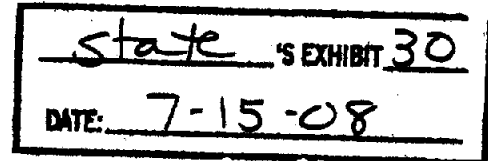


**IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION /  
NOS. 54022 THROUGH 54030, INCLUSIVE, /  
FILED TO APPROPRIATE THE /  
UNDERGROUND WATERS OF SNAKE /  
VALLEY (195), HYDROGRAPHIC /  
BASINS /

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REPLY TO OPPOSITION  
TO APPLICATIONS FOR  
INTERESTED PARTY STATUS



Comes now, the Great Basin Water Network (GBWN), Central Nevada Regional Water Authority (CNRWA), and Abigail Johnson, Terrance Marasco, Great Basin Hospitality and Sports, Trout Unlimited, Great Basin Chapter, and Theodore Stazeski (collectively referred to as the “Baker residents”), and Veronica Douglass and Callao Irrigation Company (collectively referred to as “Utah residents”), by and through the law firm of Dyer, Lawrence, Penrose, Flaherty & Donaldson, and hereby file this Reply to Opposition to Applications for Interested Party Status.

**I.**

**INTRODUCTION**

The above-mentioned individuals and entities all filed timely<sup>1</sup> applications for interested person status to participate in the upcoming hearing on the Southern Nevada Water Authority’s (SNWA) Applications<sup>2</sup> for an inter-basin transfer of groundwater from the Snake Valley Hydrographic Basin for use in Clark County, Nevada. SNWA has opposed the granting of interested person status to the individuals and entities (collectively hereinafter referred to as the “parties”). The

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<sup>1</sup>There is no dispute that the interested person applications are timely under NAC 533.100, as being brought “at least 30 days before the hearing or prehearing conference.”

<sup>2</sup> The Las Vegas Valley Water District (LVVWD) is the entity which filed the Applications, but SNWA is LVVWD’s successor-in-interest.

heart of SNWA's opposition is based upon the assertion that none of these parties have demonstrated "extreme circumstances," sufficient to justify the grant of interested person status. SNWA also attacks the applications by essentially alleging that the testimony of these parties would be cumulative and unnecessary because the State Engineer is required to take into consideration concerns regarding impact upon water resources, fish and wildlife, the environment, and future economic development in approving the Applications.

However, in determining whether or not extreme circumstances exist, it is not just the individual party's justification for why a protest was not raised that should be considered, but the totality of circumstances presented by SNWA's Applications. Upon consideration of the length of time that these Applications have been pending, the changes to Nevada water law since the filing of the Applications, and the current awareness of the federal government of the likely negative impact that climate change will have on the sustainable water supply in the Great Basin, it becomes apparent that all of the parties do present "extreme circumstances" to justify recognition of them as interested persons in these proceedings.

As for the testimony that each of these parties will offer at the hearing. It is entirely inappropriate of SNWA to unilaterally assert that the testimony will be cumulative, the interests advanced by the testimony will already be considered, or that the testimony would needlessly complicate the hearings. The magnitude of the exportation project envisioned by SNWA is unprecedented in this State, requiring that relevant testimony from as many perspectives as possible be allowed to properly consider SNWA's Applications in Snake Valley. These parties all propose to offer testimony on legal issues or matters of broad public policy that the State Engineer will be required to consider in determining whether or not to grant the Applications. The objections of

SNWA go more to evidentiary issues of relevance that are properly resolved at the hearing, not to the issue of whether participation should be allowed.

## II.

### ARGUMENT

#### A. The Matter at Hand Presents “Extreme Circumstances” Within the Meaning of NAC 533.100.

An “interested person” is one who has not been able to file a timely protest, but should be entitled to testify at the hearing. NAC 533.040. Recognition for an interested person is set forth by NAC 533.100 and is contingent upon a “showing of *extreme circumstances* [that] prevented the person from filing a protest in a timely manner.” NAC 533.100(2) (emphasis added). Upon recognition as an interested person, that person is limited to presenting testimony on “matters of law and 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.” NAC 533.100(3).<sup>3</sup> In considering the application for interested person status, the regulation must be “liberally construed.” See NAC 533.010(1)(b).

SNWA’s Applications, which propose the massive appropriation and transfer of groundwater out of Snake Valley were filed almost twenty years ago, before some entities existed and before many individuals lived in the affected area. Aside from the fact that these Applications have been pending for almost two decades, the magnitude of SNWA’s proposed exportation project has only

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<sup>3</sup> SNWA’s assertion that NAC 533.100 was only meant to allow the United States Bureau of Reclamation (USBOR) to participate in hearings regarding the Newlands Reclamation Project water, *i.e.*, to participate to protect interest on that specific water transportation and supply project, is belied by the plain language of the regulation. While participation by the USBOR in Newlands Reclamation Project hearings may have been the genesis of the regulation, by its clear terms it is not limited to those situations.

recently came to light after SNWA requested that the State Engineer take action on the Applications. It has only been since drought conditions and population growth drove SNWA to actively pursue these Applications, that the potential severity of the impacts the proposed water project would have upon Snake Valley's water resources and ecosystem were realized.

Another circumstance to be considered is that ten years after the Applications were filed, the Legislature enacted the inter-basin transfer factors set forth in NRS 533.370(6) which must be assessed by the State Engineer prior to granting an inter-basin transfer application. NRS 533.370(6) provides:

In determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider:

- (a) Whether the applicant has justified the need to import the water from another basin;
- (b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- (d) 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
- (e) Any other factor the State Engineer determines to be relevant.

One of the reasons that the Legislature required consideration of these various factors was to guard against and be cognizant of the impact such transfers can have upon third parties, the rural exporting basins, fish and wildlife, and the environment. *See Minutes of Senate Committee on Natural Resources, February 10, 1999, Exhibit G (consideration of Senate Bill 108).* Enactment of the inter-basin transfer factors considerably broadened the possible protest grounds that could be raised against such Applications beyond determining available water, existing rights, and public

policy. The instant parties all propose to present testimony bearing upon the State Engineer's consideration of these factors as a matter of law, which could not have been raised at the time of the initial protest period.

Finally, the Nevada Legislature implicitly recognized that these facts constitute the type of circumstances which would justify allowing participation in large-scale inter-basin transfer proceedings when it amended NRS 533.370 to add the current subsection 8, which mandates the re-opening of the protest period on for long-standing Applications for inter-basin transfers of water prior to hearing. Therefore, the totality of the circumstances revolving around acting upon SNWA's decades-old Applications to appropriate and transfer massive amounts of groundwater from Snake Valley, coupled with the individual circumstances raised by the instant parties, make it clear that "extreme circumstances" justifying the grant of interested party status are presented in this case.

**B. GBWN Has Demonstrated "Extreme Circumstances" and Would Offer Testimony on Matters of Law and Broad Public Policy.**

GBWN is a non-profit organization informally formed in 2003, almost 15 years after the filing of SNWA's Applications. Clearly, GBWN could not have been an original protestant to the application because it did not exist at that time. That fact, together with the other "extreme circumstances" presented by processing SNWA's Applications, provide ample reason for the State Engineer to make a finding of "extreme circumstances."

GBWN seeks to be the voice of numerous affected parties, including counties, tribes, ranchers, and rural communities, in informing the State Engineer of the potential impacts SNWA's project will have upon Snake Valley's water resources, ecology, and future development. GBWN proposes to offer testimony regarding these impacts, which, pursuant to NRS 533.370(6), are matters

of law appropriate to be testified to by an interested party under NAC 533.100(3). Thus, in consideration of all of the circumstances presented, it is certainly appropriate to grant GBWN interested person status to participate in the instant hearing.

C. CNRWA Has Demonstrated "Extreme Circumstances" and Would Offer Testimony on Matters of Law and Broad Public Policy.

In late 2005, the CNRWA was formed pursuant to the Nevada Interlocal Cooperation Act, NRS Chapter 277, to address water resource issues common to communities of rural Nevada. Eight of Nevada's seventeen counties are members of CNRWA, consisting of approximately 60% of Nevada's land area. As with GBWN, CNRWA obviously could not have filed protests to the Applications because it did not exist at the time of filing in 1989. Once again, that fact, together with the other circumstances presented here, a finding of "extreme circumstances" of why a protest was not filed by CNRWA is clearly warranted.

The mission statement of CNRWA is to "[p]rotect the water resources of Nevada's Central Hydrographic Region so the Region will not only have an economic future, but its valued quality of life and natural environment will be maintained." The CNRWA is a separate and distinct legal entity from its county members. The interests advanced and served by CNRWA are regional in nature, and some of its authorized functions include:

A. To formulate and present united positions to agencies of the State of Nevada, the United States and other government entities relevant to water and water-related issues pertaining to Nevada's Central Hydrographic Region and the Member Counties.

B. To oversee water supplies and to develop and implement plans relating to the enhancement of the environment, social conditions, and economy of Member Counties as they may be dependant upon available water supplies.

C. To (i) monitor available water supplies from all sources within and affecting Nevada's Central Hydrographic Region and separately within each Member

County, and (iii) monitor the extent to which proposals to develop and export Central Hydrographic Region water may adversely impact availability of water for use by communities, residents, businesses and ecosystems in the Member Counties.

D. To prepare, update and oversee recommendations for water management and conservation plans for consumptive and non-consumptive uses of ground and surface waters originating in or passing through the local jurisdictions of Member Counties of the Authority.

E. To combine limited fiscal and staff resources for the purpose of obtaining and managing technical support, legal counsel, policy advice and other costly assets necessary for sound decision-making by Member Counties.

F. To facilitate the development and maintenance of a common base of data regarding the use and management of Central Region water resources and the establishment of systematic arrangements for the exchange of water information.

G. To facilitate early coordination and cooperation between Members regarding proposals for inter-basin transfers of water from the Central Region and from areas outside the Central Region that are likely to affect communities and economic activities in the Central Region.

H. To encourage citizen participation in water supply and management issues of concern to Member Counties of the Authority.

I. To recommend appropriate federal and state policy and legislation for the management of surface and groundwater resources in the Central Region and in areas outside the Central Region that are likely to affect communities and economic activities in the Central Region.

J. To conserve the levels and quality of groundwater within recharge areas to the Central Region.

K. To conserve the levels and flows of surface waters within the Central Region.

L. To protect and conserve a balance between the human environment and natural ecosystems of the Central Hydrographic Region as they relate to water resource development.

M. To recommend cooperative and adaptive programs for management of the water resources in the Central Region and in areas outside the Central Region for which management decisions affect communities and economic activities in the Central Region.

N. To make secure and protect present developments within the Central Region.

O. To provide a secure foundation for future investment and development within the Central Region.

P. To communicate the roles and responsibilities of the Authority to various public and private interests.

If granted interested person status, CNRWA proposes to testify to issues arising from its authorized functions, which are certainly within the broad range of legal and policy issues required to be addressed by the State Engineer under NRS 533.370(6). For example, CNRWA might raise the question of whether or not SNWA has justified the need for the water, environmental quality issues, the impact of climate change on water supply in the West, and the need to have monitoring of the real time impacts of SNWA production wells on the ecosystem and economy of the basin of origin. Indeed, CNRWA will offer unique regional perspectives that may differ than those offered by any one individual county, and merely because two of its county members, White Pine and Nye, are protestants, the need for participation from CNRWA is not obviated. Therefore, CNRWA should be granted interested person status.

D. The Baker Residents Have Demonstrated "Extreme Circumstances" and Would Offer Testimony on Matters of Law and Broad Public Policy.

At the risk of sounding repetitive, once again the circumstances presented by hearing SNWA's Applications, on their own, are inherently "extreme," so as to justify participation by those who were unable to protest at the time of filing. In the case of the Baker residents, none of these parties were property owners in Snake Valley at the time of SNWA's filing.<sup>4</sup> For example, Abigail Johnson was not a landowner in Baker until 2003, and Theodore Stazeski until 1998. Thus, in

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<sup>4</sup> As to Trout Unlimited, Great Basin Chapter, the organization was in existence at the time of filing the Applications, but it was unaware of those filings and the impact the withdraw of groundwater could have upon the Bonneville cutthroat trout. Although that reason alone does not constitute an "extreme circumstance," coupled with the considerations presented by these Applications as a whole, there is also "extreme circumstances" present here sufficient to justify participation by Trout Unlimited. Moreover, even if Trout Unlimited had become aware of the Applications shortly after the closure of the protest period, there was no avenue of relief to pursue because the NAC 533.100, allowing for interested person status, was not even adopted until 1995.



considering the totality of the circumstances, these residents of Baker should be allowed to participate in the hearing as interested persons.

As to the testimony presented, the Baker residents will testify as to the impact granting the Applications would have on the economic future and development of the region as a whole and the water resources of the community of Baker. It is only through testimony of individuals like these that the State Engineer will be able to properly assess the future development of the region and the water necessary to sustain that development. For example in Ruling 5726, the State Engineer was not provided specific information on the amounts of water that would be needed to sustain future growth and development, thus, he was forced to estimate. File Nos. 54003-54021, Official Records in the Office of the State Engineer, Ruling 5726 at 52 (April 16, 2007). These individuals can also testify as to the proximity of SNWA's production wells to springs, wetlands, and domestic wells. Thus, the more testimony from the individuals actually living in the area, drinking its water, engaged in business and planning for future development is key to providing the State Engineer with accurate and precise information regarding the amount of water needed for those individuals and enterprises. Additionally, as residents of Baker, these individuals are uniquely situated to provide testimony of the impact the exportation would have upon the hydrologic aspects of the ecology and environment.

E. The Utah Residents Have Demonstrated "Extreme Circumstances" and Would Offer Testimony on Matters of Law and Broad Public Policy.

The Utah residents were never provided notice of the Applications, and that fact alone is enough to amount to an extreme circumstance as to why a protest was not filed. Taken together with the other factors previously discussed, there is no doubt that granting of interested person status to these parties is warranted. The Utah residents will offer testimony as to the impact the proposed

exportation will have upon their existing rights and upon wildlife, two matters of law squarely within the parameters of the inter-basin transfer factors to be considered by the State Engineer. SNWA attempts to playdown the importance of this testimony because the State Engineer must already consider these legal issues. Once again, it is not for SNWA to opine as to what source of testimony should be allowed, so long as it is relevant to the issues presented.

### III.

#### CONCLUSION

The instant applicants for interested person status have clearly demonstrated that "extreme circumstances" justifying the failure to file timely protests to the 1989 Applications exist by virtue of the nature of the action proposed to be taken by SNWA and the Nevada water laws that have since come into existence. Moreover, each of these parties will present testimony on matters of law or broad policy that are directly related to the legal determinations made by the State Engineer in this proceeding. There are already numerous protestants to these proceedings, which are bound to be complicated no matter how you cut it. Participation from these parties will certainly not make matters worse, and will only serve to give the State Engineer all of the facts necessary to make his determination. Therefore, they should be allowed the opportunity to defend their interests, as only they can do, rather than trust that some other protestant will "carry the water."

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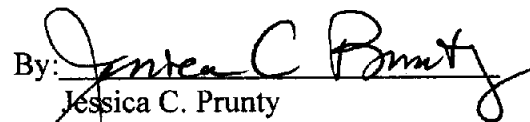
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For the foregoing reasons, the applications for interested person status should be granted.

Respectfully submitted this 1<sup>st</sup> day of July, 2008.

DYER, LAWRENCE, PENROSE,  
FLAHERTY & DONALDSON  
2805 Mountain Street  
Carson City, Nevada 89703  
(775)885-1896 telephone  
(775)885-8728 facsimile

By:



Jessica C. Prunty

Nevada State Bar No. 6926

Attorneys for Applicants for Interested Person Status

## CERTIFICATE OF SERVICE

I certify that on July 1, 2008 I mailed a copy of the instant Reply to Opposition to Interested

Person Status to the following parties and counsel of record by First-Class U.S. Mail:

Ken Albright  
Southern Nevada Water Authority  
P.O. Box 99956  
Las Vegas, Nevada 89193-9956

George Benesch, Esq.  
Attorney for various protestants  
190 West Huffaker Lane, Suite 408  
Reno, Nevada 89511-2092

John Entsminger  
Southern Nevada Water Authority  
1001 South Valley View Boulevard, MS #485  
Las Vegas, Nevada 89153

Nicole Rinke  
Attorney at Law  
505 South Arlington, Suite 110  
Reno, Nevada 89509

Paul Taggart  
Taggart & Taggart  
108 North Minnesota Street  
Carson Cit, Nevada 89703

Leah Wigren  
5995 Shadow Park Drive  
Reno, Nevada 89523

Simeon Herskovits  
Advocates for Community & Environment  
Attorney for various protestants  
129-C Kit Carson Road  
Taos, New Mexico 87571

Marilyn J. Ambrose  
Box 77  
Baker, Nevada 89311

Peter Fahmy  
Office of the Solicitor  
U.S. Department of Interior  
755 Parfet Street, Suite 151  
Lakewood, Colorado 80215

Baker Town Advisory Board  
Box 130  
Baker, Nevada 89311

Stephen Palmer  
USDI Regional Solicitor  
2800 Cottage Way E1712  
Sacramento, California 95825-1890

Baker Ranches, Inc.  
Box 29  
Baker, Nevada 89311

Baker Water & Sewer General Improvement District  
Box 94  
Baker, Nevada 89311

Attn: Mayor  
City of Caliente  
Box 158  
Caliente, Nevada 89008

Carl F. Baker  
P.O. Box 163  
Baker, Nevada 89311

William R. Coffman  
P.O. Box 9  
Baker, Nevada 89311

Dean Baker  
Box 548  
Baker, Nevada 89311

Dorothy & Raymond Damon  
Box 45  
Baker, Nevada 89311

Thomas A. Bath  
600 Mill Street  
Ely, Nevada 89301

Ely Shoshone Tribe  
16 Shoshone Circle  
Ely, Nevada 89301

Charles D. Berger  
Box 86  
Baker, Nevada 89311

Eskdale Center  
1100 Circle Drive  
Eskdale, Utah 84728

Reita Berger  
Box 86  
Baker, Nevada 89311

Garrett Family Trust  
Box 209  
Ojai, California 93023

Boundy & Forman, Inc.  
298 East Eleventh Street  
Ely, Nevada 89301

Jo Anne Garrett  
P.O. Box 130  
Baker, Nevada 89311

Nat Golter  
Box 94  
Baker, Nevada 89311

David P. & Carolyn Lehnig  
Box 111  
Baker, Nevada 89311

Owen L. Gonder  
P.O. Box 100  
Garrison, Utah 84728

Dean McIntyre  
P.O. Box 766  
East Ely, Nevada 89315

Lee H. Hayden  
Box 64  
Baker, Nevada 89311

Millard County Attorney  
362 West Main  
Delta, Utah 84624

H.P. Hesselgesser  
180 Idaho Street  
Elko, Nevada 89801

Darren Smith  
Millard County, Utah  
P.O. Box 226  
Fillmore, Utah 84631

Bunny R. Hill  
P.O. Box 150518  
East Ely, Nevada 89315

Kenneth Murrija  
1155 Avenue F  
Ely, Nevada 89301

Clay Iverson  
HCR Box 310  
Garrison, Utah 84728

Nevada Cattlemen's Association  
Eastern Unit  
P.O. Box 1077  
McGill, Nevada 89318

Las Vegas Fly Fishing Club  
2728 Tidewater Court  
Las Vegas, Nevada 89117

Nevada Farm Bureau Federation  
2165 Green Vista Drive #205  
Sparks, Nevada 89431

New Age Gardeners  
Box 94  
Baker, Nevada 89311

William R. & Katherine A. Rountree  
DX Ranch  
HC 64 Box 64510  
Ely, Nevada 89301

Nye County  
P.O. Box 153  
Tonopah, Nevada 89049

Shonna K. Sampson  
39 Connors Court  
Ely, Nevada 89301

Attn: Town Board Chairman  
Pahrump, Unincorporated Town of  
400 North Highway 160  
Pahrump, Nevada 89041

Barbara and Gerald Sand  
Box 17  
Baker, Nevada 89311

Tracy Lee Pelk  
P.O. Box 73  
Baker, Nevada 89311

Patsy Schlabsz  
Box 112  
Baker, Nevada 89311

Margaret Ann Pense  
P.O. Box 41  
Baker, Nevada 89311

Karen M. Schuh  
P.O. Box 160  
Baker, Nevada 89311

Patricia Ann Peterson  
P.O. Box 102  
Baker, Nevada 89311

Thomas E. Sims  
P.O. Box 53  
Baker, Nevada 89311-0053

Snake Valley Senior Citizen Center  
Box 65  
Baker, Nevada 89311

District Manager  
U.S. Department of Interior  
Bureau of Land Management  
HC 33 Box 33500  
Ely, Nevada 89301-9408

Snake Valley Volunteer Fire Department  
P.O. Box 101  
Baker, Nevada 89311

Betty L. Steadman  
P.O. Box 87  
Baker, Nevada 89311

Attn: District Manager  
U.S. Department of Interior  
Bureau of Land Management  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130

Terrance P. & Debra J. Steadman  
Box 117  
Baker, Nevada 89311

U.S. Department of Interior  
Bureau of Land Management  
Directors Office  
P.O. Box 12000  
Reno, Nevada 89520-0006

U.S. Department of Interior  
Fish & Wildlife Service  
911 NorthEast 11<sup>th</sup> Avenue  
Portland, Oregon 97232

Dean C. Stubbs  
1090 15<sup>th</sup> Street  
East Ely, Nevada 89301

The Border Inn  
Box 30  
Baker, Nevada 89311

The School of Natural Order, Inc.  
P.O. Box 150  
Baker, Nevada 89311

Dan McGlothlin  
U.S. Department of Interior  
National Park Service  
1201 Oakridge Drive, Suite 250  
Fort Collins, Colorado 80525

John G. Tryon  
631 Avenue I  
Boulder City, Nevada 89005

Matt Kenna  
Western Environmental Law Center  
Attorney for various protestants  
679 East 2<sup>nd</sup> Avenue, Suite 11B  
Durango, Colorado 81301

Michael VanZandt  
McQuaid, Bedford & Van Zandt, LLP  
221 Main Street 16<sup>th</sup> Floor  
San Francisco, California 94105-1936

Lloyd F. Westphal  
Box 21  
Baker, Nevada 89311

White Pine County & The City of Ely  
801 Clark Street #4  
Ely, Nevada 89301

Darwin Wheeler  
P.O. Box 40  
Harrison, Utah 84728



Darlene S. Whitlock  
P.O. Box 97  
Baker, Nevada 89311

Gilbert Wilson, Jr.  
1 Burma Road, Box 49  
Baker, Nevada 89311

Kathleen N. Baker  
P.O. Box 62  
Baker, Nevada 89311

Thomas V. Bentz  
Star Route 71691  
Pahrump, Nevada 89041

Ramona Clayton  
P.O. Box 573  
East Ely, Nevada 89315

Malika H. Crozier  
P.O. Box 26  
Baker, Nevada 89311

Hubert L. Davis  
P.O. Box 65  
Garrison, Utah 84728

Gene D. Heckethorn  
S.R. 1 Box 3  
Ely, Nevada 89301

Donald Terry Fackrell  
P.O. Box 454  
Ruth, Nevada 89319

James R. Jordan  
P.O. Box 70  
Baker, Nevada 89311

Marie L. Jordan  
P.O. Box 90  
Baker, Nevada 89311

William A. Masker  
Box 7  
Baker, Nevada 89311

Les and Nancy Overson  
Box 342  
Ely, Nevada 89301

Richard Waddingham  
Millard County Attorney  
362 West Main  
Delta, Utah 84624

J. Mark Ward  
Utah Association of Counties  
Attorney for Millard County  
Salt Lake County and Utah County  
5397 South Vine Street  
Murray, Utah 84107

Vivien Sell  
Box 14  
Baker, Nevada 89311