

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

IN THE MATTER OF APPLICATIONS)
53987-53992, INCLUSIVE, FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS OF THE CAVE VALLEY,)
DRY LAKE VALLEY AND DELAMAR)
VALLEY HYDROGRAPHIC BASINS)
(180, 181, 182) LINCOLN COUNTY,)
NEVADA.)

**INTERMEDIATE ORDER NO. 1
AND HEARING NOTICE**

GENERAL

I.

On October 17, 1989, the Las Vegas Valley Water District¹ filed Applications 53987 and 53988 to appropriate 6.0 and 10.0 cubic feet per second, respectively, for a total of 11,584 acre-feet annually, of ground water in the Cave Valley Hydrographic Basin. The applications were timely protested by multiple persons or entities.

II.

On October 17, 1989, the Las Vegas Valley Water District filed Applications 53989 and 53990 to appropriate 6.0 and 10.0 cubic feet per second, respectively, for a total of 11,584 acre-feet annually, of the ground water in the Dry Lake Valley Hydrographic Basin. The applications were timely protested by multiple persons or entities.

III.

On October 17, 1989, the Las Vegas Valley Water District filed Applications 53991 and 53992 to appropriate 6.0 and 10.0 cubic feet per second, respectively, for a total of 11,584 acre-feet annually, of ground water in the Delamar Valley Hydrographic Basin. The applications were timely protested by multiple persons or entities.

IV.

Application 53987 was timely protested by: the U.S. Bureau of Land Management; Robert C. Lewis; Dorothy M. Thompson; Las Vegas Fly Fishing Club; County of Inyo, California; Steven W. Klomp; Vernal J. Mortensen and Chester R.

¹ Since the filing of these applications they have been assigned to the Southern Nevada Water Authority.

Johnson d.b.a. Sunnyside Ranch; Preston Irrigation Company; City of Caliente; Nevada Cattlemen's Association, Eastern Unit; Sheila Hunt; Roger W. Ashby; Barbara L. Bradshaw; Carter-Griffin Inc., d.b.a. Carter Cattle Co.; Gardner's Quarter Circle 5 Ranch; Mary S. Hager; Elma Harris; Lund Irrigation and Water Co.; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; Frank Lloyd; Mick Lloyd; U.S. National Park Service; Roy W. Wilcox; and Unincorporated Town of Pahrump.

Application 53988 was timely protested by: Citizen Alert; U.S. Bureau of Land Management; Robert C. Lewis; Dorothy Bicknell; Jack R. Cooper; Virginia Kreimeyer; John M. Wadsworth; Lois H. Conklin; County of Inyo, California; Torrie O. Klomp; Toiyabe Chapter of the Sierra Club; Vernal J. Mortensen and Chester R. Johnson d.b.a. Sunnyside Ranch; Preston Irrigation Company; City of Caliente; Nevada Cattlemen's Association, Eastern Unit; Robert L. Birch; Barbara L. Bradshaw; Carter-Griffin Inc., d.b.a. Carter Cattle Co.; Ely Shoshone Tribe; Beverly R. Gaffin; Mary C. Katschke; Debra W. Lani (now Whipple); Lund Irrigation and Water Co.; John Maio; Alex Nickell; Willard A. Phillips; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; Lynn Lloyd; U.S. National Park Service; and Unincorporated Town of Pahrump.

Application 53989 was timely protested by: U.S. Bureau of Land Management; Anthony Wells; Frank C. Hulse; Yvonne Stackhouse; Renee Vincent; Richard Vincent; Steve T. Sendlein; John M. Wadsworth; Candy Haley; City of Caliente; Wilford L. Cantrell; Lillian E. Edwards; James I. Lee; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; Frank Delmue; William G. Schoenberg; Mary Smith; U.S. National Park Service; James R. Prince; and Unincorporated Town of Pahrump.

Application 53990 was timely protested by: Citizen Alert; U.S. Bureau of Land Management; Reion Lee; Grace Wallis; Alex P. Coroneos and Steve T. Sendlein; Jack E. Cupples; Kathryn J. Miller; John M. Wadsworth; Richard J. Walters; Ruby Walters; County of Inyo, California; City of Caliente; Ely Shoshone Tribe; James I. Lee; Lund Irrigation and Water Co.; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; Frank Delmue; Karl and Gerry

Hannig; Genevieve D. Logan; U.S. National Park Service; and Unincorporated Town of Pahrump.

Application 53991 was timely protested by: Wess D. Mecham; George T. Rowe; Rosemary Maxwell; U.S. Bureau of Land Management; Helen Barton; Marian Lawrence; Stanley L. Wallis; County of Inyo, California; Pahranaagat Valley Joint Services Board; Glenn Van Roekel; Town of Alamo Water and Sewer Board; City of Caliente; Joseph C. Fox, Jr.; Wesley A. Holt; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; U.S. National Park Service; Unincorporated Town of Pahrump; and Frank R. Wheeler.

Application 53992 was timely protested by: U.S. Bureau of Land Management; Mariba Singleton; Charlotte M. Wallis; John M. Wadsworth; County of Inyo, California; Rose DeVuono; City of Caliente; Cortney Dahl d.b.a. Delamar Valley Cattle; Ely Shoshone Tribe; Wesley A. Holt; Lund Irrigation and Water Co.; County of White Pine and City of Ely; Moapa Band of Paiute Indians; U.S. Fish and Wildlife Service; County of Nye; U.S. National Park Service; and Unincorporated Town of Pahrump.

FINDINGS OF FACT

I.

On August 28, 2007, the State Engineer held a pre-hearing conference in the matter of the above-referenced protested applications. At the pre-hearing conference appearances were made by Mr. Paul Taggart and Mr. John Entsminger on behalf of the Applicant Southern Nevada Water Authority. Mr. Simeon Herskovits with Advocates for Community Development on behalf of Protestants County of White Pine, County of Inyo, California, Town of Alamo Sewer and Water Board, Carter Griffin Inc., d.b.a. Carter Cattle Co., Gardner's Quarter Circle 5 Ranch, James I. Lee, Frank Delmue, Virginia Kreimeyer, John Wadsworth, Toiyabe Chapter of the Sierra Club, and Nevada Cattlemen's Association. Mr. George Benesch appeared on behalf of Protestants County of White Pine, County of Nye and Town of Alamo Water and Sewer District. Mr. Steve Palmer appeared on behalf of Protestants U.S. Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. National Park Service, and U.S. Bureau of Indians Affairs. Mr. Robert Johnston and Mr. Richard Berley appeared on behalf of the Moapa Band of Paiute Indians. Mr. Michael

Garabedian on behalf of Agriculture Water and Science Forum made an appearance at the pre-hearing conference; however, Mr. Garabedian did not file his protests until the day of the pre-hearing conference, which was not timely; therefore, the protest is rejected and Agriculture Water and Science Forum's request for protestant status is denied.

While the pre-hearing conference was the time for all parties to make their appearances and express their intention as to whether or not they intend to participate in the administrative hearing, the State Engineer allowed additional time until September 21, 2007, for notices of appearance. On September 21, 2007, Mr. Greg Walch filed an appearance on behalf of Cave Valley Ranch, LLC, who like Mr. Garabedian filed an untimely protest that was rejected, but Cave Valley Ranch further requested interested person status in the matter of Applications 53987 and 53988. The Applicant objects to the request for interested person status.²

After the pre-hearing conference, Mr. George Benesch refined his appearance and is appearing only on behalf of Protestant County of Nye. Mr. Simeon Herskovits is now appearing on behalf of Protestants Carter Griffin Inc., d.b.a. Carter Cattle Co., County of Inyo, County of White Pine, Gardner's Quarter Circle 5 Ranch, Frank Delmue, Debra Whipple (who filed a protest under her previous married name of Debra Lani), James I. Lee, Lund Irrigation and Water Co., Virginia Kreimeyer, Nevada Cattlemen's Association, Eastern Unit, Chester R. Johnson, Preston Irrigation Company, Toiyabe Chapter of the Sierra Club, Town of Alamo Water and Sewer Board, and Mick Lloyd and Lynn Lloyd. Mr. Herskovits' Entry of Appearance filed after the pre-hearing conference identifies other people for whom interested person status might be requested, but since they are not parties to the proceeding they are not listed.

Nevada Administrative Code § 533.100 provides that a person who wishes to be recognized by the state engineer as an interested person must file a written request and pay the prescribed fee at least 30 days before the hearing or pre-hearing conference. Many hearings do not have pre-hearing conferences, but when a pre-hearing conference is held it is the pre-hearing conference date which is the date before which a person must file for interested person status and not the date of the actual hearing. The pre-hearing conference

² File No. 53987 official Records in the Office of the State Engineer. Opposition by Southern Nevada Water Authority to Request by Cave Valley Ranch, LLC for Recognition as an Interested Person Under NAC § 533.100.

was the time for all persons with an interest in participating in the hearing to make their presence known. Decisions were made at the pre-hearing conference as to the dates for evidentiary exchanges as well as other matters. The evidentiary exchanges in this proceeding are to take place in November and December of 2007. The administrative hearing is scheduled to begin on February 4, 2008. If a person could file for interested person status 30 days before the February 4th date, they would not have participated in any manner in the evidentiary exchange to the unfair advantage of the Applicant. The first pre-hearing conference as to these applications was held on January 5, 2006; however, since the State Engineer did not proceed to hearing on the applications in Cave Valley, Dry Lake Valley and Delamar Valley, a second pre-hearing conference was held on August 28, 2007. The State Engineer finds Cave Valley Ranch did not file its request for interested person status until September 21, 2007, which was after the date the pre-hearing conference was held; therefore, the request was not timely and is denied.

II.

Applications 53987 through 53992 were protested on many grounds summarized below:

PROTEST GROUNDS:

1. The applications should be denied because they fail to adequately describe the proposed works, the cost of such works, estimated time required to construct the works and place the water to beneficial use and the approximate number of persons to be served.
2. The water is not available for appropriation and the quantity requested for appropriation will exceed the safe yield of the area. Mining of ground water is not acceptable and appropriation of this magnitude will lower the water table and degrade the quality of water from existing wells, cause negative hydraulic gradient influences and other negative impacts and adversely affect existing rights and the public interest.
3. The proposed diversions are from the carbonate-rock province of Nevada that is typified by complex, interbasin, regional-flow systems that include both basin-fill and carbonate-rock aquifers along with interbasin flows that are poorly defined, and the diversions will reduce the interbasin flows, and modify the direction of ground-water movement in adjoining and hydraulically connected basins thereby reducing spring and stream flows. Different flow systems underlie the state of Nevada and these flow systems

link the ground water beneath many of the hydrologic basins over distances greater than 200 miles. While water taken from a basin may be within the perennial yield of that basin, areas as far away as 200 miles may experience drawdown thereby experiencing negative impacts.

4. The granting of the applications would conflict with or tend to impair existing water rights because, if granted, the amount of water appropriated would exceed the safe yield thereby unreasonably lowering the water table. Granting the applications in the quantity requested will impair, conflict with and interfere with existing water rights, sources and uses such as those rights held by U.S. National Park Service, Vernal Mortensen and Chester Johnson d.b.a. Sunnyside Ranch, Preston Irrigation Company, Lund Irrigation and Water Co., the Moapa Band of Paiute Indians and Carter-Griffin, Inc, d.b.a. Carter Cattle Co. These Protestants allege that there is insufficient information about the interaction between the deep and shallow aquifers to allow an intelligent decision to be made on what effect granting the applications may have on the five springs that supply the Lund Irrigation and Water Co. system. The Carter-Griffin, Inc. d.b.a. Carter Cattle Co. has over 4,000 acres of native grass meadow in the White River Valley that is sub-irrigated and if pumping lowers the water table the meadows will dry up. The use of water under the applications will conflict with the rights of the Moapa Band of Paiute Indians in the Muddy River and ground water under the Moapa Indian Reservation. The use of water under the applications will conflict with the rights of the U.S. National Park Service at Ash Meadows, Devil's Hole, Death Valley National Monument, Lake Mead Recreational Area and the Muddy River.

5. The applications should be denied because use of the water could potentially impact land for which the U.S. Bureau of Land Management has management responsibility and upon which there exist candidate, threatened or endangered species; therefore, use of the water would threaten to prove detrimental to the public interest.

6. The use of 11,584 acre-feet in Cave Valley will capture most of the water that discharges from Cave Valley to the White River Hydrographic area. Flows in the lower end of Cave Valley will be reduced effecting riparian vegetation and negatively impacting Flag Springs, which has been designated as critical habitat for threatened and endangered species. Dry Lake Valley contributes 5,000 acre-feet to Delamar Valley, which is one of the three hydrographic basins contributing water to Pahrnagat Valley, which in turn supplies surface water and ground water to the Muddy River upon which candidate, threatened and

endangered species exist. The recharge in Dry Lake Valley is estimated to be 5,000 acre-feet and the applications in that valley are filed for an amount that is two times the annual recharge, which will result in loss of interbasin flow, which will impact candidate, threatened and endangered species in the Pahranaagat Valley and the Muddy River Springs Area.

7. The Applicant lacks the financial capability for developing the project.
8. Further study is needed because the potential effects are impossible to anticipate on springs, seeps and wetlands.
9. The available scientific literature is not adequate to reasonably assure that the proposed diversions will not impact senior rights and water resources.
10. The Applicant has not obtained the necessary legal interest (rights-of-way) to extract and transport the water from the points of diversion to Las Vegas and therefore cannot demonstrate beneficial use of the water.
11. The applications should be denied because previous applications have been denied and the same analysis should apply to these applications.
12. The applications should be denied because the Applicant has failed to provide information necessary for the State Engineer to protect the public interest, such information including the cumulative impacts of the proposed extractions, mitigation measures that will reduce the impacts of the proposed extractions and alternatives to the proposed extractions.
13. The applications should be denied because the per capita water consumption rate for the Las Vegas area is far above that of similarly situated southwestern cities.
14. Clark County must grow within the limits of their natural resources or the environmental and socioeconomic balance of the state of Nevada will be destroyed.
15. The use of water as proposed will interfere with the purpose for which federal lands are managed under the Federal Land Use Policy and Management Act of 1976.
16. The water is now being used and further pumping in large amounts would deplete the underground water and dry up springs thereby adversely affecting wildlife, livestock and game animals, birds, fish and Homo sapiens forever. It is about time for Clark County to solve their problems and not steal the good things rural Nevada offers.
17. The applications will encourage and enable the uncontrolled population growth in the Las Vegas Valley, which will exacerbate existing problems of air quality, traffic and crime.

18. The applications will cause water rates to go up thereby causing demand to go down thereby rendering the water unnecessary.

19. Economic activity in the basins of origin are water dependent, for example, grazing and recreation, and a reduction in the quantity and/or quality of the water in the area would adversely impact said activity and way of life for the residents of the area.

20. The applications should be denied because removal of the water will adversely impact economic activity of the basin of origin, such as agriculture, ranching, power generation and transmission, mineral extraction, manufacturing, tourism, and concentration of population.

21. Mining of the water resources will negate recreational and fish habitat benefits provided through voluntary contributions.

22. The applications were some of the 146 applications to appropriate water filed by the Las Vegas Valley Water District, which combined seek approximately 800,000 acre-feet annually of underground and surface water, and diversion of such a quantity of water would deprive the area of origin of water needed to protect and enhance its environment and economic well being, and would unnecessarily destroy environmental, ecological, scenic and recreational values the State holds in trust for its citizens. Additionally, the diversion and exportation of this water will lower the static water level adversely affecting water quality, existing wells, cause negative hydraulic gradient influences, negative impacts, threaten springs, seeps and phreatophytes, which provide water and habitat critical to the survival of wildlife, including threatened and endangered species, and grazing livestock, and will adversely affect existing rights and the public interest.

23. In as much as an interbasin transfer project of this magnitude has never been considered, it is impossible to anticipate all possible adverse effects without further information and study. This project cannot be properly evaluated without an independent, formal and publically reviewable assessment.

24. The granting of the applications is not in the public interest, as it would allow the Applicant to "lock-up" vital water resources for possible use in the distant future beyond current planning horizons.

25. Granting the applications in the absence of comprehensive planning, including but not limited to environmental impact considerations, cost considerations, socio-economic

considerations and water resource plan considerations would threaten to prove detrimental to the public interest.

26. The applications should be denied because population projection numbers are unrealistic, current and developing trends in housing, landscaping, plumbing fixture standards and demographic patterns all suggest that the simplistic water demand forecasts upon which the proposed transfers are based substantially overstate future water demands.

27. The applications should be denied because conservation programs in the water district are ineffective and the granting of these applications will increase the waste of water in Las Vegas.

28. These appropriations, even if limited to annual recharge, will inevitably damage plant and animal life on the surface. The aquifers under Cave Valley lie near the edge of the Far South Egan Range Wilderness Study Area and drawdown of the water table will have irreversible effects on the fragile ecosystem.

29. Due to cyclical drought and long-term climate change the water resources in the basins and all connecting basins is diminishing.

30. The use of water as proposed under the applications would threaten to prove detrimental to the public interest because they would likely jeopardize the continuance of threatened and endangered species. The loss of water that supplies four southern Nevada national wildlife refuges will threaten to prove detrimental to the public interest and will injure rights held by the U.S. Fish and Wildlife Service. The use of the water as proposed under the applications will impair wetlands and water in the area that support migratory birds, native fish and other wildlife in conflict with Federal laws that seek to protect wetlands, migratory birds and wildlife for the benefit of all. The use of the water under the applications will negatively impact the quantity and quality of water in the White River, reservoirs in the Wayne Kirsh Wildlife Management Area and Pahrnagat lakes.

31. The applications will negatively impact Nevada's environment in that it will lead to regional air pollution in violation of law.

32. Granting the applications in the quantity requested, that is for all the unappropriated water in the basin, will adversely affect agricultural operations in that it will affect the economic welfare of all farms and ranches, it will destroy the environmental balance thereby

destroying grazing lands, wetlands and farm lands, and it will halt all potential agricultural growth.

33. In modern periods of drought there is insufficient water that currently creates hardships on cattlemen in that grazing areas do not have sufficient feed, surface waters are insufficient for irrigation and stock watering, water tables are lowered making it more difficult and expensive to pump water, which all affects the economic welfare. If drought creates this many hardships, continual removal of the perennial yield will destroy ranching.

34. The State Engineer must consider all of the future environmental and socioeconomic ramifications of the trans-basin transfer of ground water in order to protect the state of Nevada by not allowing these transfers.

35. The State Engineer has a responsibility to all of the people of Nevada and must consider all adverse effects which the granting of these applications will have on all areas in the state of Nevada. The appropriation of this magnitude of water will deprive the area of origin of water needed for its environmental and economic well being, especially as it applies to the agricultural uses for this area.

36. Permitting the applications will threaten the life style of those living in Lincoln County and will have a detrimental effect on any future development that might take place in Lincoln County.

37. The State Engineer should order an independent assessment of the environmental and socio-economic impacts of the proposed extraction, associated structures and transportation system, and alternatives thereto prepared similar to an environmental impact statement prepared under the National Environmental Policy Act.

At the pre-hearing conference, the Protestants were instructed to review their protests and were requested to voluntarily dismiss any protest claims not based on Nevada water law or water policy and to inform the State Engineer by September 21, 2007, of any protest grounds that were being voluntarily dismissed. On September 21, 2007, Simeon Herskovits on behalf of his clients filed a document titled Summary of Protest Issues. This document does not reflect the voluntary dismissal of various protest claims, but rather is more akin to an amended protest as it presents completely new claims not found in the previous protests, for example, items 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the

Summary of Protest Issues. The State Engineer finds this document does not comport with the instructions for voluntarily dismissing protest claims not based on Nevada water law and policy.

The State Engineer finds Nye County voluntarily dismissed its protest claims 5 through 12, 14 through 20, 22, 23, 25, 26, 29 and 30.

The State Engineer finds the National Park Service dismissed protest grounds IX and X in its protests to Applications 53987 and 53988 and protest grounds X and XI in its protests to Applications 53989, 53990, 53991 and 53992, grounds which are also summarized in section XI subsections I and J in each of these protests. These protest grounds concern whether the quantity of water claimed in the applications is reasonably required for the stated use and whether the Applicant has adequately demonstrated the place of use, proposed works, cost of the works, number and type of units served or the annual consumptive use.

Stephen Palmer, legal counsel for the U.S. Department of Interior in a letter dated September 21, 2007, indicated that he was voluntarily dismissing claims in protests filed by the Bureau of Indian Affairs on behalf of the Moapa Paiute Tribe of Indians (which filed its own protests) as to each of the applications, and on behalf of the Ely Shoshone Tribe of Indians (which also filed its own protest) as to Applications 53987 and 53988. Mr. Palmer's letter raised confusion because it referred to protests that have not been found as part of the protest files related to these applications. In discussion with Mr. Palmer, the State Engineer was informed that at a status conference held on March 18, 1992, the U.S. Department of Interior, Bureau of Indians Affairs had been granted intervenor status as a protestant in the matter of the applications filed by the Las Vegas Valley Water District.³ The State Engineer reviewed the records of the early proceedings in the matter of the Las Vegas Valley Water District's applications and found the petition to intervene and the transcript of the status conference where intervention was granted;⁴ however, the protests themselves were not part of the relevant files. Upon further inquiry, Mr. Palmer mailed to the Office of the State Engineer copies of protests that included a cover letter dated April 21, 1992, which indicates

³ This status was granted prior to the enactment of the regulations in Nevada Administrative Code chapter 533 that govern the practice and procedure in protest hearings that do not provide for intervention status.

⁴ Exhibits 13-A and 13-B of the January 10-12, 1994, administrative hearing on Applications 54077, 57643 and 58591 for waters of the Virgin River, official records in the Office of the State Engineer.

the protests were to be considered as exhibits attached to the Bureau of Indian Affairs motion to intervene. The State Engineer finds that a search of the records of the Office of the State Engineer has not to date located these documents; however, it is the State Engineer's finding that more than likely the documents were filed at that time and just have not been located in the many, many documents that relate to the applications filed by the water district.⁵

III.

At the pre-hearing conference, the Applicant presented a letter dated August 27, 2007, pursuant to which it requested the State Engineer rule that certain statutory criteria and protest issues have been previously ruled on and determined in order to avoid the expenditure of time and resources of once again addressing these same issues.⁶ Many of the protest issues and statutory criteria presented by these applications have been repeatedly addressed in relation to applications filed by the same Applicant and considered at different hearings.

Nevada Revised Statute § 533.370(1)(c) provides that the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if the applicant provides proof satisfactory of his intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence, and his financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

Nevada Revised Statute § 533.370(5) provides that the State Engineer shall reject an application and refuse to issue the permit where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights or with protectible interests in existing domestic wells as set forth in NRS § 533.024, or where the proposed use threatens to prove detrimental to the public interest.

⁵ Copies of these protests can be found in File No. 53947, which appears to be the first file in the series of applications filed by the Las Vegas Valley Water District and in which much of the early documentation relevant to all 146 files was filed.

⁶ See also, Transcript of Pre-Hearing Conference dated August 28, 2007, official records of the Office of the State Engineer.

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of ground water must be rejected, the State Engineer shall consider: (1) whether the applicant has justified the need to import the water from another basin; (2) if the State Engineer determines a plan for conservation of water is advisable for the basin into which the water is imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out; (3) whether the proposed action is environmentally sound as it relates to the basin from which the water is exported; (4) whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and (5) any other factor the State Engineer determines to be relevant.

The State Engineer finds, as to protest ground number 1 identified above, that the State Engineer has previously ruled that for purposes of the application form the applications adequately describe the proposed works, the cost of such works, estimated time required to construct the works and place the water to beneficial use and the approximate number of persons to be served.⁷

As to NRS § 533.370(1)(c) and as to protest ground number 7 identified above, the State Engineer finds that the State Engineer has previously ruled that the Applicant has provided proof satisfactory of the intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence, and a financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.⁸

The State Engineer finds that as to NRS § 533.370(6)(a) and as to protest ground numbers 14 and 18 identified above, that the State Engineer has previously ruled that the Applicant has demonstrated a need for the water and has justified the need to import water from another basin. The State Engineer finds the evidence demonstrates that the amount of water contemplated in the applications is necessary and reasonably required for the proposed purposes and the protest claims are overruled. The State Engineer finds the population projections were not unrealistic and the protest claim is overruled. The State Engineer finds the allegation that the applications will cause water rates to go up thereby

⁷ See, State Engineer's Ruling No. 5726, pp. 18-19, dated April 16, 2007, official records in the Office of the State Engineer.

⁸ *Id.* at 25-26.

causing demand to go down, rendering the water unnecessary to be completely hypothetical and not within the purview of his review and is hereby dismissed.⁹

The State Engineer finds that as to NRS § 533.370(6)(b) and as to protest ground numbers 13 and 27 identified above, that the State Engineer has previously ruled that a plan for conservation of water is advisable for the basin into which the water is imported and finds the Applicant has demonstrated that such a plan has been adopted and is being effectively carried out; therefore, the protest claims are overruled. The State Engineer found that the comparison of per capita consumption of other southwestern cities to that of Southern Nevada is not an accurate comparison due to the factors impacting per capita consumption and the protest claim was overruled.¹⁰

The State Engineer finds, as to protest ground number 17 identified above, that the State Engineer has previously ruled that the decisions for growth control are the responsibility of other branches of government and overruled the protest claim and whether growth exacerbates air pollution, traffic and crime is not within the State Engineer's jurisdiction.¹¹

The State Engineer finds, as to protest ground number 24 identified above, that the State Engineer has previously ruled that the Applicant is not locking-up vital water resources for possible use in the distant future beyond current planning horizons and the applications do not substantially overstate future water demand needs.¹²

The State Engineer finds, as to protest ground number 10 identified above, that the State Engineer has previously ruled that while in some instances, such as a stock-water application on the federal lands, the State Engineer requires proof of access to the land before acting on an application, in other instances he issues a permit with a permit term that indicates that the permit is conditioned on the applicant complying with other state, federal and local laws and found that the lack of a specifically identified right-of-way does not prevent him from acting on the applications and overruled the protest claim.¹³

⁹ *Id.* at 19-21.

¹⁰ *Id.* at 44-46.

¹¹ *Id.* at 21.

¹² *Id.* at 23-24.

¹³ State Engineer's Intermediate Order No. 4, p. 7, dated August 4, 2006, In the Matter of Applications 54003 et al., official records in the Office of the State Engineer.

The State Engineer finds, as to protest ground number 26 identified above, that the State Engineer has previously ruled that the population projections were not unrealistic and overruled the protest claim.¹⁴

The State Engineer specifically adopts and reaffirms the previous findings in the matter of these applications.

IV.

PLEASE TAKE NOTICE, pursuant to the authority set forth in NRS § § 533.365, 533.370 and 533.375, the State Engineer has set a hearing to consider the matter of protested Applications 53987 - 53992, inclusive.

Accordingly, the hearing will begin promptly at **9:00 a.m. on Monday, February 4, 2008, continuing through Friday, February 8, 2008, and reconvening at 9:00 a.m. on Monday, February 11, 2008, continuing through Friday, February 15, 2008, to be held at the Nevada Legislature, 401 South Carson Street, Room 1214, Carson City, Nevada. Please note that the room will be moved for Thursday and Friday, February 7th and 8th to Room 4100.** PLEASE TAKE NOTICE, public comment will be taken on Friday, February 8, 2008 and written public comment will be accepted until Friday, February 29, 2008. The State Engineer has arranged for public comment to be taken from Las Vegas on the same date at 555 East Washington Ave., Room 4412, Las Vegas, Nevada. The State Engineer is attempting to arrange for public comment to be taken from Ely and perhaps Caliente, but has been unable to make those arrangements as of the date of this notice. If such arrangements are made, please refer to the State Engineer's website at www.water.nv.gov at a later date to ascertain the location. Public comment will be limited to five minutes per person in order to accommodate all persons wishing to speak.

V.

The exchange of documents, witness lists and descriptions of witness testimony will take place in two simultaneous exchanges. No party is required to serve copies of evidence on anyone other than those who made appearances and identified above. Where appearances were made by two lawyers for one entity, only one counsel need be served. Unless other arrangements are made between the parties, Mr. Taggart should be served in

¹⁴ State Engineer's Ruling No. 5726, pp. 19-21.

Carson City, Nevada, for the Applicant and Mr. Robert Johnston in Carson City, Nevada should be served for the Moapa Band of Paiute Indians.

Initial exchange: The parties are hereby ordered to deliver to each other and file in the Office of the State Engineer in Carson City and Las Vegas no later than Friday, November 16, 2007, an exhibit list, a witness list, a reasonably detailed summary of the testimony of each witness, and copies of any documentary evidence intended to be introduced into the hearing record. If a witness is not identified in the exchanges as testifying on direct as to a certain topic, the witness will not be allowed to testify to the un-identified topic in his or her direct testimony. If a witness is to be presented to provide expert testimony, the evidentiary exchange shall include a written report prepared and signed by the witness, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or in support of the opinions and a statement of qualifications of the witness. The parties may choose to exchange documents via computer compact disk in PDF 20 x 20 dpi format. Notebooks over 3 inches in width will not be accepted.

Second Evidentiary Exchange: The parties are hereby ordered to deliver to each other and the State Engineer in Carson City and Las Vegas, Nevada, no later than Friday, December 21, 2007, an additional exhibit list, witness list, witness testimony summaries or documentary evidence intended to be introduced at the administrative hearing that may be necessary in response to the other parties' first evidentiary exchange. This exchange is meant only to provide evidence that becomes necessary in rebuttal to the original exchange. It is not intended to be the first time a party presents evidence as to their case-in-chief. Again, the parties may choose to exchange documents via computer compact disk in PDF format. Notebooks over 3 inches in width will not be accepted.

In addition to the hard copies of the lists, summaries and evidence to be served on the State Engineer in Carson City and Las Vegas, Nevada, **the parties are hereby ordered to also file in the Office of the State Engineer in Carson City and Las Vegas, Nevada, a computer compact disk that includes: their exhibit list in Microsoft Word format using the exhibit numbers assigned below, their witness list in Microsoft Word format, their**

witness summaries in Microsoft Word format and scanned copies of all their exhibits in PDF 20 x 20 dpi format. The State Engineer will make these documents available on the Division of Water Resources website at www.water.nv.gov where the public can access the information. If the parties choose to exchange documents via computer compact disk, those arrangements are to be made between the parties themselves.

VI.

Nevada Administrative Code § 533.290 requires that exhibits introduced into evidence must be in a readily reproducible form, on paper that is 8½" x 11" or foldable to that size. Larger charts, maps, drawings and other material will not be admitted into evidence, but may be used for demonstrative purposes. Exhibits submitted on computer compact disks or any other media, other than paper that is 8½" x 11" or foldable to that size, will not be admitted into the evidentiary record. An original and one copy of each exhibit must be submitted to the State Engineer. Computer presentations, such as power-point slides, must be copied on paper that is 8½" x 11" and will be made exhibits. Facilities are not available for copying documents during the hearing.

For the presentation of material from large documents, the State Engineer will allow the submission of excerpts; however, the person or entity serving such document must make the entire document available to parties to the hearing upon request. If excerpts for a larger document are served and the person upon whom it is served requests to have the entire document in either a hard copy or in a PDF format on a computer compact disk, the person serving said document has 10 days from the date of receipt of the request to place the requested copy in the U.S. Mail.

The parties can agree to document receipt in a digital format and the digital standard will be PDF 20 x 20 dpi files. Any document, report, etc. that any participant intends to refer to must be provided as an exhibit during the administrative hearing and served upon the other participants and the State Engineer in advance.

The parties have stipulated to the State Engineer taking administrative notice of documents from the Spring Valley hearing before the State Engineer In the Matter of Protested Applications 54003 - 54021. A copy of that Stipulation is available on the State Engineer's website at www.water.nv.gov. The exhibits that were stipulated for admission in this hearing are:

- Exhibit No. 1 Intermediate Order and Hearing Notice dated 3/8/06
- Exhibit No. 56 State Engineer's Intermediate Order No. 3 dated 7/27/06
- Exhibit No. 57 State Engineer's Intermediate Order No. 4 dated 8/4/06
- Exhibit No. 504 Geology Report
- Exhibit No. 506 Data Reports
- Exhibit No. 508 Spring Valley Model Report
- Exhibit No. 510 Southern Nevada Water Authority 1996 Water Resource Plan
- Exhibit No. 511 Southern Nevada Water Authority 2006 Water Resource Plan
- Exhibit No. 532 Summary of USGS-SNWA/LVVWD Funding Agreements
- Exhibit No. 536 Southern Nevada Water Authority Clark, Lincoln, and White Pine Counties Groundwater Development Project Draft Conceptual Plan of Development, March 17, 2006
- Exhibit No. 537 Coyote Springs Stipulation for Dismissal of Protests, July 18, 2001
- Exhibit No. 538 Coyote Springs Memorandum of Agreement, April 20, 2006
- Exhibit No. 541 Cooperative Agreement Among Lincoln County, the Southern Nevada Water Authority and the Las Vegas Valley Water District, April 17, 2003
- Exhibit No. 542 General Capacity Agreement for Participation in Southern Nevada Water Authority's Groundwater Project, February 6, 2006.
- Exhibit No. 543 Three Lakes and Tikaboo Stipulation for Withdrawal of Protests, December 8, 2005.
- Exhibit No. 594 Nevada County Population Estimates July 1, 1986 to July 1, 2004
Includes Cities and Towns
- Exhibit No. 603 Interbasin Transfers
- Exhibit No. 604 Municipal Uses
- Exhibit No. 605 Precipitation Map of Nevada, 1936 (Hardman)
- Exhibit No. 606 Ground Water in White River Valley, White Pine, Nye, and Lincoln Counties, Nevada
- Exhibit No. 607 Water for Nevada, Report 3, Nevada's Water Resources, p. 23
- Exhibit No. 610 Regional Ground-Water Evapotranspiration and Ground-Water Budgets, Great Basin, Nevada (Nichols 2000)

- Exhibit No. 617 The Accuracy of United States Precipitation Data
- Exhibit No. 618 Calculation of Monthly and Annual 30-Year Standard Normals
- Exhibit No. 625 Major Ground-Water Flow Systems in the Great Basin Region of Nevada, Utah, and Adjacent States
- Exhibit No. 628 Nevada Precipitation Map – Adapted by George Hardman, 1965.
- Exhibit No. 631 Western Regional Climate Center
- Exhibit No. 632 Water Resources Data Nevada Water Year 2004
- Exhibit No. 638 NRCS Field Office Guide to Climatic Data
- Exhibit No. 644 Application for Rights-of-Way, Clark, Lincoln, and White Pine Counties Groundwater Development Project, August 19, 2004
- Exhibit No. 645 Scoping Package for the Southern Nevada Water Authority Clark, Lincoln, and White Pine Counties Groundwater Development Project
- Exhibit No. 646 Notice of Intent of the Southern Nevada Water Authority to Prepare an Environmental Impact Statement and Initiate the Public Scoping Process, April 8, 2005.
- Exhibit No. 647 Scoping Meeting Letters for Protestants
- Exhibit No. 656 Legislative History for Senate Bill 108-1999, and Act Related to the Use of Water and the Approval of Interbasin Transfers of Ground Water, SB 108-1999, May 24, 1999.
- Exhibit No. 675 Water Supply Agreement Among the Moapa Band of Paiute Indians, Las Vegas Valley Water District, Southern Nevada Water Authority, Muddy Valley Irrigation Company, and Moapa Valley Water District, April 20, 2006
- Exhibit No. 676 Agreement for Lease of Water Rights By Moapa Valley Water District, the Southern Nevada Water Authority, and the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, March 31, 2006
- Exhibit No. 689 From Models to Performance Assessment : The Conceptualization Problem
- Exhibit No. 690 The Conceptualization Model Problem - Surprise

- Exhibit No. 693 Methods and Guidelines for Effective Model Calibration, Table 1
(Hill 1998)
- Exhibit No. 694 Ground-Water Models Cannot Be Validated
- Exhibit No. 695 U.S.G.S. Ground-Water Models Cannot Be Validated Policy
Memo, 2/5/93
- Exhibit No. 777 Las Vegas Wash Coordination Committee 2005 Year-End Report
- Exhibit No. 2035 Hershler, R. 1998. A systematic review of the Hydrobiid snails
(Gastropoda: Rissooidea) of the Great Basin, western United
States. Part I. Genus *Pyrgulopsis*. The Veliger 41, pages 1-3, 11-
14, 56-57, 99-132
- Exhibit No. 2036 Hershler, R. and D.W. Sada. 2002. Biogeography of Great Basin
aquatic snails of the Genus *Pyrgulopsis*. Pages 255-276 in R.
Hershler, D.B. Madsen, and D.R. Curvey, eds. Great Basin
Aquatic Systems History. Smithsonian Contributions to the Earth
Sciences, Number 33.
- Exhibit No. 2060 Sage Grouse Conservation Team. 2004. Greater Sage-Grouse
Conservation Plan for Nevada and Eastern California. First
Edition. Prepared for Nevada Governor Kenny C. Guinn. Nevada.
Title page, table of contents, Executive Summary,
acknowledgements, Pages 1-108, Appendix Q- White Pine County
Sage-Grouse Conservation Plan, Appendix R- Lincoln County
Sage-Grouse Conservation Plan.
- Exhibit No. 2106 Skudlarek, E., ed. 2006. Nevada wetlands priority conservation
plan, technical review draft. Nevada Natural Heritage Program,
Department of Conservation and Natural Resources, Title Page and
pages 1-11, 1-20, 1-22, 1-25, 3-3, 3-7, 3-8, 3-9, 4-26, 4-31, 4-32,
4-34, 4-35.

VII.

Pursuant to NRS § 533.365(4), the technical rules of evidence do not apply to administrative hearings before the State Engineer.

VIII.

As set forth in Nevada Administrative Code § 533.220, the hearing will be reported by a certified court reporter. The court reporter will file an original and one copy of the transcript with the State Engineer. Anyone wanting a copy of the transcript should make arrangements with the court reporter. The costs of the transcript will be borne by the Applicant and Protestants as set forth in the Nevada Administrative Code.

IX.

The parties are assigned the following exhibit numbers

State Engineer	1 - 200
Applicant	201 - 500
U.S. Dept. of Interior	501 - 1100
Mr. Herskovits (for his clients)	1101 - 1500
Nye County	1501 - 1700
Moapa Band of Paiute Indians	1701 - 1900

X.

If any computer models are presented as evidence, the parties must provide the electronic data files necessary to run the model during the initial evidentiary exchange and the models must be completed in freely available codes, for example MODFLOW. Failure to provide this information will render any such evidence inadmissible.

XI.

The proposed order for the administrative hearing will be as follows, noting that the order is subject to change as may be necessary during the course of the administrative hearing or if settlement is reached with any of the parties prior to the administrative hearing. The Applicant will go first followed by the Protestants in the following order: U.S. Department of Interior; Moapa Band of Paiute Indians; Advocates for Community Development. As indicated by the State Engineer at the pre-hearing conference, the State

Engineer will review the evidence filed and the witness list and then determine how many days each party will be allowed during the course of the hearing.¹⁵

XII.

The order for examining witnesses shall be direct examination, cross-examination, re-direct examination limited to issues raised on cross-examination and re-cross examination limited to issues raised on re-direct. Rebuttal cases will not be permitted because the staggered evidentiary exchange provides for exchange of all information in advance of the hearing.

XIII.

When more than one agent or attorney represents the Applicant or Protestant, only one counsel will be allowed to conduct direct examination or cross-examination of any particular witness. However, different counsel may participate in separate portions of the same case. Legal counsel not licensed to practice law in the State of Nevada or licensed, but not maintaining an office in the State of Nevada, is required to comply with Supreme Court Rules 42 and 42.1. The Verified Application to Associate form that needs to be filed with the Nevada State Bar can be found on the Nevada Division of Water Resources website found at www.water.nv.gov Forms Room - Miscellaneous Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

XIV.

As provided in NAC § 533.220, the hearing will be reported by a certified court reporter. An original and one copy of the transcript of the proceedings must be filed with the State Engineer. The Applicant and Protestants will bear equally the court reporter's appearance fee, travel expenses, reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public. The Applicant and Protestants shall bear pro rata the cost of the portion of the transcript taken up by their own case.

¹⁵ Pre-hearing Conference Transcript, p. 67.

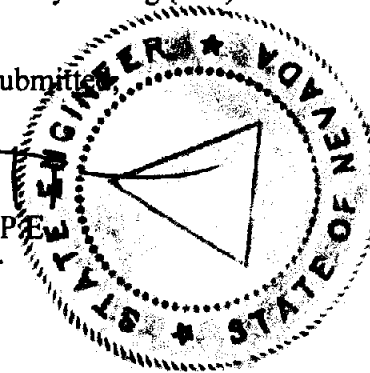
XV.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify Susan Joseph-Taylor at the Nevada Division of Water Resources, 901 South Stewart, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2800.

Respectfully submitted



Tracy Taylor, P.E.
State Engineer



TT/SJT/jm

Dated this 4th day of
October, 2007.