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DATE: July 1, 2008

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COMMENTS: As per our understanding, the State Engineer is accepting further filings with respect to the requests for Interested Person status. The Bureau of Indian Affairs respectfully requests you consider this filing in support of the requests for Interested Person status filed by the Goshute, Ely and Wells Tribes. A copy of this filing was also placed in the mail to you. Thank you.

BEFORE THE STATE ENGINEER OF THE STATE OF NEVADA

In the Matter of Application Nos. 54022-54030
filed by the Southern Nevada Water Authority
to Appropriate the Underground Waters of
Snake Valley Hydrographic Basin

) REPLY OF THE BUREAU OF
) INDIAN AFFAIRS IN SUPPORT
) OF REQUESTS FOR
) INTERESTED PERSON
) STATUS FILED BY THE
) GOSHUTE, ELY AND WELLS
) TRIBES OF INDIANS

The Bureau of Indian Affairs (BIA) submits this reply in support of the requests for recognition as an Interested Person by the Confederated Tribes of the Goshutes Reservation (Goshute Tribe), the Ely Shoshone Colony (Ely Colony) and the Wells Band Council of the Wells Band Te-Moak Tribe of Western Shoshone (Wells Band), hereinafter collectively referred to as the Tribes, with respect to the subject applications and in opposition to the response to such requests by the Southern Nevada Water Authority (SNWA). While the BIA believes that the protests it has filed to the subject applications are protective of the rights and interests of the Tribes that are held in trust by the United States and that may be affected by the proposed groundwater development by SNWA, each of the Tribes has specific knowledge and perspective as to their own rights and interests that BIA does not have and are better able to represent such rights and interests themselves.¹ Thus, we urge the State Engineer to grant each Tribe's request for Interested Person status at this proceeding.

In its opposition to the requests for Interested Person status by each of the Tribes, SNWA points to the words of the relevant administrative code section, NAC 533.100, and asserts that only a party related to the Bureau of Reclamation (Reclamation or USBOR) may be granted Interested Person status. Opposition to Applicants for

¹ The protests to the subject applications by the BIA are primarily on behalf of the Goshute Tribe.

Interested Party and Successor in Interest Status, p. 4 (hereinafter referred to as SNWA Opposition) ("numerous individuals and entities unrelated to the USBOR have filed for interested person status."). We are unaware that the State Engineer has interpreted this provision so narrowly and in fact, SNWA provided no citation to support its extremely narrow reading of this provision. The only portion of the Interested Person provision that may be related to the USBOR is the last clause of the limitation on the scope of testimony that may be offered by an Interested Person. That clause provides that an interested person may testify on 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. NAC 533.100 (3). That provision may indeed have been drafted with the Bureau of Reclamation and the Newlands Project in mind, however, the criteria for determining whether an individual or entity may be granted Interested Person status does not refer to such criteria.

Further, even if the Interested Person provision requires a situation similar to that of the Newlands Project where the USBOR was allowed to participate in state engineer protest proceedings even though it did not file a timely protest, this weighs in favor of granting the requests by the Tribes. Reclamation is in a similar position to the farmers in the Newlands Project as BIA is to the Tribes. While Reclamation does not hold the water rights for the Newlands Project in trust for the farmers, Reclamation does hold the overall water right for the Project, owns the major diversion and storage works to deliver project water and is the overall manager of the Project water supply. The individual farmers hold the beneficial interest in the Project water right as it relates to the land irrigated and the

farmers, through the Truckee-Carson Irrigation District, operate the Project facilities to store and deliver the irrigation water.

Likewise, BIA holds certain water rights and water related resources within each Tribes reservation in trust. This trust obligation requires BIA to protect these rights and resources and assist the Tribes in their management of them. However, the Tribes also hold a separate interest in these rights and resources and manage them on a daily basis similar the farmers in the Newlands Project. The primary difference here is that the Tribes are seeking the Interested Person status and not BIA.²

SNWA asserts that, unlike the situation where Reclamation was allowed to participate, the Tribes cannot offer a compelling reason for Interested Person status because they would not offer any new information not already part of the administrative record, part of the evidence of other protestants or that could be presented during public comments. SNWA Opposition, p. 5. As explained above, the situation of the Tribes and BIA is similar to that of Reclamation and the farmers, where Reclamation was allowed Interested Person status. The Tribes will indeed be able to offer information that is not currently in the administrative record, offered as evidence by another protestant or presented during public comment. The Tribes offer a unique perspective on their rights and resources that may be affected by the subject applications. As holders of their own interests in the reservation water rights and resources they will provide the State Engineer with additional information that will assist the state engineer in determining whether any

² BIA may be limited to presenting evidence related to the Goshute Tribe and not the Ely Colony or the Wells Band because the BIA protests are primarily in support of the Goshute Tribe. However, certain evidence related to the overall hydrology of Snake Valley and the regional flow system and impacts from pumping may apply to all of the Tribes.

of these rights and resources may be adversely affected by SNWA's proposed groundwater development.³

SNWA also asserts that granting the Tribes' requests for Interested Person status will only result in presentation of cumulative evidence. SNWA Opposition, p. 6. As explained above, the Tribes will present evidence in addition to the evidence that BIA may present because of the Tribes' unique understanding of their own rights and resources and that they hold those rights in their own name as the beneficiary. BIA does appreciate the State Engineer's desire to limit the presentation of cumulative evidence, and will coordinate with the Tribes to reduce such evidence in any presentation of evidence before the State Engineer.

The BIA supports the Tribes' participation in the subject proceeding as Interested Persons so that they may independently protect their rights and resources that may be affected by SNWA's proposed groundwater development project.

Dated: July 1, 2008

Respectfully submitted,



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³ SNWA asserts without support that "administrative necessity" mandates the State Engineer to limit the parties that participate in the hearing on the subject applications, thus, the requests for Interested Person status must be denied. This is not one of the criteria stated in NAC 533.100 upon which to determine whether to grant Interested Person status. Further, while the BIA is sensitive to the limited resources of the State Engineer in holding such proceedings, the primary purpose of such a proceeding is to obtain the evidence necessary to the support the State Engineer in making a decision to grant or deny the applications. Thus, upon a proper showing of the necessary "extreme circumstance" a request for Interested Person status should be granted.