IN THE MATTER OF APPLICATION NUMBER 81426

FILED BY Tonopah Public Utilities

ON 13 January, 20 12

PROTEST

FILED
MAR 16 2012
STATE ENGINEER'S OFFICE

Comes now Wayne N. Hage, Executor of Estate of E. Wayne Hage.
Printed or typed name of protestant

whose post office address is P.O. Box 513, Tonopah, NV 89049
Street No. or PO Box, City, State and ZIP Code

whose occupation is Ranching and Farming and protests the granting

of Application Number 81426, filed on 13 January, 20 12

by Tonopah Public Utilities for the

waters of an Underground Source situated in SW1/4 SW1/4 Sec.16, T5N R44E
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 Attachment "A"

THEREFORE the Protestant requests that the application be Issued subject to prior rights
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 Wayne N. Hage executor of Estate of E. Wayne Hage
Agent or protestant

Wayne N. Hage Executor, Estate of E. Wayne Hage
Printed or typed name, if agent

Address P.O. Box 513, Tonopah, NV 89049
Street No. or PO Box

Tonopah, NV 89049
City, State and ZIP Code

1 (775) 223-9258
Phone Number

almaty21@hotmail.com
E-mail

RECEIVED
2012 MAR 16 PM 4:16
STATE ENGINEER'S OFFICE

Subscribed and sworn to before me this 16th day of March, 20 12

Gloria K. Lash
Notary Public

GLORIA K. LASH
NOTARY PUBLIC
STATE OF NEVADA
No.88-0298-5 My Appt. Exp. Dec. 15, 2014

State of Nevada

County of Carson City

+ **$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.**

Attachment "A"

1. The vested water rights belonging to the Estate of E. Wayne Hage which the granting of the application will affect, have been recognized under Fifth Judicial District Court Decree 5038 and the United States Court of Federal Claims, Case Number 91-1470L. These rights are recognized under the local laws and customs of this state, and are recognized, acknowledged, and confirmed by the United States Supreme Court.
2. The granting of the subject application will interfere with 3 vested and certificated surface and underground water rights owned by the Estate of E. Wayne Hage situated in groundwater basin number 141. Pursuant to NRS 533.510 Prior rights not affected which states, "NRS 533.485 to 533.510, inclusive, do not affect the validity of rights to the use of water for watering livestock or other purposes acquired under the previously existing laws of this state or by decree or impair any existing vested or decreed right to the use of water for that purpose."
3. NRS 533.370 § 5 states, "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer **shall** reject the application and refuse to issue the requested permit.
4. The vested waters of the Estate, which are located in wells upon which it relies to water livestock may be dried up if Tonopah Public Utilities is allowed to remove water from this location which is near to the Estates existing vested water rights.
5. If the Tonopah Public Utilities applications are granted, the water table will be lowered, and the Estates will be forced to deepen its present wells which will increase it's pumping costs.
6. The Estate is extremely concerned since Tonopah Public Utilities (by pumping water at Rye Patch Channel) has already dried up the Estates water, which naturally arose and flowed down the Rye Patch Channel. The Estate has both vested and certified rights to the water at Rye Patch Channel and is unable to use its water since it has been dried up by the pumping of the Tonopah Public Utilities Wells. The Estates vested water right on Rye Patch Channel is a prior water right to that of the Tonopah Public Utilities wells in the same location. Tonopah Public Utilities has not satisfied the Estates prior water right, which they have interfered with and are aware of. Therefore, there is no reassurance they will remedy any interference they might cause to the Estates vested water rights by moving some of its wells to a new location.
7. The Estate of E. Wayne Hage demands a hearing be granted before any application is granted to Tonopah Public Utilities unless Tonopah Public Utilities 1) First, provides water to the Estate in order to satisfy the prior water rights it has already interfered with at the Rye Patch Channel. 2) Second, Tonopah Public Utilities agrees to compensate and provide water to the Estate of E. Wayne Hage if it adversely affects the nearby water rights in the location of this application. If this application is to be approved with out these protections and conditions, the Estate of E. Wayne Hage demands a hearing so that an offer of proof may be submitted by the Estate of E. Wayne Hage so that all parties have the opportunity to present all evidence so that the State Engineer may make an informed decision.
8. For these reasons the Estate of E. Wayne Hage pray that the applications are only granted subject to prior rights of the vested and certified waters owned by the Estate of E. Wayne Hage, and the conditions set forth above.