

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

FILED  
MAY 17 2012  
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 81727  
FILED BY Ready Mix of Scottsdale, AZ  
ON April 3, 20 12, TO APPROPRIATE THE  
WATERS OF Underground



PROTEST

Comes now Col. Steven D. Garland

Printed or typed name of protestant

whose post office address is 4430 Grissom Avenue, Suite 100, Nellis AFB, NV 89191-6520

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

whose occupation is Base Commander

and protests the granting

of Application Number 81727, filed on April 3, 20 12

by Ready Mix of Scottsdale, AZ to appropriate the

waters of underground situated in Clark

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.

THEREFORE the protestant requests that the application be denied. The United States Air Force will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights for the southern portion of the Nevada Test and Training Range.

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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STATE OF NEVADA  
COUNTY OF CLARK

Subscribed and sworn to before me this

Signed

*[Handwritten Signature]*  
Agent or protestant

Col. James R. Byrne

Printed or typed name, if agent

Address

4428 England Ave.

Street No. or PO Box

Nellis AFB, NV 89191-6520

City, State and ZIP Code

702-652-9900

Phone Number

day of

MAY

, 20 12

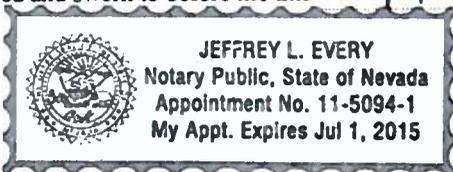
*[Handwritten Signature]*  
Notary Public

State of

NEVADA

County of

CLARK



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

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**IN THE MATTER OF APPLICATION 81727**

**EXHIBIT A**

Protest by Colonel James R. Byrne on behalf of  
Nellis Air Force Base

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**GENERAL**

- I. The mission of the United States (U.S.) Nevada Test and Training Range (NTTR) is to provide a unique environment to train U.S. and allied combat pilots against realistic threats and targets currently encountered in various locations around the world. Land withdrawn for NTTR provides a secure, flexible range for large-scale military testing and training that is not duplicated anywhere within the U.S. This land is critical to preparing flight crews from the U.S. and our Allies for developing and maintaining their battle skills in today's highly complex threat environments, as well as testing new weapons systems and platforms.
- II. The NTTR was originally established by Executive Order (EO) 8578 in 1940 as the Las Vegas Bombing and Gunnery Range. The range operated under the authority of numerous Executive Orders (EO) and Public Land Orders (PLO) until 1958 when operating authority was established in compliance with the Engle Act under PL 87-310. The NTTR public lands withdrawal was most recently renewed by Public Law 106-65, the Military Lands Withdrawal Act of 1999.
- III. The U.S. Air Force is entitled to federal reserved water rights for reserved lands within the NTTR. The priority dates for reserved rights are senior to the appropriation sought by this application. The U.S. Air Force federal reserved water rights have not been judicially quantified.

**FINDINGS**

- I. The application filed by Ready Mix, Inc. of Scottsdale, AZ, proposes to change the method of use of 2 cubic feet per second (CFS), not to exceed 300 acre feet per year (AFY), of groundwater from commercial to municipal use in Basin 211, Three Lakes South.
- II. The water had been previously used for the commercial application at a borrow pit located near the Lee Canyon turn-off, just north of US Interstate 95. The gravel operation is now being shut down and the land restored and returned to the Bureau of Land Management (BLM) from which it was leased. The proposed place of use of this water is on four sections located both north and south of US Interstate 95, where there is no municipal activity, and no privately owned land. In addition, the well is currently leased from BLM.

- III. The application to change the method of use for water rights fails to meet the requirements of the 1996 Nevada State Water Engineer's guidelines for approval of a water rights application, as reviewed and approved by the Nevada Supreme Court in *Pyramid Lake Paiute Tribe v. Washoe Co.*, 918 P.2d 697 (Nev. 1996). The guidelines require that the application to be in the public interest. This application fails this test.
- IV. The "public interest," as it relates to NTTR and its water resources, is of critical concern to both the federal government and the State of Nevada (through the State Engineer). Approval of this application would be contrary to the "public interest" set forth by federal proclamation and by guidelines promulgated by the Nevada State Engineer.

### CONCLUSIONS

- I. Nevada Revised Statute, 533.370(3), states that the Nevada State Water Engineer shall reject an application for a water permit "where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest..." Based on the mandate set forth in 533.370(3), N.R.S., the State Water Engineer should reject this application for the following reasons.

The proposed place of use of this water is on four sections located both north and south of US Interstate 95 where there is no municipal activity, and no privately owned land. .

The approval of this application will impair the senior water rights of the U.S. because:

The application for the change of groundwater use from commercial to municipal by Ready Mix Inc. implies potential future land development to occur adjacent to the NTTR boundary near Basin 211, Three Lakes South. Such development would lead to increased water demand and encroachment issues that would ultimately hinder the mission of the U.S. Air Force.

The public interest would not be served by granting permits to these applications because:

The water and water-related resources of the southern portion of the NTTR are of high importance due to national security and would be diminished or impaired as a result of the approval of this application.

- II. The U.S. Air Force reserves the right to amend this exhibit as more information becomes available.

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REFERENCES CITED

Nevada Department of Water Resources Home Page, <http://www.water.nv.gov/>, 2010.

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