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

State 's EXHIBIT 29
DATE: 7-15-08

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| IN THE MATTER OF APPLICATION NOS. 54022 THROUGH 54030, INCLUSIVE FILED TO FILED TO APPROPRIATE THE UNDERGROUND WATERS OF SNAKE VALLEY (195), HYDROGRAPHIC BASIN | ) ) ) ) ) ) ) | RESPONSE TO SNWA'S OPPOSITION TO APPLICATIONS FOR INTERESTED PARTY AND SUCCESSOR IN INTEREST STATUS |

Comes now, the Ely Shoshone Tribe, and files this Response to the Southern Nevada Water Authority's (SNWA's) Opposition to Applications for Interested Party and Successor in Interest Status in the hearing regarding SNWA groundwater applications in Snake Valley, Nevada. As detailed below, SNWA's opposition to the Ely Shoshone Tribe's request for Interested Person status in the Snake Valley hearing is without merit and the Ely Shoshone Tribe's request should be granted. Specifically, the evidence the Ely Shoshone Tribe is prepared to present is distinct and different from that which will be presented by any other protestant currently listed as a party in the Snake Valley hearing. In addition, the federal agencies' (DOI agencies') consistent, repeated failure to represent the Ely Shoshone Tribe's interests in the hearings on SNWA's pipeline project groundwater applications, or to present any evidence on its behalf in any of those hearings, constitutes an extraordinarily disabling, and plainly extreme, circumstance. These extreme circumstances warrant recognition of the Ely Shoshone Tribe as an Interested Person because that is the only way to ensure that the Tribe's rights are protected and evidence is presented at the Snake Valley hearing.

I. Factual Background

On October 26, 2005, the State Engineer issued a Notice of Pre-Hearing Conference for SNWA's water right applications in Spring, Cave, Dry Lake, Delamar, and Snake Valleys (53987-53992, inclusive and 54003-54030, inclusive). This pre-hearing conference was held on January 5, 2006. On March 8, 2006, the State Engineer issued an Intermediate Order which set the date for hearings on Spring Valley. The order stated that hearings for the Snake Valley and Cave, Delamar, and Dry Lake Valleys would be scheduled at a later date.

The hearing on SNWA's Spring Valley applications was held on September 11-25, 2006. The hearing on SNWA's Cave, Dry Lake, and Delamar Valleys applications was held on February 4-15, 2008. All federal agencies that protested the applications in these valleys, including the BIA, jointly signed stipulated agreements with SNWA to withdraw their protests before each of those hearings, and did not participate on behalf of any Tribe at either of those hearings. See Stipulation for Withdrawal of Protests (September 8, 2006) (Spring Valley); Stipulation for Withdrawal of Protests (January 7, 2008) (Cave, Dry Lake, and Delamar Valleys, BIA Signature).

On May 23, 2008, SNWA requested the State Engineer to set a hearing date for SNWA's groundwater applications 54022-54030 in Snake Valley as soon as possible. On May 28, 2008, the State Engineer issued a Notice of Hearing for the Snake Valley applications. That notice set what is in effect the pre-hearing conference for the Snake Valley hearing for July 15, 2008. Because the State Engineer has termed the July 15 proceeding a "hearing" rather than a "pre-hearing conference," the deadline for Interested

Person filings was June 16, 2008, scarcely two weeks after the notice was mailed out. Therefore, these persons had only two weeks to prepare their filings.

On June 12, the Ely Shoshone Tribe filed a request for Interested Person Status with the State Engineer. That request noted a number of the Tribe's substantial water rights and other interests that may be harmfully impacted by SNWA's Snake Valley applications and related pipeline project. It should be noted that the Ely Shoshone Tribe filed a timely protest to SNWA Snake Valley application 54027. Therefore, the Tribe has the right to participate in the Snake Valley hearing as a protestant as to that application. However, the Tribe has filed for Interested Person Status for the remainder of SNWA's Snake Valley applications to insure that it will have the opportunity to present evidence on the potential impacts of all of SNWA's Snake Valley applications.

On June 23, 2008, SNWA filed an opposition to most of the requests for Interested Person Status, including a one paragraph opposition to all tribal entity requests for Interested Person Status. The State Engineer, orally, has indicated that the deadline to respond to SNWA's opposition is July 1, 2008, at 5:00 p.m. and that faxed copies of the responses will be accepted provided a mailed original follows.

II. Legal Background

At the outset, SNWA self-servingly mischaracterizes the nature of water rights hearings in Nevada, stating that only protestants and applicants involved in the subject application may participate in State Engineer hearings. However, NAC 533.100 clearly provides for participation of interested persons in water rights hearings. By asserting that only applicants and protestants may participate in such hearings, SNWA seeks to negate,

or at least marginalize, the interested person provision of the NAC. The interested person provision is a mechanism by which an affected citizen who is neither an applicant nor a protestant may enter the proceedings and offer testimony at the hearing. Nowhere in the NAC is it stated that NAC 533.100 is an exception to any general rule, as SNWA would argue. While it is true that interested person status will be granted only upon a showing of extreme circumstances that prevented the filing of a timely protest, the State Engineer and Nevada courts have historically granted such requests in a variety of circumstances.

III. Argument

Contrary to SNWA's assertion, the evidence that the Ely Shoshone Tribe would present is plainly distinct and different from that which will be presented by the currently listed protestants to SNWA's Snake Valley applications. SNWA argues that interested person status is not warranted, because the hearing on SNWA's Snake Valley applications "will already involve numerous protestants representing various points of view." SNWA Opposition at 4. Whether or not this assertion is true, it does not address the simple fact that none of the protestants are members of the Ely Shoshone Tribe, that the BIA and other DOI agencies have not introduced any evidence concerning any tribal rights or resources that may be impacted by SNWA's applications and related pipeline project, and that the ongoing pattern of stipulated agreements between SNWA and the federal agencies makes it highly likely that the views, evidence, and interests of the Ely Shoshone Tribe will not be presented in the Snake Valley hearing unless the Ely Shoshone Tribe is recognized as an Interest Person for that hearing.

Consequently, the evidence presented by existing protestants and by SNWA will not provide all the relevant information necessary for the State Engineer to make a sound determination on the applications. The Ely Shoshone Tribe's evidence, including evidence of cultural resources (such as springs and groundwater-fed sites) and tribal water use on the Tribe's aboriginal lands (which include basins adjacent and hydrologically connected to Snake Valley), is clearly not cumulative as no such evidence will be presented by other protestants at the hearing. If the State Engineer does not grant the Ely Shoshone Tribe Interested Person Status, evidence relating to the Tribe's water rights, Tribal members' historic and current use of water, potentially affected cultural resources, and related hydrologic information would all be excluded from review by the State Engineer. While SNWA may want to prevent potentially significant information that does not favor its applications from being presented to the State Engineer, preventing the Ely Shoshone Tribe from presenting such evidence as an Interested Person would not be consistent with the State Engineer's mandate to make fully informed, sound decisions.

Similarly the State Engineer should reject SNWA's assertion that permitting the Ely Shoshone Tribe to participate as an Interested Person would unnecessarily complicate the hearing and needlessly waste time, SNWA Opposition at 4. This baldly self-serving assertion is belied by the fact that the DOI agencies have informed the Ely Shoshone Tribe that they support its involvement in the hearing as an Interested Person. Further, because the Ely Shoshone Tribe is a protestant with respect to application number 54027, recognition of the Tribe as an Interested Person with regard to SNWA's other Snake Valley applications would not create any significant additional complication or burden.

SNWA's claim that the BIA will represent the Ely Shoshone Tribe's interests in the Snake Valley hearing is equally misleading and likely untrue. Today, as SNWA makes this argument, SNWA is in the process of negotiating a stipulation with the BIA and other DOI agencies that will result in the abandonment of all federal agency protests. Therefore, SNWA not only knows, but is actively working to ensure, that the DOI agencies will stipulate out of the Snake Valley hearing, dismiss their protests, and not present any of the Ely Shoshone Tribe's evidence, or represent the Ely Shoshone Tribe's interests, in the hearing. For SNWA to argue to the contrary on the basis of such a misleading mischaracterization of the circumstances is breathtakingly disingenuous. Should the DOI agencies stipulate out of the Snake Valley hearing – as SNWA is working assiduously to ensure – the Ely Shoshone Tribe would have no representation whatsoever at that hearing and its evidence would not be available to the State Engineer.

In another cynical effort to mislead the State Engineer by mischaracterizing the reality of the situation, SNWA asserts that the Tribe's loss of its right to present its evidence to the State Engineer due to SNWA's aggressive pursuit of stipulated dismissals from the federal agencies does not constitute an extreme circumstance. SNWA bases its argument on the presumption that the federal agencies will represent the Ely Shoshone Tribe at the Snake Valley hearing in fulfillment of their trust duties to the Tribe, and thus the State Engineer need not recognize the Tribe as an Interested Person to enable it to represent its own interests at the Snake Valley hearing. But, as SNWA knows full well, the federal agencies have repeatedly failed to follow through with their protests, failed to represent the Tribe's interests in the hearings on SNWA's applications, and failed even to

consult with the Ely Shoshone Tribe before abandoning its interests. The Ely Shoshone Tribe respectfully suggests that the loss of the Tribe's right and ability to present its evidence and interests to the State Engineer due to decisions and actions of the federal agencies over which the Ely Shoshone Tribe has no control is precisely the type of circumstance that warrants interested person status. The federal agencies' abandonment of their duty to the Ely Shoshone Tribe is not a development that the Tribe reasonably should have foreseen and, as such, is an extreme circumstance that justifies the Tribe's failure to file a timely protest of its own when the federal agencies were filing protests that purported to cover the Ely Shoshone Tribe's rights and interests.

SNWA's gratuitous comment that the federal agencies' violation of their duties to the Ely Shoshone Tribe is beyond the State Engineer's jurisdiction is irrelevant and misleading. The Ely Shoshone Tribe is not requesting that the State Engineer resolve any claimed breach of trust duties on the part of the federal agencies. Rather the Tribe is alerting the State Engineer to the fact that its vital rights and interests at risk due to SNWA's applications have been, and continue to be, forfeited against its will. And, further, the Ely Shoshone Tribe is requesting that due to this extreme circumstance the State Engineer allow the Tribe to participate and present its interests in the Snake Valley hearing as an Interested Person. That determination obviously is within the State Engineer's jurisdiction.

As noted in the Ely Shoshone Tribe's June 12 request for Interested Person Status, the fact is that the DOI has failed to protect the Tribe's rights and interests in basins from which SNWA has applied to appropriate groundwater. Indeed, in previous hearings on

SNWA's applications, the DOI has failed even to consult with the Tribe before stipulating to withdraw its protests. As a result, the only way for the Ely Shoshone Tribe to present evidence concerning its rights and interests in Snake Valley, and to defend those rights and interests, is to participate directly as an Interested Person in the State Engineer's hearing on SNWA's applications in Snake Valley. Further, the Ely Shoshone Tribe's evidence is distinct from that which will be presented by other parties because it relates to the Tribe's water rights, Tribal members' historic and current use of water, potentially affected cultural resources, and related hydrologic information that differs from the interests and knowledge base of those parties. As such, it is evidence that should not be excluded from review by the State Engineer.

IV. Conclusion

For these reasons and those stated in its June 12, 2008, Request for Recognition as Interested Person, the Ely Shoshone Tribe respectfully requests that it be recognized as an Interested Person for the hearing on SNWA's Snake Valley applications.

DATED this 1st day of July, 2008.

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