

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

IN THE MATTER OF APPLICATION NUMBER 82572
FILED BY DANIEL S. VENTURACCI
ON FEBRUARY 25, 2013



FILED
MAY 24 2013
STATE ENGINEER'S OFFICE

PROTEST

Comes now EUREKA COUNTY

Printed or typed name of protestant

whose post office address is POST OFFICE BOX 694, 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 82572, filed on FEBRUARY 25, 2013

by DANIEL S. VENTURACCI 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

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

[Handwritten Signature]

Agent or protestant

I.J. GOICOECHEA, COMMISSION CHAIRMAN

Printed or typed name, if agent

Address

POST OFFICE BOX 694

Street No. or PO Box

EUREKA, NEVADA 89316

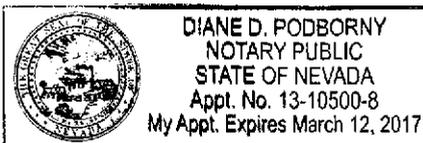
City, State and ZIP Code

(775) 237-5262

Phone Number

E-mail

Subscribed and sworn to before me this 20 day of MAY, 2013



[Handwritten Signature]
Notary Public

State of NEVADA

County of EUREKA

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

Exhibit "A"

Eureka County Protest to Daniel Venturacci

Application 82572

1. Eureka County affirms support for valid vested water rights and the doctrine of prior appropriation as established by state law. The County's protest does not challenge the existence of vested water rights on Taft Spring (also referred to as Thompson Ranch Spring). Because the intent of Application 82572, specifically the diversion rate and annual duty, are unclear from the records and the Application, the protest is intended to ensure that Eureka County citizens are informed and any final decision by the State Engineer on Application 82572 is based on consideration of all facts and potential issues related to the Application.
2. The water which Application 82572 seeks to appropriate to supplement Taft Spring is actually groundwater discharge accounted for in the estimation of the perennial yield of Diamond Valley. This spring, located in the groundwater discharge area of Diamond Valley, would inevitably cease to flow even if the basin were only pumped with a consumptive use at the basin perennial yield of 30,000 acre-feet per year, let alone being over appropriated at more than 134,000 acre-feet per year with a currently estimated consumptive use of approximately 55,000 acre feet per year. As a result, increasing the groundwater extractions from the basin by any amount, let alone an additional quantity of water to irrigate 1,636.36 acres (6,545.44 acre-feet per assuming an annual duty of 4 acre-feet per year per acre) requested under Application 82572, would exacerbate the problems already associated with over allocation of the resource.

Consequently, there may be no unappropriated water at the proposed source of supply, the proposed use may conflict 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.

3. Application 82572 requests 5.0 cfs to irrigate 1,636.36 acres of land in order to replace the loss of spring flow from Taft Spring with groundwater. The Application references Application 81825, which in turn only references amended Proof of Appropriation of Water for irrigation and stock water V01115, the land to be irrigated is the same as that described under both amended Proofs of Appropriation of Water for irrigation and stock water V01114 and V01115. Both Proofs must be included in the consideration of Application 82572 because some of the water used for irrigation on the lands described in the Proof V01115 and Application 82572 originates as seasonal flow from Horse Canyon. This comingling of the waters from the two sources is further documented by the maps filed in support of the original Proofs as well as the maps filed with the amended Proofs. Amended Proof V01115 specifies that the water from Horse Canyon and Taft Spring become comingled in a network of ditches and "...the amount of land irrigated from either source can only be approximated but the combined area is 206 [204.35] acres, this embracing all of the land on Toff's [sic] ranch irrigated from both sources." Original Proof V01114 relates to surface water from Horse Canyon used to irrigate "about fifty" acres of "wild meadow grass." No indication of the amount of water (flow rate and total quantity) from Horse Canyon is documented, but it is clear the stream is ephemeral. The proof clearly indicates that the flow is seasonal "as the water from Horse Canyon fails or becomes only a small flow." Additionally, the proof goes on to state "The waters from this canyon only run in the Spring of the year." These statements tend to contradict the statement in the Proof that "Four acre-feet per annum have been used to irrigate the crops." Further, it

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seems inappropriate for Application 82572 to seek to appropriate groundwater year-round to supplement a seasonal surface-water source.

4. Original Proof V01115, dated June 22, 1912, relates to water discharge from Taft Spring to irrigate approximately 150 acres of "meadow grass, alfalfa, grain and garden truck." To further complicate the matter, Proofs V01114 and V01115 were both amended January 30, 1975 by Milton Thompson. The amendment to V01114 (the proof of a vested water right claim to the Horse Canyon stream source) involved increasing the acreage irrigated from about 50 acres to 269.84 acres "...to show Pasture Lands not shown and Stockwatering not shown on the original filing." The amendment to V01115 (the Taft Spring vested water right claim) relates to increasing the irrigated land from approximately 150 acres to include "....Pasture Lands not shown on the original filing and Stockwatering." The amendment also states, "A continuous flow of 3.12 cubic feet per second has been used to irrigate 607.93 acres of land." Assuming year-round spring discharge at this rate, this flow equates to approximately 2,254 acre-feet per year, which is incompatible with the statement of "Four acre-feet per annum have been used to irrigate the crops."
5. Historical flow measurement data from Taft Spring (a.k.a Thompson Ranch Spring) are available through studies performed by the United States Geological Survey. These data show three flow measurements from the 1960s: 2.33 cfs on 9/21/65, 0.57 cfs on 4/1/1966 and 2.06 cfs on 10/19/66. These were made near the beginning of the period of groundwater exploitation by wells in the valley and likely were not influenced by groundwater pumping at that time, so they may provide snapshots in time of pre-pumping spring discharge for these times of the year. Work performed for General Moly, Inc. in support of groundwater appropriations for the Mount Hope Project show later in time measurements (4.23 cfs in July 1983 and 4.08 cfs in March 1984) that indicate some seasonal variability in the discharge from the spring. Taken as a whole, these measurements cast some doubt regarding the claim of a continuous flow of 3.12 cfs in amended Proof V01115. It is plausible that the seasonal peak spring discharge might approach, or even exceed, 3.12 cfs, but the historical average annual spring discharge was very likely something less. The groundwater model for the Mount Hope project incorporates a discharge for Taft Spring in the range of two cfs, but includes no other springs east of the playa. This model analysis contradicts the claim of sufficient spring flow to irrigate 1,636.36 acres at an annual duty of 4.0 acre-feet per acre.
6. Historic investigations of water resources of Diamond Valley by the USGS estimated the total amount of land irrigated by spring sources east and west of the playa at approximately 1,000 acres with an estimated annual groundwater use of 1.25 acre-feet per acre, not the 4.0 acre-feet per acre requested by the application. The amount of land claimed to have been irrigated by Taft Spring alone exceeds the estimated total irrigated by springs in the early 1960s by about 60% and clearly over estimates the actual amount of water supplied by this source.
7. The claim under Proof V01115 has not been validated by the Nevada State Engineer through adjudication. Therefore, the amount of groundwater needed to provide a supplemental source of irrigation water supply to the declared acreage is unknown. It follows the State Engineer cannot grant permits for supplemental groundwater rights until a determination has been made as to the actual amount of surface water that has been historically applied for irrigation purposes under the two claims and the potential impacts on existing rights and domestic wells.

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8. Application 82572 asserts to be supplemental to vested claims, yet the Application states "This application seeks to supplement existing right for mitigation purposes only . . ." It is not clear whether this Application to appropriate groundwater can be supplemental to the spring flow when the groundwater pumping seeks to fully replace the former spring flow.
9. Eureka County asks the State Engineer to weigh the granting of Application 82572 (asserted to make vested claims "whole") in balance with State Engineer Orders within Diamond Valley. This includes, but is not limited to, Order 717 which states that: "All applications filed after December 31, 1978 to appropriate ground water for irrigation purposes on any land within the Diamond Valley Ground Water Basin will be denied."
10. Eureka County mandates the use of peer-reviewed science in the assessment of impacts related to water resource development. We request copies of the data and information used to determine the potential impacts related to the additional groundwater pumping that would occur under the Application and to justify the amount of groundwater applied for under the Application.
11. Under the facts and circumstances of this application, the State Engineer is without authority to grant the requested appropriation.
12. 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 Protestants.

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