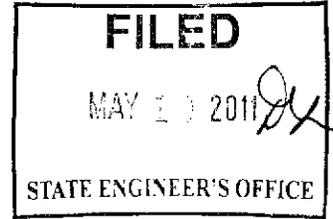


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 80668
FILED BY RUBY HILL RANCH, LLC
ON MARCH 7, 20 11



PROTEST



Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 677, EUREKA, NEVADA 89316

Street No. or PO Box, City, State and ZIP Code

whose occupation is POLITICAL SUBDIVISION

and protests the granting

of Application Number 80668, filed on MARCH 7, 20 11

by RUBY HILL RANCH, LLC for the

waters of UNDERGROUND situated in EUREKA

an underground source 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

RECEIVED
2011 MAY 10 AM 11:10
STATE ENGINEER'S OFFICE

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

Leonard Fiorenzi

Agent or protestant

LEONARD FIORENZI, COMMISSION CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 677

Street No. or PO Box

EUREKA, NEVADA 89316

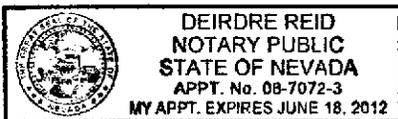
City, State and ZIP Code

(775) 237-5262

Phone Number

E-mail

Subscribed and sworn to before me this 9TH day of MAY, 20 11



Deirdre Reid

Notary Public

State of NEVADA

County of CARSON CITY

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

Exhibit "A"
Eureka County Protest to Ruby Hill Ranch LLC.
Application No. 80668

1. There are currently more than 134,000 acre-feet per year of committed water rights in Basin 153, Diamond Valley (source: <http://water.nv.gov>, last accessed 05/05/11). The current best estimate of agricultural consumptive use in the basin is approximately 55,000 acre-feet per year (Montgomery, et al., 2010) compared to an estimate of the perennial yield of the basin of approximately 30,000 acre-feet. At a public meeting at the Eureka Opera House in April 2010, it was stated by personnel from the State Engineer's office that the perennial yield of the basin was fully committed as of May 15, 1960. The base right for Application 80668 (Application 20376) was not filed until March 21, 1962, nearly two years after the State Engineer at that time had fully committed the groundwater resource by approving applications equal to the perennial yield of the basin. Consequently, there is no unappropriated water at the proposed source of supply, the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells and threatens to prove detrimental to the public interest.

2. The proposed place of use is adjacent to the service area of the Devils Gate General Improvement District that is owned and operated by Eureka County as a public water supply system. To date, Eureka County has expended more than \$25,000,000 upgrading the community water supply to the Devils Gate GID and the Town of Eureka public water systems to ensure a supply that meets current and reasonably foreseeable future demand and the applicable drinking water standards. Much of the groundwater in the general vicinity of the proposed point of diversion is associated with concentrations of arsenic that exceed the current drinking water standard and the County achieves compliance by careful blending water from multiple sources. The most recent update of the *Eureka County Water and Sewer Master Plan* shows a planned water line with the expressed purpose of serving the property identified as the place of use for Application 80668 with water that meets the drinking water standards. It is anticipated that the groundwater at the proposed point of diversion will exceed the drinking water standard for arsenic and will require costly treatment to remove arsenic because the proposed use will constitute a public water system. It is evident from the description and estimated cost of the works as stated in Application 80668 that no expensive treatment to remove arsenic is contemplated and that water delivered to the public should be anticipated to be out of compliance with the applicable regulations. The County acquired the Devils Gate GID largely to address deficiencies in that system. Because no arsenic treatment is apparently contemplated, a public water system associated with the proposed use conceivably would need to be acquired by the County in the future to protect the health and welfare of the persons consuming the water. Consequently, the proposed use threatens to prove detrimental to the public interest.

Exhibit "A"
Eureka County Protest to Ruby Hill Ranch LLC.
Application No. 80668

3. The small amount proffered for the cost of the works stated in Application 80668 fails to recognize the likelihood that expensive arsenic treatment may be required for the proposed use calls into question whether or not the applicant has allocated sufficient funds or has the financial resources to adequately develop their proposed project. Expensive arsenic removal is the bane of small water systems. The applicant has not adequately presented the State with the scope of its proposed works, nor has the applicant demonstrated its ability to finance the works. Eureka requests the opportunity to 1) review a proposed scope of work to achieve beneficial use and 2) satisfy its concerns regarding corporate purpose and financial ability.
4. Application 80668 proposes to remove 5.00 acres from irrigation under Permit 20376. There is evidence to the effect that there has been no irrigation of these 5.00 acres for at least the past 15 years such that the water rights may be subject to forfeiture. As a result, increasing the groundwater extractions from the basin by 20 acre-feet per year would exacerbate the problems already associated with over allocation of the resource. Consequently, there is no unappropriated water at the proposed source of supply, the proposed use conflicts with or will impair and interfere with existing rights and protectable interests in existing domestic wells and threatens to prove detrimental to the public interest.
5. The Devils Gate General Improvement District should provide water service to Ruby Hill Ranch LLC's property upon application and annexation into the Devils Gate General Improvement District and the payment of all infrastructure costs, dedication of easements and other requirements of the Devils Gate General Improvement District to provide water service to the property.
6. The State Engineer should consider the consumptive use of the water rights sought to be changed and the consumptive use of the proposed beneficial use of water in determining whether the proposed change in the point of diversion, manner of use and place of use complies with the provisions of NRS 533.3703. The subject change application seeks to change the manner of use from irrigation and domestic purposes to commercial purposes.
7. The place of use is not served by the Town of Eureka wastewater collection system and treatment plant. Waste from the proposed recreational vehicle park and commercial parcels by default will be disposed of via a commercial septic system and leach field. This point source has the potential to introduce significant waste loading to the aquifer significantly greater than would be allowed under Eureka land use policies if the property were to be developed for single-family residences. Consequently, the potential for degradation of groundwater quality associated with the proposed use threatens to prove detrimental to the public interest.

Exhibit "A"
Eureka County Protest to Ruby Hill Ranch LLC.
Application No. 80668

8. Should these protests result in hearings before the State Engineer, Eureka County requests that such hearings be held in Eureka to facilitate access by the body of Protestants.