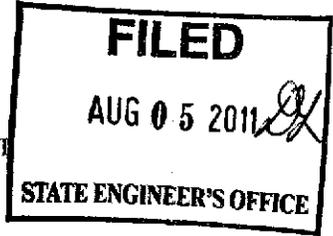


IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA



IN THE MATTER OF APPLICATION NUMBER 80893
FILED BY U.S. Dept. of Interior, Bureau of Land Management
ON June 7, 20 11



PROTEST

Comes now F.I.M. Corporation, along with Fred Fulstone as representative of the Nevada Cattlemen's Association
Printed or typed name of protestant
whose post office address is P. O. Box 12 Smith, Nevada 89430
Street No. or PO Box, City, State and ZIP Code
whose occupation is Rancher and protests the granting
of Application Number 80893, filed on June 7, 20 11
by United States Department of Interior, Bureau of Land Management for the
waters of an underground source situated in Lyon
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:
Please see Exhibit 1.

THEREFORE the Protestant requests that the application be DENIED

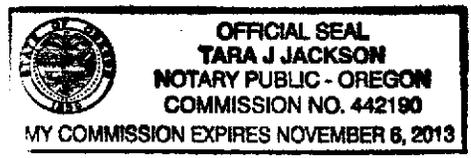
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

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Signed Courtney D. Duke NSB 10573
Agent or protestant
Schroeder Law Offices P.C., Therese A. Ure, by Courtney D. Duke
Printed or typed name, if agent
Address 440 Marsh Ave.
Street No. or PO Box
Reno, Nevada 89509
City, State and ZIP Code
775-786-8800
Phone Number
counsel@water-law.com
E-mail

Subscribed and sworn to before me this 4th day of August, 20 11



Tara Jackson
Notary Public
State of Oregon
County of Multnomah

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

Exhibit 1

Protest to Application: 80893

Protestant: F.I.M. Corporation, via **Fred Fulstone**, Secretary/Treasurer, as a Nevada registered corporation, along with Fred Fulstone as representative of the Nevada Cattlemen's Association

Post Office Address: P.O. Box 12, Smith, Nevada 89430

Protestant F.I.M Corporation, c/o Fred Fulstone, Secretary/Treasurer, filed its underground water application on December 7, 2010 (as corrected on January 4, 2011) for .0124 cfs for stock watering (2000 sheep) and domestic uses. This application will provide water to Protestant's stock on its USDI-BLM Grazing Allotment. F.I.M Corporation protests application 80893 as it attempts to file for an additional water use over and above F.I.M Corporation's source, point of appropriation and the places of use.

Protestant will be injured if this project is permitted. Protestant requests that the application be denied.

Protest Points:

1. This application will cause injury to Protestant's priority application for stock water (Application #80332) filed and not in conflict with the basin designation order. Specifically, this application will diminish the amount of water available for Protestant's stock and could prove detrimental to their livelihood. There will be a substantial interference and impairment to Protestant's range stock water.
2. The area upon which the groundwater will be appropriated is a partially designated basin pursuant to NRS 534.120(1)-(2). The groundwater in this area has been restricted to new appropriations for commercial, stockwater or industrial purposes only. *See generally* State Engineer Order No. 1126. This is an application to appropriate water for wildlife purposes (deer, antelope, and sage grouse) which is not a preferred or permissible new appropriation in this basin. This application is in conflict with the management of this designated area and must be denied.
3. This application attempts to appropriate water for wild horses as noted in the "miscellaneous remarks" section on the application, however such use is not requested in the type of use as stated in sections 3 and 4 on the application.
4. This application is vague and ambiguous. The Bureau of Land Management ("BLM") attempts to argue that water for wild horses is allowed, despite the basin closure, as the Appropriate Management Level for wild horses in the Pine Nuts is a "trace." This information is not substantiated, and is immaterial and irrelevant as this application does not request water for wild horses.



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5. The application is duplicitous. The application purports to apply for a water right “in conjunction with F.I.M. Corporation,” but F.I.M. Corporation was not only unaware of this proposed “joint” use, it also strongly opposes this “conjunctive” use. A proposition of conjunctive use with an individual who neither knows about the proposal nor consents to the conjunctive use is contrary to the public interest and should be denied.

6. The application is contrary to the public interest. The State Engineer has a number of policy considerations to assess the public interest. *See Pyramid Lake Paiute Indian Tribe of Indians v. Washoe County* 918 P.2d 697 (1996); NRS 533.370(5). To help determine if the application will harm the public interest, the applicant must demonstrate the magnitude of the use of water, such as describing the number of animals to be watered. *See Pyramid Lake Paiute Indian Tribe* 918 P.2d 697. This application fails to state or even approximate the number of wild animals that will be watered. Consequentially, the State Engineer does not have sufficient information to appropriately evaluate whether the application is contrary to the public interest. This application should be denied.

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