove detrimental to the public interest because such non-consumptive use water would no longer be available to riparian habitats and wildlife or for groundwater recharge in Basin 021.

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 fails to specify the intended beneficial use, stating only that such use is to be for municipal purposes within the proposed place of use. Applicant's proposed use violates Nevada's anti-speculation doctrine and N.R.S. § 533.370(1)(c)(1), because applicant provides no proof of applicant's good faith intent to construct necessary works and apply the water to a beneficial use with reasonable diligence. See, *Bacher v. State Engineer*, 146 P.3d 793, 799, (Nev.2006) (Nevada's anti-speculation doctrine "precludes" applications "by persons who would only speculate on need").

Applicant fails to specify exactly what party intends to put the water to beneficial use and fails to specifically identify projects requiring the additional water indicating only that proposed usage is related to Washoe County planning studies showing a demand for additional municipal water resources to supply existing and projected growth. Although an applicant need not be the party putting the water to beneficial use it must have a formal relationship with the party intending to put the water to beneficial use. Applicant fails to indicate any such formal relationship with whatever parties intend to put the water to use for, as applicant specifies, municipal purposes to supply existing and projected growth.