

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

IN THE MATTER OF APPLICATIONS 54022 )  
THROUGH 54030, INCLUSIVE, FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS OF THE SNAKE VALLEY )  
HYDROGRAPHIC BASIN (195), WHITE )  
PINE COUNTY, NEVADA. )

**INTERIM ORDER  
NO. 1**

**GENERAL**

**I.**

By Notice dated May 28, 2008, the State Engineer set the first day of the administrative hearing in the matter of protested Applications 54022 through 54030, inclusive, filed by the Las Vegas Valley Water District (LVVWD) and now held by Southern Nevada Water Authority (SNWA) to appropriate ground water in the Snake Valley Hydrographic Basin, White Pine County, Nevada. This first day of hearing is for the purpose of planning for the evidentiary portion of the hearing, addressing protest issues that might be resolved without an evidentiary hearing and for discussion of other related matters. Nevada Administrative Code (NAC) § 533.100 provides for the filing of a request to be recognized as an interested person with regard to the hearing on the protested applications. In the hearing notice, the State Engineer established June 16, 2008, as the final date for the filing of any request to be recognized as an interested person.

**FINDINGS OF FACT**

**I.**

Nevada Administrative Code § 533.100 provides as follows:

1. A person who wishes to be recognized by the state engineer as an interested person must file a written request for recognition with the office of the state engineer and pay a fee in the amount prescribed by NRS 533.435 for filing a protest, at least 30 days before the hearing or prehearing conference at which he wishes to be recognized.
2. The state engineer will grant the request for recognition upon a showing that extreme circumstances prevented the person from filing his own protest in a timely manner.

3. An interested person may only testify on matters of law, broad public issues or matters concerning how any action of the state engineer with regard to a particular application may affect the operation of a specific water transportation and supply project.

The State Engineer finds the following persons timely filed a request for interested person status regarding the referenced applications:

The Wells Band Council of the Wells Band Te-Moak Tribe of Western Shoshone<sup>1</sup>

The Ely Shoshone Tribe<sup>2</sup>

The Confederated Tribes of the Goshute Reservation<sup>3</sup>

Water Keepers<sup>4</sup>

Great Basin Water Network<sup>5</sup>

Dr. Theodore Stazeski<sup>6</sup>

Veronica Douglas Deep Creek Mountains Ranch<sup>7</sup>

Callao Irrigation Company<sup>8</sup>

Salt Lake County, Utah<sup>9</sup>

Utah County, Utah<sup>10</sup>

Trout Unlimited, Great Basin Chapter<sup>11</sup>

Terrence P. Marasco & Great Basin Hospitality and Sports<sup>12</sup>

North Snake Valley Water Association<sup>13</sup>

Abigail C. Johnson<sup>14</sup>

Central Nevada Regional Water Authority<sup>15</sup>

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<sup>1</sup> All applications.

<sup>2</sup> All applications.

<sup>3</sup> All applications.

<sup>4</sup> All applications.

<sup>5</sup> All applications.

<sup>6</sup> Dr. Stazeski sent a \$25 filing fee as if requesting interested person status in the matter of one application; however, his accompanying letter did not ask for interested person status, but was more akin to public comment as it merely expressed a "strong protest to the proposed 9 SNWA applications in Snake Valley."

<sup>7</sup> Application 54022.

<sup>8</sup> All applications.

<sup>9</sup> All applications.

<sup>10</sup> All applications.

<sup>11</sup> Application 54028.

<sup>12</sup> Application 54022.

<sup>13</sup> All applications.

<sup>14</sup> All applications.

<sup>15</sup> All applications.

The Applicant filed an opposition to the applications for interested person status. Responses to that opposition were filed by the United States Bureau of Indian Affairs, Donald Duff, the Wells Band Council of the Wells Band of Te-Moak Tribe of Western Shoshone, the Confederated Tribes of the Goshute Reservation, the Ely Shoshone Tribe, Great Basin Water Network, Central Nevada Regional Water Authority, Abigail Johnson, Terrence Marasco & Great Basin Hospitality and Sports, Trout Unlimited (Great Basin Chapter), Theodore Stazeski, Veronica Douglas, and Callao Irrigation Company.

The Applicant is correct in its analysis as to who are the statutorily authorized party participants at administrative hearings on protested water right applications. Nevada Revised Statute (NRS) only provides for applicants and protestants as is reflected in NAC § 533.050, and historically, with a few noted exceptions, non-party participants have been limited to persons presenting public comment. However, on very few occasions previous State Engineers have allowed agencies of the United States Government and a few other parties to intervene in proceedings when they had not timely filed protests and often were not taking a protestant position.

The strict interpretation as to party participants in hearings on protested applications was noted by former State Engineer Turnipseed in a letter dated August 12, 1992, to an attorney in Salt Lake City who had filed a motion to intervene on behalf of the City of Mesquite in the matter of the LVVWD applications (the group of applications filed in 1989 of which some are the applications under consideration here). In that letter, the State Engineer noted that he held sacred NRS § 533.365 wherein any "interested person" may within 30 days of the date of the last publication file a written protest against the granting of an application. He noted that the 30-day protest period had long since passed and that with all the publicity these applications received he could hardly believe that the City of Mesquite was not aware that the applications were filed. He also noted that an Attorney General's opinion dated February 23, 1922, states that "The State Engineer is without authority to receive and file protests against the granting of applications after the thirty day protest period for filing has elapsed." He notes that State Engineers only on rare occasions had allowed intervention in an evidentiary hearing. Two Tribes of Native Americans had been allowed intervention only because the Bureau of Indian Affairs, which acts in its trust responsibility for Indian Tribes in protesting applications where Tribes have an interest, had

failed to file a protest where he believed the Tribe's had a vested interest and thereby had failed to fulfill its trust responsibility in protecting their rights.

In this same letter, Mr. Turnipseed indicated that the State Engineer had allowed intervention in an evidentiary hearing by the National Wildlife Federation and the Sierra Club in the matter of applications filed by the United States Forest Service; however, they were not granted the status of a party with standing, but rather were only allowed to participate to develop a full record on public interest values. Nevada Revised Statute § 533.375 was cited by the State Engineer as his authority and the intervenors participated only in the briefing to gain the needed information. *State of Nevada v. Morros*, 104 Nev. 709, 766 P.2d 263 (1988) (the Blue Lakes case). Nevada Revised Statute § 533.375 provides that before either approving or rejecting an application the State Engineer may require such additional information as will enable him to guard the public interest properly.

In State Engineer's Ruling No. 4591, in what are known the Truckee-Carson Irrigation District Transfer Cases, the State Engineer noted that intervention had been granted to the United States Department of Interior, Bureau of Reclamation (BOR) as an unaligned party in interest because there were federal interests in the proceedings that justified standing. The BOR was intimately involved with the operation of the federal reclamation project in which the change applications were being filed.

During the 1993 Legislative Session, the Legislature added the current subsection 6 to NRS § 533.365, which instructed the State Engineer to adopt rules of practice regarding the conduct of a hearing on protested water right applications. No formal rules of practice and procedure for hearings on protested water right applications existed prior to that time. In the adoption of the rules, State Engineer Turnipseed attempted to address the issue of the occasional granting of intervention and the role that should be allowed for those that had not formally filed protests. Therefore, when the hearing rules were drafted, the State Engineer created a classification of participant called "interested person." A person granted interested person status was limited in that they were only permitted to testify on matters of law (for example, interpretation of federal water right decrees that governed water rights in the Newlands Project), broad public issues (for example, whether use of the water threatens to prove detrimental to the

public interest)<sup>16</sup> or matters concerning how any action of the State Engineer may affect the operation of a specific water transportation and supply project (for example, the Newlands Reclamation Project, a federal reclamation project).

The State Engineer finds nothing in Nevada water law as found in Nevada Revised Statutes confers a right of intervention in a hearing on a protested application and the Nevada Legislature has established the process by which water right applications can be protested.

The State Engineer finds the interested person classification was not created by statute and is not an avenue to obtain full party status at a hearing on a protested application and it was not intended to provide a way to circumvent the statutory protest period. It was intended only to allow limited participation upon a showing that extreme circumstances prevented the timely filing of a protest. The Nevada Legislature enacted the rules by which a person becomes a protestant and the State Engineer has no authority to otherwise provide for protestant status. By statute, full party status is limited to applicants and protestants and a person granted interested person status is not a protestant and is not a full party to the proceeding. Any participation as an interested person in a hearing is to be minor and is limited to matters of law and broad public interest issues within the statutory jurisdiction of the State Engineer. The State Engineer notes that there is no definition giving parameters to the meaning of words "extreme circumstances" and "interested person." The intent was that only very legitimate extenuating circumstances would make an adequate showing that would allow anyone else to participate in a hearing on a protested application, but only then in a very limited role.

The issue of reopening the protest period was addressed by the 2007 Nevada Legislature and no provisions were provided for reopening the protest period on existing applications such as these, to include issues not related to Nevada water law, issues personal to particular applicants requesting interested person status or are not related to the specific applications under consideration here or for the wide-open proceeding that many of those who are applying for interested person status are trying to make this hearing.

A hearing on protested water right applications is a quasi-judicial proceeding and is not similar to the process followed under the National Environmental Policy Act whereby anyone can comment on anything and expect the agency to respond. The State Engineer finds he will not unduly lengthen the proceedings with matters that are not within the State Engineer's

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<sup>16</sup> The provisions of NRS § 533.370(6) regarding interbasin transfers was not enacted until 1999.

jurisdiction and he will not allow the introduction of issues unrelated to the questions of Nevada water law raised by these applications. The State Engineer finds that the Nevada Legislature establishes the process by which water right applications can be protested and it is not within his statutory jurisdiction to supersede the process established by the Nevada Legislature, therefore, the State Engineer finds he will interpret the provision of NAC § 533.110 as it was intended when originally enacted.

## II.

By letter dated June 16, 2008, Advocates for Community and Environment (Advocates), on behalf of various unidentified Protestants and unidentified person/entities alleging interested person status, requested the State Engineer reschedule the first day of hearing on these Applications. Advocates argues that the ruling on the matter of the applications in Cave Valley, Dry Lake Valley and Delamar Valley has not yet been issued by the State Engineer, and thus, they are being forced to plan their case without having the opportunity to evaluate that ruling, and because of this, threaten litigation on the Cave Valley, Dry Lake Valley and Delamar Valley ruling and indicate a possible request for injunctive relief to prevent the Snake Valley hearing from proceeding. Advocates argues that it has very limited resources to participate in these hearings and that SNWA has had two decades to prepare its case in support of its applications. Advocates also allege that not all of the Protestants were sent notice of the hearing and it will take time to locate and notify these people. Advocates argues it was deprived of any opportunity to have input on the scheduling of the hearing and that there is no reason to rush the hearing. Advocates alleges that until Nevada and Utah negotiate an agreement about the availability of ground water in Snake Valley for appropriation in Nevada, the State Engineer cannot make a determination on the applications and that until the other required governmental review processes are completed, which will take at least two to three years, the SNWA cannot begin to implement its project, so there is no reason to proceed with a hearing. Finally, Advocates argues that the scheduling unduly placed a burden on those who wish to be recognized as interested persons.

The State Engineer finds whether or not the ruling on the applications in Cave Valley, Dry Lake Valley and Delamar Valley is issued prior to moving forward with the hearing in Snake Valley is in fact moot, because the Cave Valley, Dry Lake Valley and Delamar Valley ruling has no bearing on the Snake Valley hearing and in fact has been issued. The State

Engineer finds as to Advocates' argument that they have limited resources, it is they who are choosing to participate in the process by filing protests and whether or not they have the resources to prosecute those protests is their own personal issue. No applicant should be prevented from having its application considered because a protest was filed by someone who does not have the resources to pursue their protest.

As to the allegation of the Protestants not being noticed, the State Engineer finds that when the October 2005 notice was sent out for the January 5, 2006, pre-hearing conference, mail was returned marked by the United States Postal Service as "deceased," "undeliverable," or "no such number," for example. The State of Nevada is currently experiencing a severe budget crisis and the State Engineer is not going to waste taxpayer money sending certified notices to addresses that he has full knowledge are no longer valid. Therefore, if mail has already been returned from an address for a Protestant, the State Engineer finds that there was no reason to send it again. Advocates also argues that many of these people could probably be found. The State Engineer finds that Advocates has had two and one-half years since the first pre-hearing conference specific to these applications to find the Protestants with undeliverable mail and submit current addresses and has not done so. The State Engineer finds it is the responsibility of the Protestants to keep their addresses current in the records of the Division of Water Resources and the Protestants failure to keep a current address on file is not a reason to delay a proceeding.

For the following Protestants the State Engineer notes the specifics of the returned mail:

Perry Steadman	deceased
Kathleen N. Baker	not deliverable
Thomas V. Bentz	insufficient address
Ramona Clayton	no such number
Malika H. Crozier	undeliverable
Hubert Davis	attempted not known
Donald Terry Fackrell	forwarding order expired
Gene D. Heckethorn	no such number
James R. Jordan	not deliverable
Wesley Jordan	attempted not known
Marie L. Jordan	not deliverable
William A. Masker	deceased
Les & Nancy Overson	no such number
Geraldine Robison	deceased
Robert B. & Gayle Robison	no such number

Shirley Geo Robison	vacant
Vivien Sell	not deliverable
Raymond E. Spear	deceased
The "Y" Truck Stop	not deliverable

The State Engineer finds the Protestants will have input on when to proceed to the actual evidentiary portion of the hearing at the first day of the hearing, which, as was very clearly stated in the notice, is a planning day on matters such as when to hold the evidentiary exchange and evidentiary portion of the hearing. The State Engineer finds he is not prevented from moving forward without an agreement negotiated between Nevada and Utah. The State Engineer also finds that waiting two to three years for other governmental processes to be complete is also not necessary. Many projects proceed on various different tracks so that the various facets come together at some point in the reasonable future.

The State Engineer finds the first meeting and status conferences held on all of the applications filed by the LVVWD were held in the early 1990s, which was prior to the administrative hearing rules that provide for requesting interested person status being enacted in 1995. In 2001, the State Engineer held hearings on the Coyote Springs portion of the Applicant's applications. In 2002, the State Engineer acted on the portion of the Applicant's applications in Garnet Valley, Hidden Valley and California Wash. In 2004, the State Engineer held a hearing on the portion of the Applicant's applications in Tikapoo and Three Lakes Valleys. The first pre-hearing conference on these specific applications in Snake Valley and those in Spring Valley, Cave Valley, Dry Lake Valley and Delamar Valley was noticed on October 26, 2005, and held on January 5, 2006. For seven years, the State Engineer has been reviewing and issuing rulings on the various applications filed in 1989 by LVVWD. The Protestants have known for more than two and one-half years that the State Engineer was moving forward with these specific applications. Anyone wanting interested person status should have filed for that status 30 days before the January 5, 2006, pre-hearing conference. However, exercising his discretionary authority, the State Engineer gave an additional opportunity in the notice of this hearing for requesting interested party status; therefore, the State Engineer finds no person or entity has been unduly burdened.



The State Engineer finds he is guided by Nevada water law and not the threat of litigation with regard to the decision making process and denies Advocates' request to postpone the first day of hearing.

### III.

The United States Department of Interior, National Park Service by letter dated June 16, 2008, requested the State Engineer not schedule the evidentiary hearing in this matter any sooner than July 15, 2009, and gave its reasons for the request. The reasons included hydrologic studies that are being conducted, the need for the creation of a regional-scale numerical model and site specific model, resolution of the Nevada/Utah agreement on apportionment of the water of Snake Valley, and time needed to allow for settlement discussions. The State Engineer notes that in approximately 1992 the Federal agencies argued for an 18-month delay, and now 16 years later they again argue for delay. The State Engineer finds that the SNWA pipeline project will be extensively studied and there will always be another study that can be done and there will always be another reason presented for delaying a hearing on the applications.

### IV.

In State Engineer's Intermediate Order No. 1 and Hearing Notice in the Matter of Applications 53987 – 53992, inclusive (Cave Valley, Dry Lake Valley and Delamar Valley),<sup>17</sup> the State Engineer indicated that the United States Department of Interior, Bureau of Indian Affairs was granted intervener status as a protestant in the matter of the applications filed by LVVWD. The State Engineer notes that this petition was filed and granted prior to the legislative mandate for the creation of rules for protest hearings, which includes the rule for requesting interested person status. A further review of the petition to intervene indicates that it was filed to protect the resources of the Moapa Paiute Tribe, Las Vegas Paiute Tribe, Duckwater Shoshone Tribe, Ely Shoshone Colony and Goshute Shoshone Tribe. The State Engineer finds the United States Bureau of Indian Affairs has already been granted intervener protestant status on behalf of the Ely Shoshone Tribe and the Confederated Tribes of the Goshute Reservation in the matter of these applications.

The Wells Band Council of the Wells Band Te-Moak Tribe of Western Shoshone argues that the reason it should be granted interested person status is that it relied on the United States

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<sup>17</sup> State Engineer's Intermediate Order No. 1 and Hearing Notice, dated October 4, 2007, In the Matter of Applications 53987 – 53992, inclusive, official records in the Office of the State Engineer.

Department of the Interior protest to protect its rights and interests, but that the Federal Agencies previous stipulations to settle their protests indicates a failure on the part of the Federal Agencies to protect the Wells Band's rights and interests. The State Engineer finds the Wells Band Council of the Wells Band Te-Moak Tribe of Western Shoshone is in Nevada not far from Ely, Nevada. The State Engineer finds the notice of these applications was published in the Ely Daily Times in Ely, Nevada and a great deal of publicity surrounded the filing of these applications. The State Engineer finds either the Bureau of Indian Affairs or the Wells Band Te-Moak Tribe could have timely filed a protest to the applications. A further review of the petition to intervene filed by the Bureau of Indian Affairs indicates it was not filed on behalf of the Wells Band Te-Moak Tribe; thus, the Bureau of Indian Affairs must not have believed there was any concern as to the resources of the Wells Band. The State Engineer finds even though the Bureau of Indian Affairs did not act in these proceedings on behalf of the Wells Band, the Wells Band of Te-Moak Tribe, like the Ely Shoshone Tribe and the Moapa Tribe who did timely file protests on their own behalf, could have filed protests on its own behalf and has not adequately demonstrated extreme circumstances that prevented it from timely filing a protest to the applications and their request for interested person status is denied.

The Ely Shoshone Tribe argues that at the time the applications were filed they were encouraged to rely on the United States Department of Interior's protests to protect their rights and interests. However, the Ely Shoshone Tribe filed a protest on it own behalf regarding Application 54027. The State Engineer finds the Ely Shoshone Tribe is a full party protestant in the matter of Application 54027 on its own behalf and a full party protestant through the Bureau of Indian Affairs as to the rest of the applications; therefore, the request for interested party status is denied. If the Tribe has an issue with the Bureau of Indian Affairs stipulating to settle its protests in the matter of these specific applications, it is its obligation to raise that issue with the Bureau of Indian Affairs and that is a matter between the Tribe and the Bureau of Indian Affairs, but does not change the fact that at this stage the Tribe is a party protestant itself and through the Bureau of Indian Affairs.

The Confederated Tribes of the Goshute Reservation argue that at the time the applications were filed they were encouraged to rely on the United States Department of Interior's protests to protect their rights and interests. The State Engineer finds that any reliance on the Bureau of Indian Affairs and actions of the Bureau of Indian Affairs in which the

Confederated Tribes of the Goshute Reservation are disappointed is a matter between the Confederated Tribes of the Goshute Reservation and the Bureau of Indian Affairs, but is not a reason to grant interested person status. As with the Ely Shoshone Tribe, as of now the Confederated Tribes of the Goshute Reservation have protestant status through the Bureau of Indian Affairs. Additionally, the State Engineer finds that a portion of the Confederated Tribes of the Goshute Reservation is within the State of Nevada in the area where the notice of these applications was published and, like the Ely Shoshone Tribe, the Confederated Tribes of the Goshute Reservation could have filed a protest on its own behalf and has not demonstrated any extreme circumstances that prevented it from timely filing a protest; therefore the request for interested person status is denied.

V.

Water Keepers argues that it should be granted interested person status because it did not exist as an organization until 2008. In an attempt to demonstrate extreme circumstances that prevented the timely filing of a protest, Water Keepers makes a nonsensical argument about water shortages on the Colorado River, the 100-year historical record of the Colorado River and global warming to try and demonstrate an extreme change that affected the decision to protest by a group that did not even exist when the applications were filed. Water Keepers also argues that it would have filed protest this year except that the State Engineer refuses to accept a protest after the protest period had ended. Water Keepers then makes a series of arguments regarding due diligence and matters of law.

The State Engineer finds that the non existence of an organization during the protest period does not demonstrate "extreme circumstances." The State Engineer finds the Nevada Legislature is the only entity that grants the authority for filing protests and it has not provided any provision for reopening the protest period as to these applications. The State Engineer finds that the other arguments made by Water Keepers are not relevant to the State Engineer's consideration of these applications. The State Engineer finds the arguments made by Water Keepers demonstrates why the rule should be narrowly construed. The State Engineer finds Water Keepers has not demonstrated extreme circumstances within the intent of the rule to be granted interested person status; therefore the request for interested person status is denied.

## VI.

Great Basin Water Network requested interested person status and indicates that it does not claim any water rights, but rather exists to assist protestants and to educate and inform affected parties and alleges that the extreme circumstances that prevented it from timely filing a protest was that it was not formed informally until five years ago and incorporated in 2005. The Great Basin Water Network also alleges that the magnitude of the project and the export of water from Snake Valley constitute extreme circumstances. The State Engineer finds that the non existence of an organization during the protest period does not demonstrate extreme circumstances and the State Engineer finds that it is not the size of the project that should determine participation; it is the extreme circumstances preventing the statutory process of filing a timely protest; therefore the request for interested person status is denied. The State Engineer finds that this denial does not prevent the Great Basin Water Network from doing exactly what it indicates its purpose is to do, that being its stated purpose to assist Protestants and to educate and inform affected parties.

## VII.

The State Engineer finds Theodore Stazeski did not present any argument in his application as to why he complies with the provision of Nevada Administrative Code § 533.100 to be recognized as an interested person and in fact did not specifically ask for that status; therefore, he will not be recognized as an interested person. The State Engineer finds an after the fact argument in response to the opposition will not be accepted as an adequate application when in fact Mr. Stazeski did not even request that status.

## VIII.

The State Engineer finds Donald Duff in his response to the SNWA's opposition provided more specific information as to vested water rights he claims as to property he purchased from Owen Gonder as entitling him to be a successor-in-interest to Owen Gonder's protest.

## IX.

Veronica Douglass for Deep Creek Mountains Ranch only requested to be recognized as an interested person as to Application 54022. She argues that since they live in Utah and the filing of the applications was only published in Nevada that she had no notice of the applications, even though there is no newspaper to publish in on the Utah side of the Snake Valley Basin, but

believes they pose a significant risk to the continued livelihood of her ranch. Since Snake Valley spans the Nevada/Utah border and the filing of the applications was only published in Nevada, she argues that constitutes extreme circumstances that prevented her from having notice of the applications in order to have filed a timely protest. Ms. Douglass also made many other arguments that are not relevant to the question of whether extreme circumstances prevented the timely filing of a protest.

The State Engineer finds the points of diversion under the applications are not in Utah and the State Engineer is not required by law to publish notice of the applications in Utah, and legal notice of the applications was published in accordance with the Nevada water law. The State Engineer finds Ms. Douglass wants to present a personal case as to her ranch, which is not a matter of law or broad public issues an interested person is allowed to present.

The State Engineer finds that for water rights holders in Snake Valley Utah or a governmental agency in Utah whose jurisdiction includes the Snake Valley ground-water basin, the State Engineer will consider that a showing of extreme circumstances can take into consideration the lack of publication on the Utah side of the basin for water right holders in the Utah side of the basin. The State Engineer finds Ms. Douglass will be granted interested person status in accordance with NAC § 533.100.

**X.**

Callao Irrigation Company (Callao) alleges that the extreme circumstance that prevented it from timely filing a protest in that it had no notice of the applications, as they were not published in Utah. Callao indicates it is comprised of five ranches in Snake Valley and the fact that no notice was published in Utah and the significant multi-state impacts of the proposed ground-water withdrawals constitute extreme circumstances. Like for Ms. Douglass, the State Engineer will consider that a showing of extreme circumstances can take into consideration the lack of publication on the Utah side of the basin for water right holders on the Utah side of the basin. The State Engineer finds Callao will be granted interested person status in accordance with NAC § 533.100

**XI.**

Salt Lake County, Utah, requested interested person status but gave no grounds for any extreme circumstances that prevented it from timely filing of protest, and in fact it indicated it was aware of the applications but did not feel it was necessary to file protest at that time. Salt Lake County does not share the Snake Valley ground-water basin with Nevada and does not hold water rights in the ground-water basin; therefore the request for interested person status is denied.

**XII.**

Utah County, Utah, requested interested person status but did not provide any substantial grounds demonstrating extreme circumstances prevented it from timely filing a protest. Utah County does not share the Snake Valley ground-water basin with Nevada and does not hold water rights in the ground-water basin; therefore the request for interested person status is denied.

**XIII.**

Trout Unlimited, Great Basin Chapter requested interested person status alleging that it was not aware of the filing of the applications. The State Engineer finds Trout Unlimited indicated that it has been involved in Snake Valley since the 1970's and had members in the area at the time the applications were filed. The State Engineer finds Trout Unlimited is located in Baker, Nevada, which is located in White Pine County, the county where notice of the applications was published, and thus, has not made a sufficient showing that extreme circumstances prevented it from timely filing a protest and its request for interested person status is denied.

**XIV.**

Terrence P. Marasco and Great Basin Hospitality and Sports requested interested person status alleging that he has businesses in Baker, Nevada, but did not live in Baker at the time the applications were filed. Mr. Marasco does not indicate he holds water rights in the basin of origin, but expresses concerns that go to the environmental soundness of exporting water from the basin of origin and issues as to the long-term growth and development of the basin of origin.

The State Engineer finds Mr. Marasco has not shown he is a water right holder in the Utah portion of Snake Valley and the State Engineer finds that moving to an area after the

protest period has ended does not demonstrate extreme circumstances within the intent of the regulation; therefore the request for interested person status is denied.

**XV.**

North Snake Valley Water Association requested interested person status indicating that it is an organization that was formed in 2005 when the Utah Department of Water Resources brought the applications to their attention. They allege that they are comprised of residents/water right holders from the north end of Snake Valley and that they did not timely file individual protests because notice of the applications were not published in Utah even though they did not exist as an organization at the time of publication. The State Engineer finds that the forming of an organization after the protest period does not demonstrate extreme circumstances for granting interested person status, therefore the request for interested person status is denied.

**XVI.**

Abigail C. Johnson requested interested person status on the grounds that she purchased property in Baker, Nevada, in 2003 and did not originally protest the applications in Snake Valley because she did not own property there at the time for filing original protests. She notes that she did timely file a protest to the Applicant's applications in Spring Valley. The State Engineer finds Abigail Johnson had full knowledge of the filing of the applications at the time for originally protesting them and had full knowledge of the applications at the time she purchased her property in Snake Valley and was an actual protestant to some of the applications and thereby does not demonstrate extreme circumstances that prevented her from timely filing a protest to the applications in Snake Valley and the request for interested person status is denied.

**XVII.**

The Central Nevada Regional Water Authority (CNRWA) requested interested person status. The CNRWA indicates that it is a unit of local government that was established by the agreement of six counties, those being Elko, Esmeralda, Eureka, Lander, Nye and White Pine. It argues that it should be granted interested person status because it was not in existence at the time the applications were filed, but that its purpose is to proactively and collaboratively address water issues common to the communities of Nevada's rural interior. The CNRWA argues that its functions as identified in its request for interested person status, such as formulating and presenting a united position for the member counties, should support its request. The State Engineer finds that the non-existence of an organization during the protest period does not

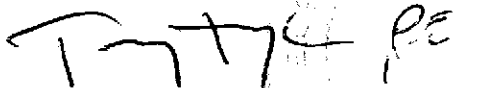
demonstrate extreme circumstances; therefore the request for interested person status is denied. The State Engineer finds that White Pine County and Nye County are already full party Protestants to this proceeding and if CNRWA wants to provide assistance to the counties it is not prevented from doing so.

CONCLUSION

The State Engineer concludes a hearing on protested water right applications is a quasi-judicial proceeding and is not a forum for anyone to comment on anything and expect the agency to respond. The State Engineer concludes the interested person classification is not a vehicle for anyone wanting to become a party to the hearing and it was not intended to provide a way to circumvent the statutory protest period. The interested person classification was intended to allow participation in a very limited manner on matters of law and public interest issues within the statutory jurisdiction of the State Engineer.

The State Engineer concludes that the Nevada Legislature grants the authority for the filing of a protest to applications filed with the State Engineer and the reopening of the protest period was addressed by the 2007 Legislature and no provisions were enacted to provide the reopening of the protest period as many of those who are applying for interested person status here are trying to do.

Respectfully submitted,



Tracy Taylor, P.E.  
State Engineer

Dated this 9th day of  
July, 2008.