

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

IN THE MATTER OF APPLICATION NUMBER 79807
FILED BY CITY OF WEST WENDOVER, NEVADA &
CITY OF WENDOVER, UTAH
ON APRIL 26, 2010, TO APPROPRIATE THE
WATERS OF UNDERGROUND

} PROTEST

FILED
MAY 28 2010
STATE ENGINEER'S OFFICE

Comes now Wendover Project, LLC, a Nevada Limited liability company and The Star Living Trust
whose post office address is P.O. Box 81624, Las Vegas, NV 89180
whose occupation is Ranching and protests the granting
of Application Number 79807 filed on April 26, 2010
by City of West Wendover, Nevada & City of Wendover, Utah to appropriate
the waters of Underground situated in Elko
County, State of Nevada, for the following reasons and on the following grounds, to wit:

Please refer to Attachment "A"

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THEREFORE the Protestant requests that the application be Denied
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Gregory M. Bilby
Address 9480 Double Diamond Parkway, Suite 200
Reno, Nevada, 89521

Subscribed and sworn to before me this 19 day of May, 2010

ANTOINETTE K. MORRISON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-88271-2 - Expires February 8, 2012

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.

Attachment "A"
To Protest filed against Application 79807

Wendover Project, LLC, a Nevada limited liability company and The Star Living Trust protest the granting of Application 79807 on the following grounds:

1. There is no unappropriated water at the source. Application 79807 seeks to appropriate 6.0 cfs of water from an underground source within the Goshute Valley Hydrographic Basin (Basin 187). The perennial yield of this basin is 11,000 acre-feet annually according to reports published by the U.S. Geological Society. Existing groundwater appropriations within this basin exceed this perennial yield figure as shown in the records of the State Engineer's office. Pursuant to NRS 533.370(5), The State Engineer is prohibited by law from granting an application to appropriate water within a groundwater basin, **"where there is no unappropriated water in the proposed source of supply."**

Prior rulings by the State Engineer, specifically Ruling #5363 issued on June 4, 2004 have denied prior appropriations of groundwater within this basin. Quoting from Page 3 of said ruling the State Engineer wrote:

"The committed groundwater resources of the Goshute Valley Hydrographic Basin currently exceed the groundwater basin's estimated perennial yield. The State Engineer concludes that the approval of the subject applications would result in the withdrawal of substantial amounts of groundwater for industrial purposes in excess of the perennial yield of the Goshute Valley Hydrographic Basin and therefore would adversely affect existing rights and threaten to prove detrimental to the public interest."

Based on the above prior ruling of the State Engineer Application 79807 should be denied.

2. The proposed use will conflict with existing rights. Wendover Project, LLC and the Star Living Trust have senior permitted and certificated groundwater rights within Basin 187. The proposed point of diversion for Application 79807 is within the vicinity of several of these rights and the appropriation of water sought by the Applicants will conflict with those senior rights by drawing down the static water level to unreasonable levels. Application 79807, if approved, will result in an over appropriated groundwater basin and will adversely impact the Protestant's water rights.
3. Application 79807 proposes an inter basin transfer of groundwater. The criteria for consideration for an inter-basin transfer of water are referenced by NRS 533.370(6). Subsection (a) of that statute lists one of these criteria as **"Whether the applicant has justified the need to import the water from another basin;"**

In the case of the Application 79807 which seeks an additional appropriation of 6.0 cfs, the applicants have not fully developed their existing water rights within Basin 187 and therefore cannot show a need for the water sought under this

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application. There are currently nine (9) permits owned by either the City of West Wendover, Nevada or the City of Wendover, Utah within the Goshute Valley Hydrographic Basin. Seven of these are municipal groundwater rights with a total combined duty of 4,335 acre-feet (note – three of these permits were the subject of State Engineer’s Ruling #3573 which resulted in Basin 187 being fully appropriated). The Applicants have not perfected all of these rights and thus have not demonstrated or justified a need for the water.

The Applicants also have existing water rights within Basin 187 which they have not developed. Specifically Permit 27745, Certificate 9708 which is owned by the City of West Wendover and is issued for mining and milling purposes, has a certificated duty of 579.19 acre-feet. There has been no apparent attempt to develop or convert this right to municipal purposes.

Finally, as it pertains to the issue of demonstrating a need for the water, The Applicants also have three permits for quasi-municipal use in Basin 191. These three permits (50340, 50341 and 50342) were issued in 1987 and to-date, neither the Proofs of Completion of Work and of Beneficial Use have been filed for these permits. The failure by the Applicants to complete the works of diversion, develop and place these rights to beneficial use is further evidence of the failure to justify a need for the water sought under this Application.

4. Subsection (c) of NRS 533.370(6) cites that one criteria for approval of an inter basin transfer is a determination of whether or not the proposed transfer is environmentally sound as it pertains to the basin of origin. In prior hearings before the State Engineer pertaining to appropriations of groundwater sought by the Applicants within Basin 187, there was evidence provided that the appropriation of groundwater from the vicinity of Big Springs would result in harm to the existing wetlands, spring pools and habitat in the vicinity of the spring complex and that this could impact wildlife, including some threatened and endangered species. As a result, the point of diversion for those groundwater appropriations were moved several miles to the east in the vicinity of the Applicants present day well field. Application 79807 ignores the recognition of this concern by seeking to withdraw water from a point that will clearly adversely impact the aforementioned wetlands, spring pools and habitat and thus the State Engineer should find that the proposed transfer is not environmentally sound.
5. Finally, this application does not serve the public interest in that it seeks an appropriation of groundwater in excess of the perennial yield, would adversely impact and conflict with existing rights, would limit the development of water resources and growth within the Goshute Valley Hydrographic Basin and is contrary to prior rulings by the State Engineer, Furthermore, the Applicants have neither justified a need for the water nor shown that the proposed inter basin transfer is environmentally sound.

For the reasons cited above, the State Engineer should deny Application 79807.

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