

RFA DATE: 3/28/2011

APPLICATION NO. 53992

PROTESTED BY	DATE
✓ TOIYABE CHAPTER OF THE SIERRA CLUB	3/9/2011
✓ NEVADA DEPARTMENT OF WILDLIFE	3/15/2011
✓ TERRY AND DEBRA STEADMAN	3/21/2011
✓ GREAT BASIN BUSINESS AND TOURISM COUNCIL	3/21/2011
✓ ELKO BAND COUNCIL	3/21/2011
✓ COUNTY OF INYO CALIFORNIA 2011	3/22/2011
✓ CENTRAL NEVADA REGIONAL WTR AUTH	3/22/2011
✓ DEFENDERS OF WILDLIFE	3/23/2011
✓ ROB MROWKA	3/23/2011
✓ DUCKWATER SHOSHONE TRIBE	3/23/2011
✓ ELY SHOSHONE TRIBE 2011	3/24/2011
✓ WHITE PINE COUNTY & CITY OF ELY 2011	3/24/2011
✓ CONFEDERATED TRIBES OF THE GOSHUTE RES	3/24/2011
✓ GREAT BASIN WATER NETWORK	3/24/2011
✓ COL. JAMES R. BYRNE, NELLIS AFB	3/28/2011

State 'S EXHIBITS 59  
DATE: 9/26/11

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Southern Nevada Water Authority  
ON October 17, 1989 ~~20~~, TO APPROPRIATE THE  
WATERS OF Underground



PROTEST  
FILED  
MAR 28 2011  
STATE ENGINEER'S OFFICE

Comes now Col. James R. Byrne

Printed or typed name of protestant

whose post office address is 4430 Grissom Avenue, Suite 100, Nellis AFB, NV 89191-6520

Street No. or PO Box, City, State and ZIP Code

whose occupation is Staff Judge Advocate

and protests the granting

of Application Number 53992

, filed on October 17, 1989

~~20~~

by Southern Nevada Water Authority

to appropriate the

waters of underground

situated in Clark, Lincoln, White Pine, and Nye

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The United States Air Force will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights for Creech Air Force Base and the southern portion of the Nevada Test and Training Range.

THEREFORE the Protestant requests that the application be

denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

DONE/DWR  
RECEIVED

MAR 28 2011

LABORATORY OFFICE

Signed

*J.R.A. Byrne*

Agent or protestant

Col. James R. Byrne

Printed or typed name, if agent

Address

4430 Grissom Avenue, Suite 101

Street No. or PO Box

Nellis AFB, NV 89191-6520

City, State and ZIP Code

702-652-5470

Phone Number

STATE ENGINEER'S OFFICE

2011 MAR 30 AM 9:17

RECEIVED

Subscribed and sworn to before me this

28

day of

March

, 20 11

DOROTHEA MAXVILLE  
NOTARY PUBLIC  
STATE OF NEVADA  
Date Appointment Exp: 10-22-2011  
Certificate No: 99-38624-1

*Dorothy Maxwell*  
Notary Public

State of Nevada

County of Clark

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**IN THE MATTER OF APPLICATIONS 53987-53992 and 54003-54021**

**EXHIBIT A**

Protest by Colonel James R. Byrne on behalf of  
Nellis Air Force Base

**GENERAL**

- I. The mission of the United States (U.S.) Air Force at Creech Air Force Base (AFB) is to provide a unique environment to train U.S. and allied combat pilots against realistic threats and targets currently encountered in various locations around the world. Creech AFB also provides direct support to conduct advanced weapons and tactics training and is the site for remotely piloted vehicles testing and training. Creech AFB is part of the Nevada Test and Training Range (NTTR) and is the gateway to the southern ranges located within Clark, Nye and Lincoln Counties. Creech AFB currently has a population of approximately 2,300 but future plans will expand the number of personnel over the next several years. Land withdrawn for NTTR provides a secure, flexible range for large-scale military testing and training that is not duplicated anywhere within the U.S. This land is critical to preparing flight crews from the U.S. and our Allies for developing and maintaining their battle skills in today's highly complex threat environments, as well as testing new weapons systems and platforms.
- II. The NTTR was originally established by Executive Order (EO) 8578 in 1940 as the Las Vegas Bombing and Gunnery Range. The range operated under the authority of numerous Executive Orders (EO) and Public Land Orders (PLO) until 1958 when operating authority was established in compliance with the Engle Act under PL 87-310. The NTTR public lands withdrawal was most recently renewed by Public Law 106-65, the Military Lands Withdrawal Act of 1999.
- III. The U.S. Air Force is entitled to federal reserved water rights for reserved lands within Creech AFB, Nellis AFB and the NTTR. The priority dates for reserved rights are senior to the appropriation sought by this application. The U.S. Air Force federal reserved water rights have not been judicially quantified.

MAR 28 2011

**FINDINGS**

**LAS VEGAS OFFICE**

- I. The applications filed on behalf of the Southern Nevada Water Authority (SNWA) propose to appropriate groundwater from the Indian Spring Valley Hydrographic Basin (Basin 161), Three Lakes Valley – North (Basin 168), Three Lakes Valley – South (Basin 211), Tikappo Valley – North (Basin 169A), and Tikapoo Valley – South (Basin 169B). The Nevada Department of Conservation and Natural Resources found that the perennial yield of the Indian Springs Valley (Basin 161) is equal to 500 acre-feet per year (AFY). While the stated perennial yield in the Indian Springs Valley Basin is 500 AFY, certificated and permitted rights total 1,380.47 AFY, which does not even account for

- federal reserved water rights, or surface water rights required for natural and biological resources in the area.
- II. The Indian Springs Valley Basin is therefore already over-prescribed, yet the application filed on behalf of SNWA proposes to withdraw an additional 30,406.61 AFY, an amount for which there is no unallocated resources. The withdrawals proposed by these applications would further reduce the flows in the Indian Springs Valley Basin, an already over-allocated basin.
  - III. The applications for water rights filed on behalf of SNWA fail to meet the requirements of the 1996 Nevada State Water Engineer's guidelines for approval of water rights applications, as reviewed and approved by the Nevada Supreme Court in *Pyramid Lake Paiute Tribe v. Washoe Co.*, 918 P.2d 697 (Nev. 1996). The guidelines require that the applications for water rights be in the public interest. These applications fail that test.
  - IV. The "public interest," as it relates to Creech AFB, NTTR, Nellis AFB and their water resources, is of critical concern to both the federal government and the State of Nevada (through the State Engineer). Approval of these applications would be contrary to the "public interest" set forth by federal proclamation and by guidelines promulgated by the Nevada State Engineer.

### CONCLUSIONS

- I. Nevada Revised Statute, 533.370(3), states that the Nevada State Water Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest..." Based on the mandate set forth in 533.370(3), N.R.S., the State Water Engineer should reject this application for the following reasons.
  - A. The Indian Springs Valley Basin is currently over allocated, and additional allocations could adversely affect the mission of the U.S. Air Force within Creech AFB and the southern portion of the NTTR.
  - B. There is a lack of empirical data to support additional allocations. Without understanding the impact additional allocations will have on both short and long term interests, these allocations could cause irreparable harm.
  - C. There appears to be a movement underway by various entities to secure water rights. Other applicants have also filed for rights within this valley which should be considered in conjunction with the subject applications as aggregate impacts versus individual applications. The need to accurately measure and understand groundwater and recharge rates is imperative.

The approval and development of these applications will impair the senior water rights of the U.S. because:

- A. The proposed appropriation could potentially reduce the flow of existing wells operating at Creech AFB and Point Bravo.

The public interest would not be served by granting permits to these applications because:

- A. The water and water-related resources of Creech AFB and the southern portion of the NTTR are of high importance due to national security and would be diminished or impaired as a result of these applications.
- II. The U.S. Air Force reserves the right to amend this exhibit as more information becomes available.

#### REFERENCES CITED

Nevada Department of Water Resources Home Page, <http://www.water.nv.gov/>, 2010.

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY LVVWD / SNWA  
ON October 17, 1989 TO APPROPRIATE THE  
WATERS OF UNDERGROUND.

FILED  
MAR 24 2011  
PROTEST  
STATE ENGINEER'S OFFICE

Comes now the Great Basin Water Network with whom the individuals in Attachment A join  
whose post office address is 1755 E. Plumb Lane #170, Reno, NV 89502  
whose occupation is a Water Protection Network  
of Application Number 53992, filed on October 17, 1989  
by LVVWD / SNWA to appropriate the  
waters of UNDERGROUND situated in LINCOLN  
County, State of Nevada, for the following reasons and on the following grounds, to wit:

RECEIVED  
2011 MAR 24 AM 11:51  
STATE ENGINEER'S OFFICE

Please see Attachment B for Reasons and Grounds

THEREFORE the Protestant requests that the application be DENIED  
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

*Susan B Lynn*  
Susan B. Lynn

Print Name

Address

Great Basin Water Network  
1755 E. Plumb Lane #170  
Reno, NV 89502

Phone Number

(775) 786-9955

Subscribed and sworn to before me this 23rd day of March, 2011



*Lori Wray*  
Notary Public

State of NEVADA

County of WASHOE

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE

**ATTACHMENT B To Protest of GREAT BASIN WATER NETWORK Against  
Application No. 53992, Filed October 17, 1989  
by the Las Vegas Valley Water District and owned by the Southern Nevada Water Authority**

This attachment lists and briefly describes the reasons and grounds for this protest of Great Basin Water Network ("GBWN" or "Protestant") against Application Number 53992. The Southern Nevada Water Authority ("SNWA" or "Applicant") is the successor-in-interest to the Las Vegas Valley Water District which filed this Application to appropriate groundwater from Basin DELAMAR VALLEY (*Basin #182*) as part of SNWA's massive proposed groundwater development project and associated network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, GBWN asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

**1. There Is Insufficient Water Available In The Proposed Source of Supply:**

The State Engineer should deny the subject applications pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system or systems, will exceed the perennial yield of those basins. The State Engineer already has designated one or more hydrologically connected basins within the same flow system or systems as the basin that is targeted by this Application, effectively acknowledging that those basins and potentially the entire flow system are fully appropriated, if not over-appropriated.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable overappropriation in the interbasin flow system or systems, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation has not been completed, and until that process has been completed it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

**2. The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells:**

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system or systems. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system or systems, the proposed appropriation and use will result in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

**3. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and SNWA's Pipeline Project, of which this Application is a part, would permit serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin.

**A. Harm to Wildlife and Wildlife Habitat:**

The proposed appropriation, export and use would result in significantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species.

The wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to, Pahrnagat National Wildlife Refuge, Desert National Wildlife Refuge Complex, Great Basin National Park, Shoshone Ponds Natural Area, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, and Amargosa Valley Pupfish Station.

Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**B. Degradation of Air Quality:**

The proposed appropriation, export, and use would result insignificantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely



will have serious harmful impacts on human and animal health in those basins and in additional downwind communities. In addition to causing respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**C. Destruction of Recreational and Aesthetic Values:**

The decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas, including but not limited to Lake Mead National Recreation Area in Clark County, Nevada, and the Wasatch Front in Utah. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**D. Degradation of Water Quality:**

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**E. Degradation of Cultural Resources:**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources in the basin expressly targeted in this Application and in hydrologically connected basins within the same interbasin flow system. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire Pipeline Project, of which this Application is a part, include but are not limited to Native American ritual worship sites and other sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Native Americans. These and other cultural resources that would be damaged if this Application is approved constitute an important part of Nevada's, and the Nation's, historical and cultural legacy. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) and 533.370(6)(c) because the proposed appropriation and use would cause degradation of cultural resources in the basin of origin and downgradient hydrologically connected basins that would be detrimental to the public interest and would be environmentally unsound.

**4. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Economic Grounds And Would Unduly Limit Future Growth And Development In The Basin From Which The Export Is Proposed:**

**A. Undue Limitation Of Future Economic Activity and Growth In Basin Of Origin:**

As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects

that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential development for both year-round and vacation use, and potential future energy development. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

**B. Undue Economic Harm Will Extend To The Economies And Communities of Downgradient Hydrologically Connected and Downwind Basins:**

These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's Pipeline Project radiates outward into downgradient hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural economies and communities of other basins, including but not limited to Snake Valley, White River Valley, Pahrangat Valley, and Moapa Valley. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it and SNWA's Pipeline Project, of which this Application is a part, would undermine the viability of existing rural economies in Nevada and Nevada's current and future economic diversity, and therefore would be detrimental to the public interest.

**5. The Proposed Action Is Not An Appropriate Long-Term Use Of Nevada's Water:**

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, and their economies, and to the environment, SNWA's rural water grab is not an appropriate long-term use of Nevada's scarce water resources. The State Engineer should require SNWA to actively pursue alternatives to the rural water grab, such as desalination, conservation and Colorado River Management alternatives, before granting water rights to SNWA from the subject valleys. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

**6. The Applicant Has Not Justified The Need To Import Water From Another Basin:**

By the same token, SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as cheaper and more reliable increased water conservation measures and the use of desalination for downstream Colorado River users in exchange for additional Colorado River water. The State Engineer should not permit such a massive interbasin transfer project, which is likely to cause long-term economic and environmental damage to the basins of origin and hydrologically connected downgradient basins, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basin of origin and hydrologically connected downgradient basins. Additionally, given the current population, housing, financial, and water use conditions and trends in southern Nevada, the water demand projections that SNWA has used to justify the Pipeline Project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

**7. The Applicant Has Not Implemented A Sufficient Conservation Plan:**

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area continues to exceed that of similarly situated western cities. The State Engineer should require SNWA to submit and demonstrate effective implementation of a conservation plan that utilizes all reasonably feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

**8. The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:**

**A. Changed Circumstances, Uncertain Intent, Doubtful Financing:**

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, have ranged into the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See Brendan Riley, Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>.* Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. *See I-Team, Dire Predictions Made on Las Vegas Water Supply, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>.* Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

**B. Failure To Demonstrate Ability to Access Land Containing Point of Diversion:**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential points of diversion are located. This lack of access is evidence that the Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence.

**9. Great Basin Water Network Reserves The Right To Amend This Protest As May Be Warranted By Future Developments:**

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, the above-named Protestant reserves the right to amend the subject protest to include such issues as they develop.

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

FILED  
MAR 23 2011  
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY LVVWD/Southern Nevada Water Authority  
ON October 17, 1989, 20, TO APPROPRIATE THE  
WATERS OF Underground Well

PROTEST

Comes now Defenders of Wildlife

Printed or typed name of protestant

whose post office address is 1130 17th Street, NW, Washington, D.C. 20036

Street No. or PO Box, City, State and ZIP Code

whose occupation is national, non-profit conservation organization

and protests the granting

of Application Number 53992, filed on October 17, 1989, 20

by Las Vegas Valley Water District / Southern Nevada Water Authority

to appropriate the

waters of NE1/4, NE1/4, Sec. 15, T. 06S., R. 64E.

situated in Lincoln

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment for Application No. 53992.

DCNE/DWR  
RECEIVED

MAR 23 2011

LAS VEGAS OFFICE

RECEIVED  
2011 MAR 25 AM 10:00  
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper

Signed

*[Signature]*

Agent or protestant

Adam Kon

Printed or typed name, if agent

District of Columbia : SS  
Subscribed and Sworn to before me  
this 22 day of March, 2011

Address

1130 17th Street, NW

Street No. or PO Box

Washington, D.C. 20036

City, State and ZIP Code

202-682-9400

Phone Number

Stephen M. McWilliams, Notary Public, D.C.  
My commission expires April 30, 2015

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

State of \_\_\_\_\_

County of \_\_\_\_\_

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATI  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT TO PROTEST OF DEFENDERS OF WILDLIFE** MAR 23 2011  
**AGAINST APPLICATION NO. 53992, FILED OCTOBER 17, 1989,**

**BY THE LAS VEGAS VALLEY WATER DISTRICT /**  
**SOUTHERN NEVADA WATER AUTHORITY LAS VEGAS OFFICE**

This attachment lists and briefly describes the reasons and grounds for this protest of Defenders of Wildlife ("Protestant") against Application Number 53992. The Las Vegas Valley Water District and the Southern Nevada Water Authority ("SNWA" or "Applicant") as successor in interest filed this Application to appropriate groundwater from Lincoln County as part of its massive proposed network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, Protestant asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the Applicant has not justified the need to import water from another basin; (5) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (6) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

**1. There Is Insufficient Water Available In The Proposed Source of Supply:**

The State Engineer should deny the subject application pursuant to NRS § 533.370(5), because all available water within the perennial yield has already been appropriated – there is insufficient water available for appropriation in Delamar Valley Basin. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins and reduce the natural discharge of the flow system. Moreover, the State Engineer should keep with past practice and not depart from any measure of caution afforded by following his traditional measure of a basin's perennial yield. The State Engineer already has designated a number of hydrologically connected basins within the same flow system as the basin that is targeted by this Application, effectively acknowledging that those basins and potentially the entire flow system are fully appropriated, if not over-appropriated.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable over-appropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. Until such additional data gathering and evaluation are complete it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

Much of the recharge in the regional flow system and in the basin targeted by this and related applications from Applicant originates in mountainous areas of higher altitudes and lower temperatures. Climate change will adversely affect the temperatures and precipitation in these areas,

decreasing the amount of groundwater recharge. The State Engineer should first exercise caution and initiate additional study and monitoring to assess the effects of climate change on the perennial yield of these flow systems and basins.

2. **The Application and Proposed Use Would Conflict With Existing Water Rights:**

The State Engineer should deny Application 53992 pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights in the basin targeted by this Application and in hydrologically connected basins within the same flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basins resulting in declining groundwater levels and unreasonable degradation of the level and quality of the groundwater.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

The carbonate rocks that underlay the Delamar Valley basin are part of the White River Groundwater Flow System, a regional-scale carbonate-rock aquifer that flows generally toward the south and terminates at Muddy River Springs and the Virgin River – tributary to the Colorado River. Groundwater discharges in large springs in the Pahrangat Valley and Muddy River Springs Area. The use of water under this and other applications in the same basin and flow system will deplete the waters of the White River regional groundwater flow system, which supplies water to many springs, streams, seeps and wetlands that are home to threatened and endangered species and found within or near national wildlife refuges and national parks.

The use of water as proposed under the applications will interfere with water rights held by the Fish and Wildlife Service (“FWS”), National Park Service (“NPS”) and Bureau of Land Management (“BLM”) specifically to protect these waters and water-related resources. The underground source of water proposed to be appropriated will intercept the source of water that now maintains the numerous springs, seeps, marshes, streams, riparian and mesquite habitats that support wildlife and plant resources, including threatened and endangered species in the state of Nevada. FWS resources in this area include but are not limited to Desert National Wildlife Range, Pahrangat National Wildlife Refuge and Moapa Valley National Wildlife Refuge. NPS resources include Lake Mead National Recreation Area.

Approval of the applications would significantly reduce the water available at the refuges and other specially designated public lands and injure FWS’s and NPS’s water rights. Impairment of these water rights will also compromise the agencies’ abilities to carry out their missions, continue to protect sensitive ecosystems and comply with federal environmental laws.

3. **The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:**

MAR 23 2011

The State Engineer should deny Application 53992 pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and inter-related applications from Applicant would threaten to cause serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin. The use of water under the applications will cause an unreasonable lowering of the water table, degradation of water quality, destruction of environmental, ecological, scenic and recreational values, all to the detriment of the public interest.

#### **A. Harm to Wildlife and Wildlife Habitat:**

The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species. In particular, groundwater withdrawals from the White River Valley regional groundwater system may reduce the groundwater supply that supports aquatic and riparian habitats for various ESA-listed species including the Hiko White River springfish (endangered), Pahrnatag roundtail chub (endangered), White River springfish (endangered), and southwestern willow flycatcher (endangered).

The public interest will not be served if waters, water-related resources and water rights to support these resources and national assets – national parks and monuments, national wildlife refuges, and national recreational areas – are diminished or impaired as a result of these applications. These federal lands and waters were established to protect imperiled fish and wildlife and their habitats. Potentially affected areas include but are not limited to Pahrnatag National Wildlife Refuge and Moapa Valley National Wildlife Refuge, established to protect the endangered Moapa dace, endangered plant and animal species and migratory birds.

Loss of adequate water supply to national wildlife refuges could eliminate or degrade wildlife habitat and result in the loss of migratory birds, threatened and endangered species and other imperiled wildlife the refuges were established to protect. This could defeat the purposes of the refuges and interfere with FWS's responsibilities under the Migratory Bird Treaty Act ("MBTA"), Endangered Species Act ("ESA"), National Wildlife Refuge System Administration Act and other laws. Acts that reduce the refuges' water supply could constitute a violation of the MBTA and ESA.

The use of water as proposed under the applications will degrade wetlands and riparian habitats, including those in Lake Mead National Recreation Area. Loss of adequate water supply to national parks and monuments could eliminate or degrade habitat for threatened and endangered species and other wildlife. Appropriation and diversion from these applications could adversely affect these species. This could interfere with the NPS's responsibilities under the National Park Service Organic Act, ESA and other federal laws. Reducing the parks' water supply could constitute a violation of the ESA.

Loss of adequate water supply to other federal lands could eliminate or degrade protected and sensitive habitats. The use of water under the applications will interfere with the BLM's capability to provide water for the multiple uses under the Federal Land Policy and Management Act including, but not limited to recreation, range, wildlife, minerals, watershed and fish. The use of water under the applications will interfere with the BLM's responsibilities to protect wetlands and to conserve listed threatened or endangered species.

Threatened and endangered species are found throughout Nevada yet outside of the parks and refuges. Reducing water supplies to these species and their habitats could adversely affect these species and could constitute a violation of the ESA and other laws. The State Engineer must also ensure that wildlife which customarily use water from a spring or that has seeped to the surface of the ground will have access to it.

Wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to, Desert National Wildlife Refuge Complex, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Overton Wildlife Management Area, Amargosa Valley Pupfish Station, Humboldt National Forest, Death Valley National Park, Great Basin National Park, Ash Meadows Area of Critical Environmental Concern ("ACEC") and Shoshone Ponds ACEC.

Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **B. Degradation of Air Quality:**

The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically



MAR 23 2011

degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

LAS VEGAS

### **C. Destruction of Recreational and Aesthetic Values:**

The severe decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

### **D. Degradation of Water Quality:**

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **4. The Applicant Has Not Justified The Need To Import Water From Another Basin:**

SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as increased water conservation. The State Engineer should not permit such a massive interbasin transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected downgradient basins in the same flow system, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently far exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin. Additionally, given the current population, housing, and water use trends, the water demand projections that SNWA has been using to justify its water importation project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

#### **5. The Applicant Has Not Implemented A Sufficient Conservation Plan:**

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area currently far exceeds that of similarly situated western cities. The State Engineer should require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

6. **The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:**

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. See Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal (Feb. 12, 2009), available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. See I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News (Feb. 11, 2009), available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

7. **Protestant Reserves The Right To Amend This Protest As May Be Warranted By Future Developments:**

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, the above-named Protestant reserves the right to amend the subject protest to include such issues as they develop.

8. **Incorporation Of Other Protests To SNWA's Applications By Reference:**

The above-named Protestant additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's groundwater export project and filed pursuant to NRS § 533.365.

DCWD  
REC'D

MAR 23 2011

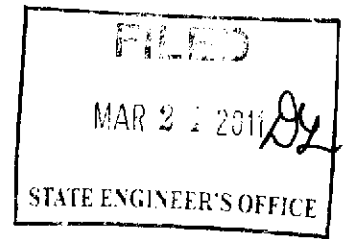
LAS V

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Las Vegas Valley Water District/SNWA  
ON October 17, 2010



PROTEST



Comes now Confederated Tribes of the Goshute Reservation

Printed or typed name of protestant

whose post office address is 195 Tribal Center Road, Ibapah, Utah 84034

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 53992, filed on October 17, 2010

19/20 89

by Las Vegas Valley Water District/SNWA

for the

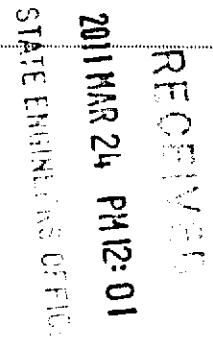
waters of underground (Basin 182- Delamar Valley)

situated in Lincoln

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment.



THEREFORE the Protestant requests that the application be DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

*Amos Murphy*

Agent or protestant

Amos Murphy

Printed or typed name, if agent

Address

195 Tribal Center Road

Street No. or PO Box

Ibapah, Utah 84034

City, State and ZIP Code

435.234.1162

Phone Number



Subscribed and sworn to before me this

23

day of

March

E-mail

20 11

State of

Utah

Notary Public

County of

Salt Lake

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT**

RECEIVED

2011 MAR 24 PM 12:00

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

**IN THE MATTER OF APPLICATION ) PROTEST BY CONFEDERATED TRIBES OF  
NO. 53991-53992 FILED BY LAS VEGAS ) THE GOSHUTE RESERVATION  
VALLEY WATER DISTRICT AND OWNED )  
BY SOUTHERN NEVADA WATER )  
AUTHORITY TO APPROPRIATE )  
UNDERGROUND WATERS OF DELAMAR )  
VALLEY (HYDROGRAPHIC BASIN 182) )**

**SUMMARY**

Pursuant to Nevada Revised Statute ("NRS") 533.365, the Confederated Tribes of the Goshute Reservation ("Tribe" or "Protestant") hereby protest Application No. 53991-53992 ("Application" or "Applications"), which was filed by the Las Vegas Valley Water District ("LVVWD") on October 17, 1989, and later acquired by the Southern Nevada Water Authority ("SNWA"), to appropriate groundwater from Delamar Valley (Hydrographic Basin 182).

Protestant states as grounds and reasons for this Protest that: (1) there is an insufficient amount of water available in the proposed source of supply; (2) the application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells; (3) the appropriation and proposed use would be detrimental to the public interest on environmental grounds, environmentally unsound and unsustainable; (4) the appropriation and proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the export basin and hydrologically connected basins; (5) the proposed use is not an appropriate long-term use of Nevada's limited water supply; (6) the Applicant

has not justified the need to import water from another basin; (7) the Applicant has not implemented a sufficient water conservation plan in the basin(s) in which water will be delivered; (8) the Applicant has not developed a sufficient conservation plan to protect affected basins; (9) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (10) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (11) the appropriation and proposed use would violate the Tribe's reserved water rights; (12) the appropriation and proposed use would violate the Tribe's rights under the Treaty of 1863; (13) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (14) the appropriation and proposed use would unduly injure the Tribe's capacity for self-governance; (15) the applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and (16) failure to demonstrate ability to access land containing point of diversion. These protest grounds are explained below.

## **INTRODUCTION**

SNWA has filed applications to appropriate and transfer large amounts of water from surface and groundwater sources in eastern Nevada, including Spring, Cave, Dry Lake, and Delamar Valleys, located in White Pine and Lincoln Counties. SNWA has also filed applications to appropriate and transfer large amounts of water from Snake Valley, which is located in Utah but extends hydrologically into eastern Nevada. Moreover, Spring and Snake Valleys are part of the Great Salt Lake Desert regional flow system, while Cave, Dry Lake and Delamar Valleys are part of the Colorado regional flow system. SNWA's groundwater development project ("GWD Project") proposes an interbasin

transfer of water via a 300+ mile pipeline to municipalities and other users in southern Nevada.

The Confederated Tribes of the Goshute Indian Reservation (“Reservation”) covers approximately 112,870 acres in eastern Nevada (White Pine County) and western Utah (Juab and Tooele counties). The aboriginal territory of the Tribe was at least partially defined in the Treaty of 1863 (13 Stat. 681-684), signed between the United States and the Tribe, among other Western Shoshone tribes. The Reservation was created from two executive orders: EO 1539 in 1912 and EO 1903 in 1914. The Reservation has expanded since that time from purchases of various lands. Currently, the Reservation encompasses portions of Deep Creek Valley (basin 193), Tippet Valley (basin 185), Pleasant Valley (basin 194), and Snake Valley (basin 195).

The Tribe has multitude of surface and ground water rights that include but are not limited to water rights that are federally reserved, decreed, acquired from existing senior state water right holders, and from the Treaty of 1863. Federal reserved water rights are in a quantity sufficient to fulfill any and all purposes of the Reservation and to satisfy the any and all present and future needs of the Reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981). Tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9<sup>th</sup> Cir. 1956). In addition, the Tribe's federal reserved water rights may be protected against off-reservation groundwater use/diversions, which are hydrologically connected with those reserved waters. *Cappaert v. United States*, 426 U.S. 128 (1976). The Reservation lies within the Great Salt Lake Desert regional flow system, and as such, the Reservation is hydrologically connected to the subject basin via interbasin groundwater connectivity.

**I. THERE IS NOT A SUFFICIENT AMOUNT OF WATER AVAILABLE IN THE PROPOSED SOURCE OF SUPPLY**

The State Engineer should deny the Application pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. Pursuant to 533.370(5), “where there is no unappropriated water in the proposed source of supply . . . the State Engineer shall reject the application and refuse to issue the requested permit.” The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins, also indicating that the entire flow system is potentially fully appropriated, if not over-appropriated.

Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section XI below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. The Stipulations entered into by the SNWA and the U.S. Department of the Interior do not properly or adequately protect Tribal water rights or substitute for the required legal recognition and protection of the Tribe’s water rights. It is noteworthy that affected Tribes have consistently objected to the Stipulations, which were negotiated and entered without the legally required consultation with affected Tribal governments. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863. Thus, the State Engineer must deny the



Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, the State Engineer previously found that there is too much uncertainty, too little sound data, and too great of a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation have not been completed, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application. Thus, the State Engineer must deny the Application. The State Engineer has the discretion to require the Applicant to undertake the necessary hydrological study to collect scientifically sound data, fill the appropriate information gaps, reduce uncertainty, and reduce the risk of unsustainable water use and export.

## **II. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS IN DOMESTIC WELLS**

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basin resulting in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells. This will undoubtedly increase water costs to domestic and local

users, which include members of the Tribe.

Groundwater sources in the subject basin and downgradient basins are interconnected via the interbasin flow system, and the subject basin is one of several areas that feed downgradient basins. As such, overutilization and overappropriation in the subject basin will negatively impact existing reserved water rights held by Indian tribes, whether the Tribal reserved water rights have been adjudicated, quantified, or utilized. The Stipulated Agreements between SNWA and the Department of Interior agencies cannot substitute for a proper consideration, recognition, and protection of Indian water rights within the subject basin, within hydrologically connected basins, or within the Tribe's treaty lands defined in the Treaty of 1863. Neither can the Stipulated Agreements waive or substitute for properly considered Indian reserved water rights.

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and importantly, to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin, and in downgradient basins will have their domestic wells adversely impacted by the Application, if approved, and SNWA has not demonstrated or devised reasonable mitigation. Thus, the State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a substantial cone of depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone of depression around the well/pumping station. Due to the large amounts of water applied for by SNWA and the large number of proposed wells (applications) for the SNWA's GWD Project, if approved, the multitude of cones of

depression would eventually coalesce and cause widespread drawdown and water quality problems. A cone of depression caused by this Application, if approved, and the entirety of other SNWA applications would conflict with existing rights and be detrimental to the public welfare.

**III. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND, UNSUSTAINABLE, AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS AS IT RELATES TO THE BASIN FROM WHICH THE EXPORT IS PROPOSED AND IN HYDROLOGICALLY CONNECTED BASINS**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in SNWA's GWD Project, of which this Application is a part, would threaten to cause serious and irreparable environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound and unsustainable as it relates to the basin of origin and hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), found that pumping ground water was jeopardizing the survival of an endangered species due to lowering of the water level. The Court found that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment . . . ."

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, as long as other public interests were not unreasonably compromised or could not be mitigated. While

SNWA's GWD Project has developed monitoring plans, it should be made clear that monitoring plans absolutely are not adequate or sufficient mitigation. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental impacts that would result from the approval of this Application, among others within the SNWA GWD Project, outweigh strongly the use proposed by the SNWA GWD Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The severe and irreparable harms that would result from the approval of this Application, and others within the GWD Project, would prove to be extremely detrimental to the public interest at national, state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from widespread impacts, despite whether or not monitoring programs have been developed and would be implemented. These grounds, in addition to the other environmental reasons below, strongly weigh in favor of the State Engineer denying this Application.

**A. Unsustainable Use and Long-Term Hydrologic and Environmental Impacts**

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins and prevent a repeat of the Owens Valley

scenario, while providing for responsible use of available water. Within that scope, SNWA's GWD Project, which the subject Application is a part, is not a responsible use of available water, the appropriation(s) would not protect natural resources, and the appropriation and GWD Project would greatly limit and burden future economic growth and development within the export basin and hydrographically connected basins. Moreover, this appropriation and proposed use is not sustainable over the long-term, would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. The Tribe relies on these natural resources in the subject basin and in hydrologically connected basins for a large number of vital cultural and religious purposes.

**B. Severe and Irreparable Harm to Ecosystems and Wildlife**

As mentioned above, the State Engineer and the courts previously have considered harms to ecosystems and wildlife to be within the purview of the public interest. Accordingly and especially in this case, the State Engineer must consider whether harms to ecosystems and wildlife would be detrimental to the public interest. The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and their habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and

state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. Wildlife taxa likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of invertebrates, including but not limited to rare butterfly species and springsnails. Threats to wildlife will include anything from actual extinction, threats to extinction, and drastically altered distributions. In addition to NRS 533.370(6)(c), the appropriation and proposed use from this Application and others that are part of the GWD Project, are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of important and necessary tribal cultural and religious resources.

The unique wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's GWD Project, of which this Application is a part, include but are not limited to Pahrangat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, Amargosa Valley Pupfish Station, the Desert National Wildlife Refuge Complex, Great Basin National Park, and Swamp Cedars/Shoshone Ponds Natural Area. Many of these protected areas are even considered globally and/or regionally unique and imperiled ecosystems and hold great cultural importance to the Tribe.

Because of these severe and irreparably harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c) and 533.367.

### **C. Degradation of Cultural, Traditional, Historic, and Sacred Resources**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources, traditions, sacred sites, etc, in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, and the entirety of the GWD Project will cause severe and irreparable harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire GWD Project, of which this Application is a part, include but are not limited to: Native American ritual worship and various sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Tribal ancestors. Cultural resources also include spring ecosystems and various plant and animal species that the Tribe holds sacred and hold religious importance. These and other cultural resources that would be damaged or destroyed if this Application is approved constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

### **D. Degradation of Water Quality**

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. The groundwater drawdown that would be caused by the

appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound and unsustainable, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound and unsustainable in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **E. Degradation of Air Quality**

It is within the purview of the State Engineer to consider whether the degradation of air quality will be detrimental to the public interest due to a specific action on the subject Application. The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in more xeric and causing groundwater-dependent vegetation to die off in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will cause previously moist and/or vegetated areas to be more susceptible to increased mobilization of particulate



matter, heavy metals, and other chemicals harmful to public health. In other words, the desiccation of these ecosystems will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities, where members of our Tribe live and/or where our sister tribes live. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas may contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. Because of these harmful impacts to the public interest, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**F. Destruction of Recreational and Aesthetic Values**

Another major environmental consideration within the purview of the State Engineer's decision on this Application is the destruction of recreational and aesthetic values. These values are important to the public on local, regional, and national levels. The severe decline in groundwater levels that will result from this Application and SNWA's GWD Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate a large number of globally and regionally unique mesic ecosystems, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas for members of our Tribe. Similarly, the loss of water, wildlife, clean air, and good visibility will unduly harm the recreational uses and value of these basins and additional downwind areas. For these reasons, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**IV. THE APPROPRIATION AND EXPORT OF WATER PROPOSED IN THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST ON ECONOMIC GROUNDS AND WOULD UNDULY LIMIT FUTURE GROWTH AND DEVELOPMENT IN THE BASIN FROM WHICH THE EXPORT IS PROPOSED**

The appropriation and proposed use would unduly limit future economic activity and growth in basin of origin. As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential and municipal developments for both year-round and vacation use, and potential future alternative energy developments that members of our Tribe may utilize and gain employment through. Many people would be negatively impacted from the proposed appropriation and SNWA's GWD Project, including residents of the subject basin, residents of hydrologically connected basins, citizens of Nevada, tourists and travelers, and consumers of products originating from such basins. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

Undue economic harm will extend to the economies and communities of hydrologically

connected and downwind basins. These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's GWD Project radiates outward into downgradient and hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural and tribal economies and communities of other basins. Development of new and expansion of existing economic ventures would be unduly constrained because of inaccessibility to water. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

**V. THE PROPOSED USE IS NOT AN APPROPRIATE LONG-TERM USE OF NEVADA'S WATER**

Nevada Revised Statute § 533.370(6) provides that the State Engineer, in his determination of whether an application for an interbasin transfer of water must be rejected, shall consider whether the proposed action is an appropriate long-term use. As described in Section IV, the appropriation and export of water from the subject basin would unduly limit economic growth and development within the subject basin, and hydrologically connected basins, and thus be detrimental to the public interest. Population projections and economic growth and development projections in Clark County have proved to be inaccurate, especially in this time of severe economic recession. In contrast, the subject basin, and adjacent areas, have been cued for numerous alternative energy projects that include but are not limited to wind energy facility projects, solar energy facility projects, or electrical transmission line arrays. These types of projects spur additional economic growth and activity. Some of these projects will require water appropriations and this Application and other applications under SNWA's GWD

Project would be greatly detrimental to these energy projects in the subject basin and the corresponding need for additional economic growth and development that would transpire as a result of the construction and operation of those facilities. Moreover, the State Engineer must allow for unanticipated economic growth in the subject basin. The legislative history shows clearly that the State Engineer's decisions to approve or reject water appropriation applications must not unduly limit future economic growth.

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, to economies, to the environment, and to the Tribe, SNWA's GWD Project and this Application are not appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the pumping and exportation of water under this Application before granting water rights to SNWA from the subject basin. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

#### **VI. THE APPLICANT HAS NOT JUSTIFIED THE NEED TO IMPORT WATER FROM ANOTHER BASIN**

By the same token, SNWA has not justified the need to import water from another basin. Nevada Revised Statute § 533.370(6) provides that before the State Engineer can approve an application for an interbasin transfer, the applicant must have "justified the need to import the water from another basin." At least two issues are relevant here. First, this Application is not justified because the Applicant has numerous other more feasible and cost-effective options, such as increased water conservation among other options. The State Engineer should not permit such a massive interbasin

transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected basins, when alternatives are available to the Applicant that are more economically sound, environmentally sound, sustainable, and drastically in favor of the public interest and welfare. While the SNWA has instituted a water conservation plan for the Las Vegas area, the transition toward water conservation has been markedly slow over the last two decades. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin and potentially spur innovative water conservation technologies and industries in the Clark County and other areas of Nevada. Implementing significant water conservation policies and regulations can be accomplished fairly rapidly and do not require several decades to implement. Second, this Application has not justified the need to import water from another basin given the current population, housing, and water-demand trends within the import basin – the water demand and population projections that SNWA has been using to justify the GWD Project are not credible. As such, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

## **VII. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN**

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. While SNWA established a goal in the early 1990s of 25% conservation by 2010 and surpassed that

goal in advance, the water conservation plan and the 25% goal are not sufficient measures by which the State Engineer should approve an application. By the same reasoning, the State Engineer would have the discretion to accept a SNWA water conservation plan of 1% conservation in 25, 50, or even 100 years. The legislative intent of NRS 533.370(6) is to require a sufficient and highest practicable level of water conservation for the basin into which the water is imported so as to make an interbasin transfer a last resort. SNWA's current water conservation plan and goals are insufficient because substantial water conservation gains still can be obtained in Clark County and the Las Vegas Valley, at a fraction of the cost of the SNWA's GWD Project and without detriment to the public interest and welfare. As such, the State Engineer must require SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by conservation-minded water-scarce municipalities – before being permitted to transfer groundwater from the subject basin and other GWD Project basins. The State Engineer must require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. The State Engineer must also require SNWA to submit a conservation plan that compares those conservations measures to the GWD Project in terms of cost and timelines for export and import basins. Unless SNWA submits such a plan, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b).

**VIII. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS**

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect

affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section III above, the Application and the GWD Project as a whole are environmentally unsound, unsustainable, and will have long-term environmental impacts within the subject basin and hydrologically connected basins within the same flow system. While biological and hydrological monitoring plans have been developed by SNWA, these plans are insufficient on numerous counts, including but not limited to being scientifically flawed and generally insufficient.

Second, NRS § 533.370(6)(d) provides that an application for interbasin transfer of water must not unduly limit future growth and development. The subject basin's future growth and development is already under way with the construction and operation of alternative energy projects and transmission lines, among other things. Predicting the amount of groundwater needed for future growth and development in the subject basin may be difficult, but the State Engineer should require SNWA to do so as part of a monitoring and mitigation plan for the export basin and/or as part of the water conservation plan for the import basin. SNWA has failed to provide reasonable and sufficient projections of future growth and development for the export basin. Just as SNWA's population and water demand projections did not predict that the Las Vegas Valley would experience an economic bust and substantial loss of population (and therefore much reduced water demand), SNWA's attempts to forecast future growth and economic development in the subject basin are also highly flawed.

Third, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone of depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or

rely on such water sources. The biological and hydrological monitoring plans do not provide safeguards from these potential impacts because: (1) monitoring plan and early detections in the plans are highly flawed; (2) monitoring and early detection for such purposes have proven to be insufficient in the past; (3) cones of depression are very likely to impact springs, seeps, and associated wildlife resources in the initial area of the cone of depression; and (4) cones of depression are likely to move downgradient and adversely impact downgradient springs, seeps, and associated wildlife.

Fourth, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone of depression and lowering of the water level that would result from the approval of this Application, and others associated with the GWD Project, is very likely to negatively affect water quality by drawing in low quality water and cause areas to coalesce. Such impacts will occur within the subject basin and in downgradient basins within the same flow system. SNWA has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor do the monitoring plans ensure that early detection will offset those impacts because once the groundwater impacts have been realized the impacts will persist over the long-term.

**IX. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED**

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that natural



resources, which by definition includes historic and cultural resources, endangered species, water quality, among other resources, are of public interest. By establishing the State Historic Preservation Office under NRS §383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes “that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin . . . .”<sup>1</sup> The State Engineer also has found that while “NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues.” Moreover, the “State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources.” Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The Application and proposed use from the subject basin will result in groundwater drawdown in the subject basin and in hydrologically connected basins and will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

---

<sup>1</sup> State Engineer's Ruling #5726 dated April 16, 2007, in the matter of applications 54003 through 54021.

**X. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES**

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate the following, but not limited to: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863. Nevada Legislature's intent of giving the State Engineer authority to approve water applications has never been to do so in a manner that would violate state and federal mandates, or state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the export of water will violate some or all of the above-listed laws due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot violate federal and state laws. As such, the State Engineer's purview is to make decisions that are not in violation of law. To do otherwise is against the public interest and welfare. Therefore, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

**XI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RESERVED WATER RIGHTS**

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's federal reserved water rights. The State Engineer has the authority to deny the Application on those

grounds pursuant to either NRS §§ 533.370(5) or 533.370(6)(e). Given that Congress and the federal government are representatives of the public and they established a permanent and federally recognized homeland for the Tribe, Congress and the federal government have deemed the establishment of Indian reservations and their associated rights to be in the public interest. The designation of the Reservation concomitantly reserved water rights for the Tribe that included any areas that may feed their ground or surface water systems.

The Tribe has rights to large amounts of water, no matter if those rights are quantified, remain unquantified, or even unused. Such water rights are predicated on the fact that the date of creation of the Reservation not only reserved the land, but also reserved the rights to water in an amount necessary to fulfill the purposes of the reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546, 600 (1963). As a result of *Winters*, the creation of the Reservation implied federal reserved water rights for the Tribe. This reserved water right vests on the date that Congress formally designated the lands as a reservation for the Tribe. *Arizona v. California*. Those reserved water rights remain regardless of utilization or quantification. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10<sup>th</sup> Cir. 1994).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's federal reserved water rights, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and

operational, is predicted to cause widespread groundwater drawdown even in separate basins that are downgradient and within the same hydrologic flow system. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's reserved water rights. Pursuant to NRS § 533.370(6)(e), the State Engineer must consider violations of tribal reserved water rights as a highly relevant factor in acting on this Application that is part of an interbasin transfer. And as such, the State Engineer must deny this Application.

## **XII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATY OF 1863**

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress, which the Supreme Court has determined has "plenary authority" of Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaty of 1863 designates and recognizes certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally recognized treaty lands are clearly within the public interest. As discussed above, Western Shoshone tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large

amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized. Such water rights, to some extent, are predicated on the fact that the Treaty of 1863 designates a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaty. Those rights remain regardless of non-use or being unquantified. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10<sup>th</sup> Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful groundwater pumping that will infringe upon or diminish water necessary to satisfy the Tribe's reserved water right. It is important to emphasize that the Tribe's water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe's reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaty of 1863 are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems and laws, as in Nevada, do not affect the rights of the Tribe's treaty lands and Reservation. *Power Comm'n v. Oregon*, 349 U.S. 435 (1955).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and

operational, is predicted to cause widespread groundwater drawdown even in separate basins that are hydrologically connected. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's rights reserved and guaranteed under the Treaty of 1863. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

**XIII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST**

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust or fiduciary relationship with Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government to government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands. Under 20 USC § 7401 Congress declared: it is "the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people." The Secretary of Interior in 25 CFR § 225.1 states that the Secretary "continues to have a trust obligation to ensure that the rights of a tribe or individual Indians are protected in the event of a violation." The Department of Justice's Policy on Indian Sovereignty and Government-to-Government Relations with the Indian Tribes states that "the

Department shall be guided . . . by the United States' trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes." The federal-tribal relationship and the federal government's responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government's "trust responsibilities to protect Indian water rights." See 43 USC § 371. There is a large list of federal mandates, policies, and federal court decisions regarding the federal government's trust responsibilities to protect the Tribe's interests, resources, and rights.<sup>2</sup> Thus, the federal government's trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe's water rights and resources within the Tribe's aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

#### **XIV. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE'S CAPACITY FOR SELF-GOVERNANCE**

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The

<sup>2</sup> See, e.g., *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Seminole Nation v. US*, 316 US 297 (1942); *Worcester v. Georgia*, 31 US 515; *Manchester Band of Pomo Indians v. US*, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); *Nance v. EPA*, 645 F.2d 701, 711 (9<sup>th</sup> Cir 1981); *Menominee Tribe v. US*, 101 Ct Cl 10, 19-20 (1944); *Pardvano v. Babbitt*, 70 F.3d 539, 545 (9<sup>th</sup> Cir 1995).

Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority, the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's capacity to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public interest. As such, the Application, and others that are part of the GWD Project, if approved, falls strictly counter to the public interest on this element. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and conducting an interbasin transfer of water in ways that will unduly injure the Tribe's water resources and rights will concomitantly injure the Tribe's ability for tribal self-governance, its ability to regulate its territory, and its ability to provide necessary benefits and services to its members on or off reservation lands. This is a highly relevant factor that the State Engineer should consider with the interbasin transfer decision. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

**XV. THE APPLICANT HAS NOT DEMONSTRATED THE GOOD FAITH INTENT OR FINANCIAL ABILITY AND REASONABLE EXPECTATION TO CONSTRUCT THE WORK AND APPLY THE WATER TO THE INTENDED BENEFICIAL USE WITH REASONABLE DILIGENCE**

The current economic recession has severely altered the economic boom trajectory that Las Vegas had been undergoing for many years. As a result of the recession, Las Vegas Valley population base has decreased, a large number of homes are now vacant, and demand for water has been truncated.



It is highly uncertain at this point in time as to whether the Las Vegas economy will rebound. It is also highly uncertain as to when the economy will rebound, and to what extent that economic rebound will affect the Las Vegas Valley. In contrast, the trajectory for eastern Nevada is moving in a positive direction. A multitude of alternative energy projects have been cued for eastern Nevada and are all in the public interest as Congress, the federal government, and the Nevada Legislature have similar initiatives to establish Nevada as leader in alternative energy developments and provide such clean energy to the public.

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See* Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct the GWD Project. *See* I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project, or at least not within a reasonable time frame, and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

The Applicant has not conducted reasonable diligence to construct the GWD Project. Partial

completion of ROW grants/NEPA process does not constitute reasonable diligence on SNWA's part to ensure that Nevada's water will be put to beneficial use. The only thing that the partial progress in the NEPA process and BLM ROW ensures is that SNWA intends to have the necessary grants and permits in place if such a need arises in the future. Even if BLM rights-of-way are granted by the BLM, there is no assurance that the water will be put to beneficial use within a reasonable amount of time. Moreover, the highly uncertain economic future in Las Vegas area provides rationale to deny this Application.

Because of these reasons, the State Engineer should deny the Application under NRS § 533.370(1)(c).

Moreover, the Application does not clearly describe the place of use, the proposed works, the estimated projects costs of the works, the number and types of units to be served, or the annual consumptive use. It is also not clear as to whether the diversions sought by the Application, and others that are part of the SNWA GWD Project, are necessary and/or in an amount reasonably required for the beneficial uses that have been applied for.

#### **XVI. FAILURE TO DEMONSTRATE ABILITY TO ACCESS LAND CONTAINING POINT OF DIVERSION**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence. Thus, the State Engineer should deny the Application under NRS § 533.370(1)(c).

**XVII. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION**

SNWA's proposed GWD Project is a massive project and adverse impacts from the Project are certain and they are likely to be both intensive and extensive over various spatial and temporal scales. New scientific or other data, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

**XVIII. INCORPORATION OF OTHER PROTESTS TO SNWA'S APPLICATIONS BY REFERENCE**

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's GWD Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY THE LAS VEGAS VALLEY WATER DISTRICT  
ON OCTOBER 17, 1989 TO APPROPRIATE  
THE WATERS OF DELAMAR VALLEY (GROUNDWATER  
BASIN 182)

FILED  
MAR 24 2011  
PROTEST ENGINEER'S OFFICE

Comes Now, the County of White Pine, State of Nevada, with whom the City of Ely, State of Nevada joins  
whose post office address is 953 Campton Street, Ely, Nevada 89301  
whose occupation is Political Subdivision, State of Nevada and protests the granting  
of Application Number 53992, filed on October 17, 1989  
by Las Vegas Valley Water District and now owned by the Southern Nevada Water Authority to appropriate the  
waters of DELAMAR VALLEY (GROUNDWATER BASIN 182) situated in Lincoln  
County, State of Nevada, for the following reasons and on the following grounds, to wit:

**PLEASE SEE ATTACHED PROTEST GROUNDS**

THEREFORE the Protestant requests that the application be **DENIED**, and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

[Signature]

Simeon Herskovits  
Attorney for White Pine County and City of Ely

Simeon Herskovits  
Attorney's Printed Name

Address

Advocates for Community and Environment  
P.O. Box 1075  
El Prado, NM 87529  
575-758-7202

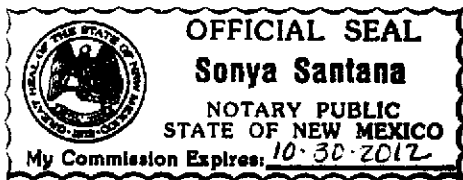
RECEIVED  
2011 MAR 24 PM 12:24  
STATE ENGINEER'S OFFICE

Subscribed and sworn to before me this 21 day of March, 2011

[Signature]  
Notary Public

State of New Mexico

County of Taos



**+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

**ATTACHMENT TO PROTEST OF WHITE PINE COUNTY AND THE CITY OF ELY  
AGAINST APPLICATION NO. 53992, FILED OCTOBER 17, 1989,  
BY THE LAS VEGAS VALLEY WATER DISTRICT AND OWNED BY THE  
SOUTHERN NEVADA WATER AUTHORITY**

This attachment lists and briefly describes the reasons and grounds for this protest of White Pine County and the City of Ely ("Protestant") against Application Number 53992. The Southern Nevada Water Authority ("SNWA" or "Applicant") is the successor-in-interest to the Las Vegas Valley Water District which filed this Application to appropriate groundwater from Delamar Valley as part of SNWA's massive proposed groundwater development project and associated network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, White Pine County and the City of Ely assert as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

**1. There Is Insufficient Water Available In The Proposed Source of Supply:**

The State Engineer should deny the subject applications pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system or systems, will exceed the perennial yield of those basins. The State Engineer already has designated one or more hydrologically connected basins within the same flow system or systems as the basin that is targeted by this Application, effectively acknowledging that those basins and potentially the entire flow system are fully appropriated, if not over-appropriated.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable overappropriation in the interbasin flow system or systems, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation has not been completed, and until that process has been completed it would be

premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

**2. The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells:**

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system or systems. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system or systems, the proposed appropriation and use will result in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

**3. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and SNWA's Pipeline Project, of which this Application is a part, would permit serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin.

**A. Harm to Wildlife and Wildlife Habitat:**

The proposed appropriation, export and use would result in significantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial

species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species.

The wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to, Pahrangat National Wildlife Refuge, Desert National Wildlife Refuge Complex, Great Basin National Park, Shoshone Ponds Natural Area, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, and Amargosa Valley Pupfish Station.

Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**B. Degradation of Air Quality:**

The proposed appropriation, export, and use would result insignificantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have serious harmful impacts on human and animal health in those basins and in additional downwind communities. In addition to causing respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**C. Destruction of Recreational and Aesthetic Values:**

The decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas, including but not limited to Lake Mead National Recreation Area in Clark County, Nevada, and the Wasatch Front in Utah. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**D. Degradation of Water Quality:**

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**E. Degradation of Cultural Resources:**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources in the basin expressly targeted in this Application and in hydrologically connected basins within the same interbasin flow system. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire Pipeline Project, of which this Application is a part, include but are not limited to Native American ritual worship sites and other sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Native Americans. These and other cultural resources that would be damaged if this Application is approved constitute an important part of Nevada's, and the Nation's, historical and cultural legacy. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) and 533.370(6)(c) because the proposed appropriation and use would cause degradation of cultural resources in the basin of origin and downgradient hydrologically connected basins that would be detrimental to the public interest and would be environmentally unsound.

**4. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Economic Grounds And Would Unduly Limit Future Growth And Development In The Basin From Which The Export Is Proposed:**

**A. Undue Limitation Of Future Economic Activity and Growth In Basin Of Origin:**

As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of



businesses related to recreational tourism, as well as residential development for both year-round and vacation use, and potential future energy development. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

**B. Undue Economic Harm Will Extend To The Economies And Communities of Downgradient Hydrologically Connected and Downwind Basins:**

These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's Pipeline Project radiates outward into downgradient hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural economies and communities of other basins, including but not limited to Snake Valley, White River Valley, Pahranaagat Valley, and Moapa Valley. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it and SNWA's Pipeline Project, of which this Application is a part, would undermine the viability of existing rural economies in Nevada and Nevada's current and future economic diversity, and therefore would be detrimental to the public interest.

**5. The Proposed Action Is Not An Appropriate Long-Term Use Of Nevada's Water:**

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, and their economies, and to the environment, SNWA's rural water grab is not an appropriate long-term use of Nevada's scarce water resources. The State Engineer should require SNWA to actively pursue alternatives to the rural water grab, such as desalination, conservation and Colorado River Management alternatives, before granting water rights to SNWA from the subject valleys. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

**6. The Applicant Has Not Justified The Need To Import Water From Another Basin:**

By the same token, SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as cheaper and more reliable increased water conservation measures and the use of desalination for downstream Colorado River users in exchange for additional Colorado River water. The State Engineer should not permit such a massive interbasin transfer project, which is likely to cause long-term economic and environmental damage to the basins of origin and hydrologically connected downgradient basins, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basin of origin and hydrologically connected downgradient basins. Additionally, given the current population, housing, financial, and water use conditions and trends in southern Nevada, the water demand projections that SNWA has used to justify the Pipeline Project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

**7. The Applicant Has Not Implemented A Sufficient Conservation Plan:**

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area continues to exceed that of similarly situated western cities. The State Engineer should require SNWA to submit and demonstrate effective implementation of a conservation plan that utilizes all reasonably feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

**8. The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:**

**A. Changed Circumstances, Uncertain Intent, Doubtful Financing:**

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, have ranged into the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See Brendan Riley, Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. *See I-Team, Dire Predictions Made on Las Vegas Water Supply, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.**

**B. Failure To Demonstrate Ability to Access Land Containing Point of Diversion:**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential points of diversion are located. This lack of access is evidence that the Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence.

**9. White Pine County And The City Of Ely Reserve The Right To Amend This Protest As May Be Warranted By Future Developments:**

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, White Pine County and the City of Ely reserve the right to amend the subject protest to include such issues as they develop.

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Las Vegas Valley Water District/SNWA  
ON October 17, 1989

FILED  
MAR 24 2011  
STATE ENGINEER'S OFFICE

PROTEST

Comes now Ely Shoshone Tribe

Printed or typed name of protestant

whose post office address is 16 Shoshone Circle, Ely, Nevada 89301

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 53992

, filed on October 17

1989

by Las Vegas Valley Water District/SNWA

for the

waters of underground (Basin 182 - Delamar Valley)

situated in Lincoln

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:  
See Attachment.

RECEIVED  
2011 MAR 24 AM 9:45  
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

*Alvin S. Marques*  
Agent or protestant

Alvin S. Marques

Printed or typed name, if agent

Address

16 Shoshone Circle

Street No. or PO Box

Ely, Nevada 89301

City, State and ZIP Code

775.289.3013

Phone Number

elkmounter@yahoo.com

E-mail

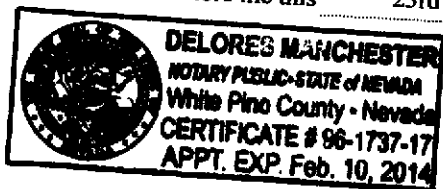
Subscribed and sworn to before me this

23rd

day of

March

, 20 11



*Delores Manchester*  
Notary Public

State of Nevada

County of White Pine

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT**

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

**IN THE MATTER OF APPLICATION ) PROTEST BY THE  
NO. 53991-53992 FILED BY LAS VEGAS ) ELY SHOSHONE TRIBE  
VALLEY WATER DISTRICT AND OWNED )  
BY SOUTHERN NEVADA WATER )  
AUTHORITY TO APPROPRIATE )  
UNDERGROUND WATERS OF DELAMAR )  
VALLEY (HYDROGRAPHIC BASIN 182) )**

**SUMMARY**

Pursuant to Nevada Revised Statute ("NRS") 533.365, the Ely Shoshone Tribe ("Tribe" or "Protestant") hereby protests Application No. 53991-53992 ("Application" or "Applications"), which were filed by the Las Vegas Valley Water District ("LVVWD") on October 17, 1989, and later acquired by the Southern Nevada Water Authority ("SNWA"), to appropriate groundwater from Delamar Valley (Hydrographic Basin 182).

Protestant states as grounds and reasons for this Protest that: (1) there is an insufficient amount of water available in the proposed source of supply; (2) the application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells; (3) the appropriation and proposed use would be detrimental to the public interest on environmental grounds, environmentally unsound and unsustainable; (4) the appropriation and proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the export basin and hydrologically connected basins; (5) the proposed use is not an appropriate long-term use of Nevada's limited water supply; (6) the Applicant

has not justified the need to import water from another basin; (7) the Applicant has not implemented a sufficient water conservation plan in the basin(s) in which water will be delivered; (8) the Applicant has not developed a sufficient conservation plan to protect affected basins; (9) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (10) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (11) the appropriation and proposed use would violate the Tribe's reserved water rights; (12) the appropriation and proposed use would violate the Tribe's rights under the Treaty of 1863; (13) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (14) the appropriation and proposed use would unduly injure the Tribe's capacity for self-governance; (15) the applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and (16) failure to demonstrate ability to access land containing point of diversion. These protest grounds are explained below.

## **INTRODUCTION**

SNWA has filed applications to appropriate and transfer large amounts of water from surface and groundwater sources in eastern Nevada, including: Spring, Cave, Dry Lake, and Delamar Valleys, located in White Pine and Lincoln Counties. SNWA has also filed applications to appropriate and transfer large amounts of water from Snake Valley, which is located in Utah but extends hydrologically into eastern Nevada. Moreover, Spring and Snake Valleys are part of the Great Salt Lake Desert regional flow system, while Cave, Dry Lake and Delamar Valleys are part of the Colorado regional flow system. SNWA's groundwater development project ("GWD Project") proposes an interbasin

transfer of water via a 300+ mile pipeline to municipalities and other users in southern Nevada.

The Ely Shoshone Indian Reservation (“Reservation”) covers over 3,600 acres of land in eastern Nevada (White Pine County). The aboriginal territory of the Tribe was at least partially defined in the Treaty of 1863 (13 Stat. 681-684), signed between the United States and the Tribe, among other Western Shoshone Tribes. The Reservation was first established by an Act of Congress in 1930 (46 Stat. 820). Subsequent Acts added lands to the Reservation in 1931, 1977, and in 2006. Currently, the Reservation is comprised of lands in both Steptoe Valley and White River Valley. The Reservation lies within the Colorado regional flow system, and as such, the Reservation is adjacent to the subject basin and/or hydrologically connected. The subject basin has been a vital area for the Tribe since time immemorial.

The Tribe has multitude of surface and ground water rights that include but are not limited to water rights that are federally reserved, decreed, acquired from existing senior state water right holders, and from the Treaty of 1863. Federal reserved water rights are in a quantity sufficient to fulfill any and all purposes of the Reservation and to satisfy the any and all present and future needs of the Reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981). Tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9<sup>th</sup> Cir. 1956). In addition, the Tribe's federal reserved water rights may be protected against off-reservation groundwater use/diversions, which are hydrologically connected with those reserved waters. *Cappaert v. United States*, 426 U.S. 128 (1976).

**I. THERE IS NOT A SUFFICIENT AMOUNT OF WATER AVAILABLE IN THE PROPOSED SOURCE OF SUPPLY**

The State Engineer should deny the Application pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. Pursuant to 533.370(5), “where there is no unappropriated water in the proposed source of supply . . . the State Engineer shall reject the application and refuse to issue the requested permit.” The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins, also indicating that the entire flow system is potentially fully appropriated, if not over-appropriated.

Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section XI below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. The Stipulations entered into by the SNWA and the U.S. Department of the Interior do not properly or adequately protect Tribal water rights or substitute for the required legal recognition and protection of the Tribe’s water rights. It is noteworthy that affected Tribes have consistently objected to the Stipulations, which were negotiated and entered without the legally required consultation with affected Tribal governments. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863. Thus, the State Engineer must deny the



Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, the State Engineer previously found that there is too much uncertainty, too little sound data, and too great of a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation have not been completed, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application. Thus, the State Engineer must deny the Application. The State Engineer has the discretion to require the Applicant to undertake the necessary hydrological study to collect scientifically sound data, fill the appropriate information gaps, reduce uncertainty, and reduce the risk of unsustainable water use and export.

**II. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS IN DOMESTIC WELLS**

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basin resulting in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells. This will undoubtedly increase water costs to domestic and local users, which include members of the Tribe.

Groundwater sources in the subject basin and downgradient basins are interconnected via the interbasin flow system, and the subject basin is one of several areas that feed downgradient basins. As such, overutilization and overappropriation in the subject basin will negatively impact existing reserved water rights held by Indian tribes, whether the Tribal reserved water rights have been adjudicated, quantified, or utilized. The Stipulated Agreements between SNWA and the Department of Interior agencies cannot substitute for a proper consideration, recognition, and protection of Indian water rights within the subject basin, within hydrologically connected basins, or within the Tribe's treaty lands defined in the Treaty of 1863. Neither can the Stipulated Agreements waive or substitute for properly considered Indian reserved water rights.

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and importantly, to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin, and in downgradient basins will have their domestic wells adversely impacted by the Application, if approved, and SNWA has not demonstrated or devised reasonable mitigation. Thus, the State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a substantial cone of depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone of depression around the well/pumping station. Due to the large amounts of water applied for by SNWA and the large number of proposed wells (applications) for the SNWA's GWD Project, if approved, the multitude of cones of depression would eventually coalesce and cause widespread drawdown and water quality problems. A

cone of depression caused by this Application, if approved, and the entirety of other SNWA applications would conflict with existing rights and be detrimental to the public welfare.

**III. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND, UNSUSTAINABLE, AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS AS IT RELATES TO THE BASIN FROM WHICH THE EXPORT IS PROPOSED AND IN HYDROLOGICALLY CONNECTED BASINS**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in SNWA's GWD Project, of which this Application is a part, would threaten to cause serious and irreparable environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound and unsustainable as it relates to the basin of origin and hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), found that pumping ground water was jeopardizing the survival of an endangered species due to lowering of the water level. The Court found that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment . . . ."

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, as long as other public interests were not unreasonably compromised or could not be mitigated. While SNWA's GWD Project has developed monitoring plans, it should be made clear that monitoring plans

absolutely are not adequate or sufficient mitigation. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental impacts that would result from the approval of this Application, among others within the SNWA GWD Project, outweigh strongly the use proposed by the SNWA GWD Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The severe and irreparable harms that would result from the approval of this Application, and others within the GWD Project, would prove to be extremely detrimental to the public interest at national, state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from widespread impacts, despite whether or not monitoring programs have been developed and would be implemented. These grounds, in addition to the other environmental reasons below, strongly weigh in favor of the State Engineer denying this Application.

**A. Unsustainable Use and Long-Term Hydrologic and Environmental Impacts**

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins and prevent a repeat of the Owens Valley scenario, while providing for responsible use of available water. Within that scope, SNWA's GWD

Project, which the subject Application is a part, is not a responsible use of available water, the appropriation(s) would not protect natural resources, and the appropriation and GWD Project would greatly limit and burden future economic growth and development within the export basin and hydrographically connected basins. Moreover, this appropriation and proposed use is not sustainable over the long-term, would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. The Tribe relies on these natural resources in the subject basin and in hydrologically connected basins for a large number of vital cultural and religious purposes.

**B. Severe and Irreparable Harm to Ecosystems and Wildlife**

As mentioned above, the State Engineer and the courts previously have considered harms to ecosystems and wildlife to be within the purview of the public interest. Accordingly and especially in this case, the State Engineer must consider whether harms to ecosystems and wildlife would be detrimental to the public interest. The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and their habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be

threatened with extinction as a result of the proposed appropriation and export of this water. Wildlife taxa likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of invertebrates, including but not limited to rare butterfly species and springsnails. Threats to wildlife will include anything from actual extinction, threats to extinction, and drastically altered distributions. In addition to NRS 533.370(6)(c), the appropriation and proposed use from this Application and others that are part of the GWD Project, are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of important and necessary tribal cultural and religious resources.

The unique wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's GWD Project, of which this Application is a part, include but are not limited to Pahrangat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, Amargosa Valley Pupfish Station, the Desert National Wildlife Refuge Complex, Great Basin National Park, and Swamp Cedars/Shoshone Ponds Natural Area. Many of these protected areas are even considered globally and/or regionally unique and imperiled ecosystems and hold great cultural importance to the Tribe.

Because of these severe and irreparably harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c) and 533.367.

### **C. Degradation of Cultural, Traditional, Historic, and Sacred Resources**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources, traditions, sacred sites, etc, in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, and the entirety of the GWD Project will cause severe and irreparable harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire GWD Project, of which this Application is a part, include but are not limited to: Native American ritual worship and various sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Tribal ancestors. Cultural resources also include spring ecosystems and various plant and animal species that the Tribe holds sacred and hold religious importance. These and other cultural resources that would be damaged or destroyed if this Application is approved constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

### **D. Degradation of Water Quality**

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. The groundwater drawdown that would be caused by the

appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound and unsustainable, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound and unsustainable in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **E. Degradation of Air Quality**

It is within the purview of the State Engineer to consider whether the degradation of air quality will be detrimental to the public interest due to a specific action on the subject Application. The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in more xeric and causing groundwater-dependent vegetation to die off in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will cause previously moist and/or vegetated areas to be more susceptible to increased mobilization of particulate



matter, heavy metals, and other chemicals harmful to public health. In other words, the desiccation of these ecosystems will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities, where members of our Tribe live and/or where our sister tribes live. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas may contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. Because of these harmful impacts to the public interest, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **F. Destruction of Recreational and Aesthetic Values**

Another major environmental consideration within the purview of the State Engineer's decision on this Application is the destruction of recreational and aesthetic values. These values are important to the public on local, regional, and national levels. The severe decline in groundwater levels that will result from this Application and SNWA's GWD Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate a large number of globally and regionally unique mesic ecosystems, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas for members of our Tribe. Similarly, the loss of water, wildlife, clean air, and good visibility will unduly harm the recreational uses and value of these basins and additional downwind areas. For these reasons, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**IV. THE APPROPRIATION AND EXPORT OF WATER PROPOSED IN THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST ON ECONOMIC GROUNDS AND WOULD UNDULY LIMIT FUTURE GROWTH AND DEVELOPMENT IN THE BASIN FROM WHICH THE EXPORT IS PROPOSED**

The appropriation and proposed use would unduly limit future economic activity and growth in basin of origin. As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential and municipal developments for both year-round and vacation use, and potential future alternative energy developments that members of our Tribe may utilize and gain employment through. Many people would be negatively impacted from the proposed appropriation and SNWA's GWD Project, including residents of the subject basin, residents of hydrologically connected basins, citizens of Nevada, tourists and travelers, and consumers of products originating from such basins. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

Undue economic harm will extend to the economies and communities of hydrologically

connected and downwind basins. These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's GWD Project radiates outward into downgradient and hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural and tribal economies and communities of other basins. Development of new and expansion of existing economic ventures would be unduly constrained because of inaccessibility to water. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

**V. THE PROPOSED USE IS NOT AN APPROPRIATE LONG-TERM USE OF NEVADA'S WATER**

Nevada Revised Statute § 533.370(6) provides that the State Engineer, in his determination of whether an application for an interbasin transfer of water must be rejected, shall consider whether the proposed action is an appropriate long-term use. As described in Section IV, the appropriation and export of water from the subject basin would unduly limit economic growth and development within the subject basin, and hydrologically connected basins, and thus be detrimental to the public interest. Population projections and economic growth and development projections in Clark County have proved to be inaccurate, especially in this time of severe economic recession. In contrast, the subject basin and/or adjacent areas, have been cued for numerous alternative energy projects that include but are not limited to wind energy facility projects, solar energy facility projects, and electrical transmission line arrays. These types of projects spur additional economic growth and activity. Some of these projects will require water appropriations and this Application and other applications under SNWA's GWD

Project would be greatly detrimental to these energy projects in the subject basin and the corresponding need for additional economic growth and development that would transpire as a result of the construction and operation of those facilities. Moreover, the State Engineer must allow for unanticipated economic growth in the subject basin. The legislative history shows clearly that the State Engineer's decisions to approve or reject water appropriation applications must not unduly limit future economic growth.

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, to economies, to the environment, and to the Tribe, SNWA's GWD Project and this Application are not appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the pumping and exportation of water under this Application before granting water rights to SNWA from the subject basin. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

#### **VI. THE APPLICANT HAS NOT JUSTIFIED THE NEED TO IMPORT WATER FROM ANOTHER BASIN**

By the same token, SNWA has not justified the need to import water from another basin. Nevada Revised Statute § 533.370(6) provides that before the State Engineer can approve an application for an interbasin transfer, the applicant must have "justified the need to import the water from another basin." At least two issues are relevant here. First, this Application is not justified because the Applicant has numerous other more feasible and cost-effective options, such as increased water conservation among other options. The State Engineer should not permit such a massive interbasin

transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected basins, when alternatives are available to the Applicant that are more economically sound, environmentally sound, sustainable, and drastically in favor of the public interest and welfare. While the SNWA has instituted a water conservation plan for the Las Vegas area, the transition toward water conservation has been markedly slow over the last two decades. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin and potentially spur innovative water conservation technologies and industries in the Clark County and other areas of Nevada. Implementing significant water conservation policies and regulations can be accomplished fairly rapidly and do not require several decades to implement. Second, this Application has not justified the need to import water from another basin given the current population, housing, and water-demand trends within the import basin – the water demand and population projections that SNWA has been using to justify the GWD Project are not credible. As such, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

## **VII. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN**

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. While SNWA established a goal in the early 1990s of 25% conservation by 2010 and surpassed that

goal in advance, the water conservation plan and the 25% goal are not sufficient measures by which the State Engineer should approve an application. By the same reasoning, the State Engineer would have the discretion to accept a SNWA water conservation plan of 1% conservation in 25, 50, or even 100 years. The legislative intent of NRS 533.370(6) is to require a sufficient and highest practicable level of water conservation for the basin into which the water is imported so as to make an interbasin transfer a last resort. SNWA's current water conservation plan and goals are insufficient because substantial water conservation gains still can be obtained in Clark County and the Las Vegas Valley, at a fraction of the cost of the SNWA's GWD Project and without detriment to the public interest and welfare. As such, the State Engineer must require SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by conservation-minded water-scarce municipalities – before being permitted to transfer groundwater from the subject basin and other GWD Project basins. The State Engineer must require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. The State Engineer must also require SNWA to submit a conservation plan that compares those conservations measures to the GWD Project in terms of cost and timelines for export and import basins. Unless SNWA submits such a plan, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b).

**VIII. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS**

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect

affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section III above, the Application and the GWD Project as a whole are environmentally unsound, unsustainable, and will have long-term environmental impacts within the subject basin and hydrologically connected basins within the same flow system. While biological and hydrological monitoring plans have been developed by SNWA, these plans are insufficient on numerous counts, including but not limited to being scientifically flawed and generally insufficient.

Second, NRS § 533.370(6)(d) provides that an application for interbasin transfer of water must not unduly limit future growth and development. The subject basin's future growth and development is already under way with the construction and operation of alternative energy projects and transmission lines, among other things. Predicting the amount of groundwater needed for future growth and development in the subject basin may be difficult, but the State Engineer should require SNWA to do so as part of a monitoring and mitigation plan for the export basin and/or as part of the water conservation plan for the import basin. SNWA has failed to provide reasonable and sufficient projections of future growth and development for the export basin. Just as SNWA's population and water demand projections did not predict that the Las Vegas Valley would experience an economic bust and substantial loss of population (and therefore much reduced water demand), SNWA's attempts to forecast future growth and economic development in the subject basin are also highly flawed.

Third, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone of depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or

rely on such water sources. The biological and hydrological monitoring plans do not provide safeguards from these potential impacts because: (1) monitoring plan and early detections in the plans are highly flawed; (2) monitoring and early detection for such purposes have proven to be insufficient in the past; (3) cones of depression are very likely to impact springs, seeps, and associated wildlife resources in the initial area of the cone of depression; and (4) cones of depression are likely to move downgradient and adversely impact downgradient springs, seeps, and associated wildlife.

Fourth, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone of depression and lowering of the water level that would result from the approval of this Application, and others associated with the GWD Project, is very likely to negatively affect water quality by drawing in low quality water and cause areas to coalesce. Such impacts will occur within the subject basin and in downgradient basins within the same flow system. SNWA has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor do the monitoring plans ensure that early detection will offset those impacts because once the groundwater impacts have been realized the impacts will persist over the long-term.

**IX. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED**

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that natural



resources, which by definition includes historic and cultural resources, endangered species, water quality, among other resources, are of public interest. By establishing the State Historic Preservation Office under NRS §383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes “that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin . . . .”<sup>1</sup> The State Engineer also has found that while “NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues.” Moreover, the “State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources.” Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The Application and proposed use from the subject basin will result in groundwater drawdown in the subject basin and in hydrologically connected basins and will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

---

<sup>1</sup> State Engineer's Ruling #5726 dated April 16, 2007, in the matter of applications 54003 through 54021.

**X. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES**

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate the following, but not limited to: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863. Nevada Legislature's intent of giving the State Engineer authority to approve water applications has never been to do so in a manner that would violate state and federal mandates, or state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the export of water will violate some or all of the above-listed laws due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot violate federal and state laws. As such, the State Engineer's purview is to make decisions that are not in violation of law. To do otherwise is against the public interest and welfare. Therefore, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

**XI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RESERVED WATER RIGHTS**

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's federal reserved water rights. The State Engineer has the authority to deny the Application on those

grounds pursuant to either NRS §§ 533.370(5) or 533.370(6)(e). Given that Congress and the federal government are representatives of the public and they established a permanent and federally recognized homeland for the Tribe, Congress and the federal government have deemed the establishment of Indian reservations and their associated rights to be in the public interest. The designation of the Reservation concomitantly reserved water rights for the Tribe including areas that feed Reservation lands.

The Tribe has rights to large amounts of water, no matter if those rights are quantified, remain unquantified, or even unused. Such water rights are predicated on the fact that the date of creation of the Reservation not only reserved the land, but also reserved the rights to water in an amount necessary to fulfill the purposes of the reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546, 600 (1963). As a result of *Winters*, the creation of the Reservation implied federal reserved water rights for the Tribe effective starting when the Reservation was formally established. *Arizona v. California*. Those reserved water rights remain regardless of utilization or quantification. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10<sup>th</sup> Cir. 1994).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's federal reserved water rights, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even adjacent basin and/or in separate basins that are downgradient and within the same hydrologic flow system. If the State

Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's reserved water rights. Pursuant to NRS § 533.370(6)(e), the State Engineer must consider violations of tribal reserved water rights as a highly relevant factor in acting on this Application that is part of an interbasin transfer. And as such, the State Engineer must deny this Application.

## **XII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATY OF 1863**

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress, which the Supreme Court has determined has "plenary authority" of Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaty of 1863 designates and recognizes certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally recognized treaty lands are clearly within the public interest. As discussed above, Western Shoshone tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized.

Such water rights, to some extent, are predicated on the fact that the Treaty of 1863 designates a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaty. Those rights remain regardless of non-use or being unquantified. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10<sup>th</sup> Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful groundwater pumping that will infringe upon or diminish water necessary to satisfy the Tribe's reserved water right. It is important to emphasize that the Tribe's water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe's reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaty of 1863 are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems and laws, as in Nevada, do not affect the rights of the Tribe's treaty lands and Reservation. *Power Comm'n v. Oregon*, 349 U.S. 435 (1955).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even in separate basins that are

hydrologically connected. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's rights reserved and guaranteed under the Treaty of 1863. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

**XIII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST**

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust or fiduciary relationship with Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government to government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands. Under 20 USC § 7401 Congress declared: it is "the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people." The Secretary of Interior in 25 CFR § 225.1 states that the Secretary "continues to have a trust obligation to ensure that the rights of a tribe or individual Indians are protected in the event of a violation." The Department of Justice's Policy on Indian Sovereignty and Government-to-Government Relations with the Indian Tribes states that "the Department shall be guided . . . by the United States' trust responsibility in the many ways in which the

Department takes action on matters affecting Indian tribes.” The federal-tribal relationship and the federal government’s responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government’s “trust responsibilities to protect Indian water rights.” See 43 USC § 371. There is a large list of federal mandates, policies, and federal court decisions regarding the federal government’s trust responsibilities to protect the Tribe’s interests, resources, and rights.<sup>2</sup> Thus, the federal government’s trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe’s water rights and resources within the Tribe’s aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

#### **XIV. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE’S CAPACITY FOR SELF-GOVERNANCE**

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority,

<sup>2</sup> See, e.g., *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Seminole Nation v. US*, 316 US 297 (1942); *Worcester v. Georgia*, 31 US 515; *Manchester Band of Pomo Indians v. US*, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); *Nance v. EPA*, 645 F.2d 701, 711 (9<sup>th</sup> Cir 1981); *Menominee Tribe v. US*, 101 Ct Cl 10, 19-20 (1944); *Pardvano v. Babbitt*, 70 F.3d 539, 545 (9<sup>th</sup> Cir 1995).

the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's capacity to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public interest. As such, the Application, and others that are part of the GWD Project, if approved, falls strictly counter to the public interest on this element. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and conducting an interbasin transfer of water in ways that will unduly injure the Tribe's water resources and rights will concomitantly injure the Tribe's ability for tribal self-governance, its ability to regulate its territory, and its ability to provide necessary benefits and services to its members on or off reservation lands. This is a highly relevant factor that the State Engineer should consider with the interbasin transfer decision. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

**XV. THE APPLICANT HAS NOT DEMONSTRATED THE GOOD FAITH INTENT OR FINANCIAL ABILITY AND REASONABLE EXPECTATION TO CONSTRUCT THE WORK AND APPLY THE WATER TO THE INTENDED BENEFICIAL USE WITH REASONABLE DILIGENCE**

The current economic recession has severely altered the economic boom trajectory that Las Vegas had been undergoing for many years. As a result of the recession, Las Vegas Valley population base has decreased, a large number of homes are now vacant, and demand for water has been truncated. It is highly uncertain at this point in time as to whether the Las Vegas economy will rebound. It is also



highly uncertain as to when the economy will rebound, and to what extent that economic rebound will affect the Las Vegas Valley. In contrast, the trajectory for eastern Nevada is moving in a positive direction as at least 16 alternative energy projects have been cued for eastern Nevada, which will bring jobs and economic gains to the eastern Nevada. These projects are all in the public interest as Congress, the federal government, and the Nevada Legislature all have similar initiatives to establish Nevada as leader in alternative energy developments and provide such clean energy to the public.

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See Brendan Riley, Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct the GWD Project. *See I-Team, Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project, or at least not within a reasonable time frame, and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

The Applicant has not conducted reasonable diligence to construct the GWD Project. Partial completion of ROW grants/NEPA process does not constitute reasonable diligence on SNWA's part to

ensure that Nevada's water will be put to beneficial use. The only thing that the partial progress in the NEPA process and BLM ROW ensures is that SNWA intends to have the necessary grants and permits in place if such a need arises in the future. Even if BLM rights-of-way are granted by the BLM, there is no assurance that the water will be put to beneficial use within a reasonable amount of time. Moreover, the highly uncertain economic future in Las Vegas area provides rationale to deny this Application.

Because of these reasons, the State Engineer should deny the Application under NRS § 533.370(1)(c).

Moreover, the Application does not clearly describe the place of use, the proposed works, the estimated projects costs of the works, the number and types of units to be served, or the annual consumptive use. It is also not clear as to whether the diversions sought by the Application, and others that are part of the SNWA GWD Project, are necessary and/or in an amount reasonably required for the beneficial uses that have been applied for.

#### **XVI. FAILURE TO DEMONSTRATE ABILITY TO ACCESS LAND CONTAINING POINT OF DIVERSION**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence. Thus, the State Engineer should deny the Application under NRS § 533.370(1)(c).

**XVII. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION**

SNWA's proposed GWD Project is a massive project and adverse impacts from the Project are certain and they are likely to be both intensive and extensive over various spatial and temporal scales. New scientific or other data, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

**XVIII. INCORPORATION OF OTHER PROTESTS TO SNWA'S APPLICATIONS BY REFERENCE**

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's GWD Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.

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

FILED

MAR 23 2011

PROTEST ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER **53992**

FILED BY **LVVWD / SNWA**  
ON **October 17, 1989** TO APPROPRIATE THE  
WATERS OF **UNDERGROUND**

Comes now **Rob Mrowka**

whose post office address is **4261 Lily Glen Ct, North Las Vegas, NV 89032**

whose occupation is a **ecologist** and protests the granting

of Application Number **53992**, filed on **October 17, 1989** by **LVVWD / SNWA** to appropriate the

waters of **UNDERGROUND** situated in **Delamar Valley, Lincoln** County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: Undue limitation of future economic activity and growth in the basin of origin, undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins, loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin:
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrnagat and Moapa NWRs and Pahrnagat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be **DENIED** and that an order be entered for such relief as the State Engineer deems just and proper.

DCNR/DWR  
RECEIVED

MAR 23 2011

LAS VEGAS OFFICE

Signed *Rob Mrowka*

**Rob Mrowka**  
Printed or Typed name, if agent

**4261 Lily Glen Ct  
North Las Vegas, NV 89032**

Address, City, State, Zip

**702-638-4261**


Address

Phone Number

STATE ENGINEER'S OFFICE  
2011 MAR 25 AM 10:05  
2011

RECEIVED

Subscribed and sworn to before me this **22<sup>nd</sup>** day of **March**

 SUDATHIP BIAKRATOKE  
NOTARY PUBLIC  
STATE OF NEVADA  
My Commission Expires: 05-01-2014  
Certificate No: 10-2341-1

*[Signature]*  
Notary Public  
State of **NV**  
County of **Clark**

**ATTACHMENT TO PROTEST OF Rob Mrowka AGAINST  
APPLICATION NO. 53992, FILED 10/17/1989,  
BY THE SOUTHERN NEVADA WATER AUTHORITY**

This attachment lists and briefly describes the reasons and grounds for this protest of Rob Mrowka ("Protestant"), acting for himself, Application Number 53992. The Southern Nevada Water Authority ("SNWA" or "Applicant") has filed this Application to appropriate groundwater from Delamar Valley in Lincoln County, Nevada to use as domestic supplies for its service area.

In sum, Protestant asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the pipeline and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

**1. There Is Insufficient Water Available In The Proposed Source of Supply:**

The State Engineer should deny the subject applications pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins. The State Engineer already has designated a number of hydrologically connected basins within the same flow system as the basin that is targeted by this Application, effectively acknowledging that those basins and potentially the entire flow system are fully appropriated, if not over-appropriated.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation have not been completed and until they are it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

**2. The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells:**

DOWN  
RECEIVED

MAR 23 2011

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basins resulting in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

**3. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and SNWA's Pipeline Project, of which this Application is a part, would threaten to cause serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin.

**A. Harm to Wildlife and Wildlife Habitat:**

The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. Some of the specific species of concern include: desert tortoise, Moapa dace, Southwest willow flycatcher, yellow-billed cuckoo, Virgin River chub, grated Tryonia, Moapa pebblesnail, Moapa White River spring fish, Meadow Valley sandwort, red-tailed blazing star bee, and Mojave poppy bee. A more general listing of likely harmfully impacted species by the appropriation and export of water proposed in this application includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species.

MAR 23 2011

The wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to Pahranaagat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, and the Desert National Wildlife Refuge Complex. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**B. Degradation of Air Quality:**

The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**C. Destruction of Recreational and Aesthetic Values:**

The severe decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**D. Degradation of Water Quality:**

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically

connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**E. Degradation of Cultural Resources:**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources in the basin expressly targeted in this Application and in hydrologically connected basins within the same interbasin flow system. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire Pipeline Project, of which this Application is a part, include but are not limited to Native American ritual worship and other sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Native Americans. These and other cultural resources that would be damaged if this Application is approved constitute an important part of Nevada's, and the Nation's, historical and cultural legacy. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

**4. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Economic Grounds And Would Unduly Limit Future Growth And Development In The Basin From Which The Export Is Proposed:**

**A. Undue Limitation Of Future Economic Activity and Growth In Basin Of Origin:**

As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential development for both year-round and vacation use, and potential future energy development. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

GOVERNMENT  
RECEIVED

MAR 23 2011



**B. Undue Economic Harm Will Extend To The Economies And Communities of Downgradient Hydrologically Connected and Downwind Basins:**

These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's Pipeline Project radiates outward into downgradient hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural economies and communities of other basins. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

**5. The Proposed Action Is Not An Appropriate Long-Term Use Of Nevada's Water:**

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, and their economies, and to the environment, SNWA's rural water grab is not an appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the rural water grab, such as desalination and conservation, before granting water rights to SNWA from the subject valleys. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

**6. The Applicant Has Not Justified The Need To Import Water From Another Basin:**

By the same token, SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as increased water conservation and the use of desalination for downstream Colorado River users in exchange for additional Colorado River water. The State Engineer should not permit such a massive interbasin transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected downgradient basins in the same flow system, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently far exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin. Additionally, given the current population, housing, and water use trends, the water demand projections that SNWA has been using to justify the Pipeline Project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

**7. The Applicant Has Not Implemented A Sufficient Conservation Plan:**

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

DO NOT  
RENEWED

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area currently far exceeds that of similarly situated western cities. The State Engineer should require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

**8. The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:**

**A. Changed Circumstances, Uncertain Intent, Doubtful Financing:**

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See* Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. *See* I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

**B. Failure To Demonstrate Ability to Access Land Containing Point of Diversion:**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence.

**9. Protestant Reserves The Right To Amend This Protest As May Be Warranted By Future Developments:**

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, the above-named Protestant reserves the right to amend the subject protest to include such issues as they develop.

**10. Incorporation Of Other Protests To SNWA's Applications By Reference:**

DOWN/0113  
P. 11/11/10

The above-named Protestant additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's groundwater export project and filed pursuant to NRS § 533.365.

DOUGLAS  
PROJECT

MAR 23 2011

LAC MOUNTAIN

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Las Vegas Valley Water District/SNWA  
ON October 17, 20 1989



PROTEST  
FILED  
MAR 23 2011  
STATE ENGINEER OF NEVADA

Comes now Duckwater Shoshone Tribe

Printed or typed name of protestant

whose post office address is 511 Duckwater Falls, Duckwater, Nevada 89314

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 53992

, filed on October 17

19  
89

by Las Vegas Valley Water District/SNWA

for the

waters of underground (Basin 182)

situated in Lincoln

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment.

RECEIVED  
2011 MAR 23 AM 11:39  
STATE ENGINEER OF NEVADA

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

*Virginia Sanchez*  
Agent or protestant

Virginia Sanchez

Printed or typed name, if agent

Address

511 Duckwater Falls

Street No. or PO Box

Duckwater, Nevada 89314

City, State and ZIP Code

775.863.0227

Phone Number



Subscribed and sworn to before me this

21st

day of

March

E-mail

, 20 11

*Heather Broderon*  
Notary Public

State of

Nevada

County of

Nye

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT**

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

**IN THE MATTER OF APPLICATION ) PROTEST BY  
NO. 53991-53992 FILED BY LAS VEGAS ) DUCKWATER SHOSHONE TRIBE  
VALLEY WATER DISTRICT AND OWNED )  
BY SOUTHERN NEVADA WATER )  
AUTHORITY TO APPROPRIATE )  
UNDERGROUND WATERS OF DELAMAR )  
VALLEY (HYDROGRAPHIC BASIN 182) )**

**SUMMARY**

Pursuant to Nevada Revised Statute ("NRS") 533.365, the Duckwater Shoshone Tribe ("Tribe" or "Protestant") hereby protests Application No. 53991-53992 ("Application" or "Applications"), which was filed by the Las Vegas Valley Water District ("LVVWD") on October 17, 1989, and later acquired by the Southern Nevada Water Authority ("SNWA"), to appropriate groundwater from Delamar Valley (Hydrographic Basin 182).

Protestant states as grounds and reasons for this Protest that: (1) there is not a sufficient amount of water available in the proposed source of supply; (2) the application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells; (3) the appropriation and proposed use would be environmentally unsound, unsustainable, and detrimental to the public interest on environmental grounds; (4) the appropriation and proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the export basin and in hydrologically connected basins; (5) the proposed use is not an appropriate long-term use of Nevada's limited water supply; (6) the Applicant

has not justified the need to import water from another basin; (7) the Applicant has not implemented a sufficient water conservation plan in the basin(s) in which water will be delivered; (8) the Applicant has not developed a sufficient conservation plan to protect affected basins; (9) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (10) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (11) the appropriation and proposed use would violate the Tribes' rights under the Treaty of 1863 in Ruby Valley; (12) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (13) the appropriation and proposed use would unduly injure the Tribe's sovereignty and ability to regulate their territory; (14) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and (15) the Applicant has failed to demonstrate ability to access land containing point of diversion. These protest grounds are explained below.

## **INTRODUCTION**

SNWA has filed applications to appropriate and transfer large amounts of water from surface and groundwater sources in eastern Nevada, including: Spring, Cave, Dry Lake, and Delamar Valleys, located in White Pine and Lincoln Counties. SNWA has also filed applications to appropriate and transfer large amounts of water from Snake Valley, which is located in Utah but extends hydrologically into eastern Nevada. Moreover, Spring and Snake Valleys are part of the Great Salt Lake Desert regional flow system, while Cave, Dry Lake, and Delamar Valleys are part of the Colorado regional flow system. SNWA's groundwater development project ("GWD Project") proposes an interbasin

transfer of water via a 300+ mile pipeline to municipalities and other users in southern Nevada.

The Duckwater Shoshone Indian Reservation (“Reservation”) is located in Duckwater Valley/Railroad Valley-North in Nye County, Nevada. The Reservation’s current size is approximately 3,855 acres. The Tribe has water rights that date back at least as far as 1867, if not 1863, and the Tribe’s reserved and secured rights are for both surface and ground water in an amount sufficient to fulfill the purposes of the Reservation, and to satisfy the present and future needs of the Reservation. *See Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963) (Arizona I); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981). Moreover, tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9<sup>th</sup> Cir. 1956). Federal reserved water rights for the Tribe extend to groundwater in other basins or areas to the extent that water is necessary to accomplish any and all purposes of the Reservation. *Id.*

The subject basin has been part of the Tribe’s aboriginal territory, and a centerpiece of Tribal activity and occupancy, since time immemorial. The subject basin falls within the Tribe’s treaty lands, defined by the Treaty of 1863 in Ruby Valley (13 Stat. 681-684) between the United States and Western Shoshone Tribes, including the Duckwater Shoshone. A large number of tribal trust resources and interests exist within the subject basin, in hydrologically connected basins, and in all areas potentially impacted by the SNWA GWD Project.

**I. THERE IS NOT A SUFFICIENT AMOUNT OF WATER AVAILABLE IN THE PROPOSED SOURCE OF SUPPLY**

The State Engineer should deny the Application pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. Pursuant to 533.370(5), “where there is no unappropriated water in the proposed source of supply . . . the State Engineer shall

reject the application and refuse to issue the requested permit.” The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins, also indicating that the the entire flow system is potentially fully appropriated, if not over-appropriated.

Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section XI below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. The Stipulations entered into by the SNWA and the U.S. Department of the Interior do not properly or adequately protect Tribal water rights or substitute for the required legal recognition and protection of the Tribe’s water rights. It is noteworthy that affected Tribes have consistently objected to the Stipulations, which were negotiated and entered without the legally required consultation with affected Tribal governments. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863. Thus, the State Engineer must deny the Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, the State Engineer previously found that there is too much uncertainty, too little sound data, and too great of a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation have not been completed,



and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application. Thus, the State Engineer must deny the Application. The State Engineer has the discretion to require the Applicant to undertake the necessary hydrological study to collect scientifically sound data, fill the appropriate information gaps, reduce uncertainty, and reduce the risk of unsustainable water use and export.

## **II. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS IN DOMESTIC WELLS**

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basin resulting in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells. This will undoubtedly increase water costs to domestic and local users, which include members of the Tribe.

Groundwater sources in the subject basin and downgradient basins are interconnected via the Colorado flow system, and the subject basin is one of several basins that feeds the flow system. As such, overutilization and overappropriation in the subject basin will negatively impact existing reserved water rights held by Indian tribes, whether the Tribal reserved water rights have been adjudicated, quantified, or utilized. The Stipulated Agreements between SNWA and the Department of Interior

agencies cannot substitute for a proper consideration, recognition, and protection of Indian water rights within the subject basin, within hydrologically connected basins, or within the Tribe's treaty lands defined in the Treaty of 1863 in Ruby Valley. Neither can the Stipulated Agreements waive or substitute for properly considered Indian reserved water rights.

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and importantly, to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin, and in downgradient basins will have their domestic wells adversely impacted by the Application, if approved, and SNWA has not demonstrated or devised reasonable mitigation. Thus, the State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a substantial cone of depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone of depression around the well/pumping station. Due to the large amounts of water applied for by SNWA and the large number of proposed wells (applications) for the SNWA's GWD Project, if approved, the multitude of cones of depression would eventually coalesce and cause widespread drawdown and water quality problems. A cone of depression caused by this Application, if approved, and the entirety of other SNWA applications would conflict with existing rights and be detrimental to the public welfare.

**III. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND, UNSUSTAINABLE, AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS AS IT**

**RELATES TO THE BASIN FROM WHICH THE EXPORT IS PROPOSED AND  
IN HYDROLOGICALLY CONNECTED BASINS**

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in SNWA's GWD Project, of which this Application is a part, would threaten to cause serious and irreparable environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound and unsustainable as it relates to the basin of origin and hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), found that pumping ground water was jeopardizing the survival of an endangered species due to lowering of the water level. The Court found that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment . . . ."

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, as long as other public interests were not unreasonably compromised or could not be mitigated. While SNWA's GWD Project has developed monitoring plans, it should be made clear that monitoring plans absolutely are not adequate or sufficient mitigation. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental impacts that would result from the approval of this Application, among others within the SNWA GWD

Project, outweigh strongly the use proposed by the SNWA GWD Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The severe and irreparable harms that would result from the approval of this Application, and others within the GWD Project, would prove to be extremely detrimental to the public interest at national, state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from widespread impacts, despite whether or not monitoring programs have been developed and would be implemented. These grounds, in addition to the other environmental reasons below, strongly weigh in favor of the State Engineer denying this Application.

**A. Unsustainable Use and Long-Term Hydrologic and Environmental Impacts**

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins and prevent a repeat of the Owens Valley scenario, while providing for responsible use of available water. Within that scope, SNWA's GWD Project, which the subject Application is a part, is not a responsible use of available water, the appropriation(s) would not protect natural resources, and the appropriation and GWD Project would greatly limit and burden future economic growth and development within the export basin and hydrographically connected basins. Moreover, this appropriation and proposed use is not sustainable

over the long-term, would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. The Tribe relies on these natural resources in the subject basin and in hydrologically connected basins for a large number of vital cultural and religious purposes.

### **B. Severe and Irreparable Harm to Ecosystems and Wildlife**

As mentioned above, the State Engineer and the courts previously have considered harms to ecosystems and wildlife to be within the purview of the public interest. Accordingly and especially in this case, the State Engineer must consider whether harms to ecosystems and wildlife would be detrimental to the public interest. The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and their habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. Wildlife taxa likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and

other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of invertebrates, including but not limited to rare butterfly species and springsnails. Threats to wildlife will include anything from actual extinction, threats to extinction, and drastically altered distributions. In addition to NRS 533.370(6)(c), the appropriation and proposed use from this Application and others that are part of the GWD Project, are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of important and necessary tribal cultural and religious resources.

The unique wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's GWD Project, of which this Application is a part, include but are not limited to Pahrangat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, Amargosa Valley Pupfish Station, the Desert National Wildlife Refuge Complex, Great Basin National Park, and Swamp Cedars/Shoshone Ponds Natural Area. Many of these protected areas are even considered globally and/or regionally unique and imperiled ecosystems and hold great cultural importance to the Tribe.

Because of these severe and irreparably harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c) and 533.367.

### **C. Degradation of Cultural, Traditional, Historic, and Sacred Resources**

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources, traditions, sacred sites, etc, in the basin expressly

targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, and the entirety of the GWD Project will cause severe and irreparable harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire GWD Project, of which this Application is a part, include but are not limited to: Native American ritual worship and various sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Tribal ancestors. Cultural resources also include spring ecosystems and various plant and animal species that the Tribe holds sacred and hold religious importance. These and other cultural resources that would be damaged or destroyed if this Application is approved constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

#### **D. Degradation of Water Quality**

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish

groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound and unsustainable, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound and unsustainable in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **E. Degradation of Air Quality**

It is within the purview of the State Engineer to consider whether the degradation of air quality will be detrimental to the public interest due to a specific action on the subject Application. The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in more xeric and causing groundwater-dependent vegetation to die off in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will cause previously moist and/or vegetated areas to be more susceptible to increased mobilization of particulate matter, heavy metals, and other chemicals harmful to public health. In other words, the desiccation of



these ecosystems will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities, where members of our Tribe live and/or where our sister tribes live. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas may contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. Because of these harmful impacts to the public interest, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

#### **F. Destruction of Recreational and Aesthetic Values**

Another major environmental consideration within the purview of the State Engineer's decision on this Application is the destruction of recreational and aesthetic values. These values are important to the public on local, regional, and national levels. The severe decline in groundwater levels that will result from this Application and SNWA's GWD Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate a large number of globally and regionally unique mesic ecosystems, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas for members of our Tribe. Similarly, the loss of water, wildlife, clean air, and good visibility will unduly harm the recreational uses and value of these basins and additional downwind areas. For these reasons, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

**IV. THE APPROPRIATION AND EXPORT OF WATER PROPOSED IN THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST ON ECONOMIC GROUNDS AND WOULD UNDULY LIMIT FUTURE GROWTH AND DEVELOPMENT IN THE BASIN FROM WHICH THE EXPORT IS PROPOSED**

The appropriation and proposed use would unduly limit future economic activity and growth in basin of origin. As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential and municipal developments for both year-round and vacation use, and potential future alternative energy developments that members of our Tribe may utilize and gain employment through. Many people would be negatively impacted from the proposed appropriation and SNWA's GWD Project, including residents of the subject basin, residents of hydrologically connected basins, citizens of Nevada, tourists and travelers, and consumers of products originating from such basins. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

Undue economic harm will extend to the economies and communities of hydrologically

connected and downwind basins. These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's GWD Project radiates outward into downgradient and hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural and tribal economies and communities of other basins. Development of new and expansion of existing economic ventures would be unduly constrained because of inaccessibility to water. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

**V. THE PROPOSED USE IS NOT AN APPROPRIATE LONG-TERM USE OF NEVADA'S WATER**

Nevada Revised Statute § 533.370(6) provides that the State Engineer, in his determination of whether an application for an interbasin transfer of water must be rejected, shall consider whether the proposed action is an appropriate long-term use. As described in Section IV, the appropriation and export of water from the subject basin would unduly limit economic growth and development within the subject basin, and hydrologically connected basins, and thus be detrimental to the public interest. Population projections and economic growth and development projections in Clark County have proved to be inaccurate, especially in this time of severe economic recession. In contrast, the subject basin, and adjacent areas, have been cued for numerous alternative energy projects that include but are not limited to wind energy facility projects, solar energy facility projects, and electrical transmission line arrays. These types of projects spur additional economic growth and activity. Some of these projects will require water appropriations and this Application and other applications under SNWA's GWD

Project would be greatly detrimental to these energy projects in the subject basin and the corresponding need for additional economic growth and development that would transpire as a result of the construction and operation of those facilities. Moreover, the State Engineer must allow for unanticipated economic growth in the subject basin. The legislative history shows clearly that the State Engineer's decisions to approve or reject water appropriation applications must not unduly limit future economic growth.

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, to economies, to the environment, and to the Tribe, SNWA's GWD Project and this Application are not appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the pumping and exportation of water under this Application before granting water rights to SNWA from the subject basin. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

## **VI. THE APPLICANT HAS NOT JUSTIFIED THE NEED TO IMPORT WATER FROM ANOTHER BASIN**

By the same token, SNWA has not justified the need to import water from another basin. Nevada Revised Statute § 533.370(6) provides that before the State Engineer can approve an application for an interbasin transfer, the applicant must have "justified the need to import the water from another basin." At least two issues are relevant here. First, this Application is not justified because the Applicant has numerous other more feasible and cost-effective options, such as increased water conservation among other options. The State Engineer should not permit such a massive interbasin

transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected basins, when alternatives are available to the Applicant that are more economically sound, environmentally sound, sustainable, and drastically in favor of the public interest and welfare. While the SNWA has instituted a water conservation plan for the Las Vegas area, the transition toward water conservation has been markedly slow over the last two decades. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin and potentially spur innovative water conservation technologies and industries in the Clark County and other areas of Nevada. Implementing significant water conservation policies and regulations can be accomplished fairly rapidly and do not require several decades to implement. Second, this Application has not justified the need to import water from another basin given the current population, housing, and water-demand trends within the import basin – the water demand and population projections that SNWA has been using to justify the GWD Project are not credible. As such, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

## **VII. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN**

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. While SNWA established a goal in the early 1990s of 25% conservation by 2010 and surpassed that

goal in advance, the water conservation plan and the 25% goal are not sufficient measures by which the State Engineer should approve an application. By the same reasoning, the State Engineer would have the discretion to accept a SNWA water conservation plan of 1% conservation in 25, 50, or even 100 years. The legislative intent of NRS 533.370(6) is to require a sufficient and highest practicable level of water conservation for the basin into which the water is imported so as to make an interbasin transfer a last resort. SNWA's current water conservation plan and goals are insufficient because substantial water conservation gains still can be obtained in Clark County and the Las Vegas Valley, at a fraction of the cost of the SNWA's GWD Project and without detriment to the public interest and welfare. As such, the State Engineer must require SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by conservation-minded water-scarce municipalities – before being permitted to transfer groundwater from the subject basin and other GWD Project basins. The State Engineer must require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. The State Engineer must also require SNWA to submit a conservation plan that compares those conservations measures to the GWD Project in terms of cost and timelines for export and import basins. Unless SNWA submits such a plan, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b).

**VIII. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS**

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect

affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section III above, the Application and the GWD Project as a whole are environmentally unsound, unsustainable, and will have long-term environmental impacts within the subject basin and hydrologically connected basins within the same flow system. While biological and hydrological monitoring plans have been developed by SNWA, these plans are insufficient on numerous counts, including but not limited to being scientifically flawed and generally insufficient.

Second, NRS § 533.370(6)(d) provides that an application for interbasin transfer of water must not unduly limit future growth and development. The subject basin's future growth and development is already under way with the construction and operation of alternative energy projects and transmission lines, among other things. Predicting the amount of groundwater needed for future growth and development in the subject basin may be difficult, but the State Engineer should require SNWA to do so as part of a monitoring and mitigation plan for the export basin and/or as part of the water conservation plan for the import basin. SNWA has failed to provide reasonable and sufficient projections of future growth and development for the export basin. Just as SNWA's population and water demand projections did not predict that the Las Vegas Valley would experience an economic bust and substantial loss of population (and therefore much reduced water demand), SNWA's attempts to forecast future growth and economic development in the subject basin are also highly flawed.

Third, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone of depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or

rely on such water sources. The biological and hydrological monitoring plans do not provide safeguards from these potential impacts because: (1) monitoring plan and early detections in the plans are highly flawed; (2) monitoring and early detection for such purposes have proven to be insufficient in the past; (3) cones of depression are very likely to impact springs, seeps, and associated wildlife resources in the initial area of the cone of depression; and (4) cones of depression are likely to move downgradient and adversely impact downgradient springs, seeps, and associated wildlife.

Fourth, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone of depression and lowering of the water level that would result from the approval of this Application, and others associated with the GWD Project, is very likely to negatively affect water quality by drawing in low quality water and cause areas to coalesce. Such impacts will occur within the subject basin and in downgradient basins within the same flow system. SNWA has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor do the monitoring plans ensure that early detection will offset those impacts because once the groundwater impacts have been realized the impacts will persist over the long-term.

**IX. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED**

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that natural



resources, which by definition includes historic and cultural resources, endangered species, water quality, among other resources, are of public interest. By establishing the State Historic Preservation Office under NRS §383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes “that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin . . . .”<sup>1</sup> The State Engineer also has found that while “NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues.” Moreover, the “State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources.” Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The Application and proposed use from the subject basin will result in groundwater drawdown in the subject basin and in hydrologically connected basins and will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

**X. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES**

---

<sup>1</sup> State Engineer's Ruling #5726 dated April 16, 2007, in the matter of applications 54003 through 54021.

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate the following, but not limited to: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863 in Ruby Valley. Nevada Legislature's intent of giving the State Engineer authority to approve water applications has never been to do so in a manner that would violate state and federal mandates, or state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the export of water will violate some or all of the above-listed laws due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot violate federal and state laws. As such, the State Engineer's purview is to make decisions that are not in violation of law. To do otherwise is against the public interest and welfare. Therefore, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

**XI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATY OF 1863 IN RUBY VALLEY**

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress,

which the Supreme Court has determined has “plenary authority” of Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaty of 1863 in Ruby Valley designates and recognizes certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally recognized treaty lands are clearly within the public interest. . As discussed above, Western Shoshone tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized. Such water rights, to some extent, are predicated on the fact that the Treaty of 1863 in Ruby Valley designates a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaty. Those rights remain regardless of non-use or being unquantified. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10<sup>th</sup> Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful groundwater pumping that will infringe upon or diminish water necessary to satisfy the Tribe’s reserved water right. It is important to emphasize that the Tribe’s water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe’s reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaty of 1863 in Ruby Valley are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems

and laws, as in Nevada, do not affect the rights of the Tribe's treaty lands and Reservation. *Power Commin v. Oregon*, 349 U.S. 435 (1955).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even in separate basins that are hydrologically connected. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's rights reserved and guaranteed under the Treaty of 1863 in Ruby Valley. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

## **XII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST**

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust or fiduciary relationship with Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United

States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government to government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands. Under 20 USC § 7401 Congress declared: it is “the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people.” The Secretary of Interior in 25 CFR § 225.1 states that the Secretary “continues to have a trust obligation to ensure that the rights of a tribe or individual Indians are protected in the event of a violation.” The Department of Justice’s Policy on Indian Sovereignty and Government-to-Government Relations with the Indian Tribes states that “the Department shall be guided . . . by the United States’ trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes.” The federal-tribal relationship and the federal government’s responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government’s “trust responsibilities to protect Indian water rights.” See 43 USC § 371. There is a large list of federal mandates, policies, and federal court decisions regarding the federal government’s trust responsibilities to protect the Tribe’s interests, resources, and rights.<sup>2</sup> Thus, the federal government’s trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and

---

<sup>2</sup> See, e.g., *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Seminole Nation v. US*, 316 US 297 (1942); *Worcester v. Georgia*, 31 US 515; *Manchester Band of Pomo Indians v. US*, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); *Nance v. EPA*, 645 F.2d 701, 711 (9<sup>th</sup> Cir 1981); *Menominee Tribe v. US*, 101 Ct Cl 10, 19-20 (1944); *Pardvanno v. Babbitt*, 70 F.3d 539, 545 (9<sup>th</sup> Cir 1995).

relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe's water rights and resources within the Tribe's aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

**XIII. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE'S SOVEREIGNTY AND ABILITY TO REGULATE ITS TERRITORY**

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority, the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's ability to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public interest. As such, the Application, and others that are part of the GWD Project, if approved, falls strictly counter to the public interest on this element. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and conducting an interbasin transfer of water in ways that will unduly injure the Tribe's water resources and rights will concomitantly injure the Tribe's ability for tribal self-governance, its ability to regulate its territory, and its ability to provide necessary benefits and services

to its members on or off reservation lands. This is a highly relevant factor that the State Engineer should consider with the interbasin transfer decision. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

**XIV. THE APPLICANT HAS NOT DEMONSTRATED THE GOOD FAITH INTENT OR FINANCIAL ABILITY AND REASONABLE EXPECTATION TO CONSTRUCT THE WORK AND APPLY THE WATER TO THE INTENDED BENEFICIAL USE WITH REASONABLE DILIGENCE**

The current economic recession has severely altered the economic boom trajectory that Las Vegas had been undergoing for many years. As a result of the recession, Las Vegas Valley population base has decreased, a large number of homes are now vacant, and demand for water has been truncated. It is highly uncertain at this point in time as to whether the Las Vegas economy will rebound. It is also highly uncertain as to when the economy will rebound, and to what extent that economic rebound will affect the Las Vegas Valley. In contrast, the trajectory for eastern Nevada is moving in a positive direction. A multitude of alternative energy projects have been cued for eastern Nevada and are all in the public interest as Congress, the federal government, and the Nevada Legislature have similar initiatives to establish Nevada as leader in alternative energy developments and provide such clean energy to the public.

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See Brendan Riley, Authority Keeps Pipeline Options Open: Mulroy Wants*

*Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at

<http://www.lvrj.com/news/39483777.html>. Further, General Manager Patricia Mulroy has publicly

conceded that with the profound economic downturn that has settled with particular severity on

southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to

construct the GWD Project. See I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8

Eyewitness News, Feb. 11, 2009, available at [http://www.lasvegasnow.com/Global/story.asp?](http://www.lasvegasnow.com/Global/story.asp?s=9829711)

[s=9829711](http://www.lasvegasnow.com/Global/story.asp?s=9829711). Because it appears that SNWA may never construct the project, or at least not within a

reasonable time frame, and that SNWA's ability to obtain financing for the project is highly doubtful,

the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative

request to tie up Nevada's water resources indefinitely.

The Applicant has not conducted reasonable diligence to construct the GWD Project. Partial completion of ROW grants/NEPA process does not constitute reasonable diligence on SNWA's part to ensure that Nevada's water will be put to beneficial use. The only thing that the partial progress in the NEPA process and BLM ROW ensures is that SNWA intends to have the necessary grants and permits in place if such a need arises in the future. Even if BLM rights-of-way are granted by the BLM, there is no assurance that the water will be put to beneficial use within a reasonable amount of time. Moreover, the highly uncertain economic future in Las Vegas area provides rationale to deny this Application.

Because of these reasons, the State Engineer should deny the Application under NRS § 533.370(1)(c).

Moreover, the Application does not clearly describe the place of use, the proposed works, the estimated projects costs of the works, the number and types of units to be served, or the annual consumptive use. It is also not clear as to whether the diversions sought by the Application, and others that are part of the SNWA GWD Project, are necessary and/or in an amount reasonably required for the beneficial uses that have been applied for.



**XV. FAILURE TO DEMONSTRATE ABILITY TO ACCESS LAND CONTAINING POINT OF DIVERSION**

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence. Thus, the State Engineer should deny the Application under NRS § 533.370(1)(c).

**XVI. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION**

SNWA's proposed GWD Project is a massive project and adverse impacts from the Project are certain and they are likely to be both intensive and extensive over various spatial and temporal scales. New scientific or other data, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

**XVII. INCORPORATION OF OTHER PROTESTS TO SNWA'S APPLICATIONS BY REFERENCE**

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's GWD Project and filed pursuant to NRS § 533.365, including but not

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

IN THE MATTER OF APPLICATION NUMBER 53992

FILED BY LVVWD / SNWA

ON October 17, 1989 TO APPROPRIATE THE WATERS OF UNDERGROUND

MAR 22 2011 *JK*

STATE ENGINEER'S OFFICE

**PROTEST**

Comes now CENTRAL NEVADA REGIONAL WATER AUTHORITY

whose post office address is P.O. BOX 1510, RENO, NV 89505

whose occupation is a UNIT OF LOCAL GOVERNMENT and protests the granting

of Application Number 53992, filed on October 17, 1989 by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in LINCOLN County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY) X

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin.
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrnagat and Moapa NWRs, 3 State WMAs, and Pahrnagat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be **DENIED** and that an order be entered for such relief as the State Engineer deems just and proper.

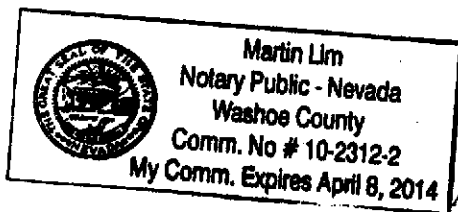
Signed

*Stephen T. Bradhurst*

STEPHEN T. BRADHURST  
Printed or Typed name, if agent

P.O. BOX 1510  
RENO, NV 89505  
Address, City, State, Zip

775.747.2038  
Phone Number



Address

Phone Number

Subscribed and sworn to before me this 22 day of March

*[Signature]*  
Notary Public

State of NEVADA

County of WASHOE

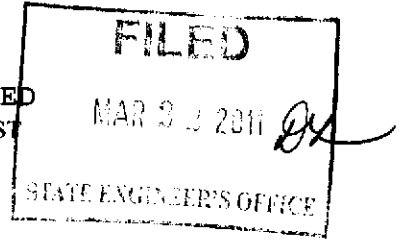
STATE ENGINEER'S OFFICE  
2011 MAR 22 PM 3:27

RECEIVED

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Southern Nevada Water Authority  
ON October 17, 1989, 20, TO APPROPRIATE THE  
WATERS OF Basin No. 182--Delamar Valley

AMENDED  
PROTEST



Comes now County of Inyo, California

Printed or typed name of protestant

whose post office address is 712 Owens Gorge Road, HC 79, Box 11, Mammoth Lakes, California, 93546

Street No. or PO Box, City, State and ZIP Code

whose occupation is Political Subdivision of the State of California

and protests the granting

of Application Number 53992, filed on October 17, 1989 (republished and reopened), 20

by Southern Nevada Water Authority

to appropriate the

waters of Basin No. 182--Delamar Valley

situated in Lincoln

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attached

RECEIVED  
2011 MAR 22 PM 12:59  
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

*Gregory L. James*  
Agent or protestant

Gregory L. James, Attorney for the County of Inyo

Printed or typed name, if agent

Address

712 Owens Gorge Road, HC 79, Box 11

Street No. or PO Box

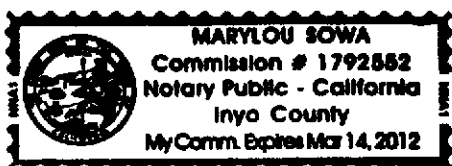
Mammoth Lakes, California 93546

City, State and ZIP Code

760-935-4148

Phone Number

Subscribed and sworn to before me this 21st day of March, 20 11



*Marylou Sowa*  
Notary Public

State of California

County of Inyo

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

## **BASIS OF THE AMENDED PROTEST BY INYO COUNTY**

(Attachment to Amended Protest)

The County of Inyo, State of California, protests the granting of the attached Application for the following reasons and on the following grounds:

1. If this Application is granted, the appropriation and diversion under this permit will eventually reduce or eliminate the flows in springs, and the supplies of groundwater, in several areas and communities (including Death Valley National Monument) in eastern Inyo County which are dependent upon recharge from a regional carbonate rock aquifer. The diversion proposed by this Application is located in the regional carbonate rock province which underlies a large area of Nevada is part of a regional groundwater flow system that, in part, discharges through springs and maintains groundwater supplies in Inyo County, California. Springs and groundwater supplies in eastern Inyo County will be affected by the cumulative impacts of groundwater pumping under this Application and other related applications. The carbonate rock province is typified by complex interbasin regional flow systems from basin to basin. The cumulative impact of the proposed groundwater pumping is expected to reduce interbasin flows and modify the direction of groundwater movement in adjoining hydraulically connected basins and ultimately reduce the discharge through regional springs in Inyo County, California, including Death Valley, Death Valley Junction, Shoshone, Tecopa, Tecopa Hot Springs, China Ranch, and Charleston View.

Inyo County amends its protest to this Application which was filed on July 11, 1990. If this Application is granted, it may impair the water resources of eastern Inyo County, California. The area affected by this Application is located west of the White River Flow System and north of the Pahrnagat Shear Zone--an area identified in available scientific literature as critical to the groundwater resources of eastern Inyo County, California.

The appropriation and diversion proposed by this Application is expected to reduce the volume and velocity of groundwater flowing through the regional aquifer system which could begin the process of closing connected fractures and solution cavities, substantially impairing the capacity of the aquifer to transmit water.

2. There is insufficient unappropriated groundwater in the groundwater water basin to provide the water sought in the above-referenced Application and all other pending applications involving the utilization of surface and groundwater from the basin.

3. The appropriation of this water when added to the already approved appropriations and existing uses and water rights in host water basin will exceed the annual recharge and safe yield of the basin. Appropriation and use of this magnitude will lower the water table, degrade the quality of water from existing wells, cause negative hydraulic gradient influences, and threaten springs, seeps and phreatophytes which provide water and habitat that are critical to the survival of wildlife and grazing livestock, including areas within Inyo County.

4. The granting or approval of the above-referenced Application would unreasonably lower the water table and sanction water mining, which is contrary to Nevada law and public policy.

5. The cumulative impacts of groundwater pumping under this Application in conjunction with other applications filed by the Southern Nevada Water Authority and others will deprive many areas, including areas within Inyo County, of the water needed to protect and enhance their environment and well being, and the diversion will unnecessarily destroy environmental, ecological, scenic, and recreational values.

6. The proposed groundwater pumping would be detrimental to the public interest on environmental grounds and would be environmentally unsound for the export basin.

7. Applicant has not justified the need to appropriate and export groundwater from another basin.

8. Applicant has not implemented a sufficient water conservation plan.

9. The proposed action will unduly limit the future growth and development in the basin.

10. A water extraction and interbasin conveyance project of this magnitude has never been considered by the State Engineer. Accordingly, protestant reserves the right to amend this amended protest to include such issues as they may develop as a result of further information and study.

11. Each and every other protest and amended protest to this Application and/or any application filed that is associated with the water importation project is incorporated by reference as though fully set forth herein and is adopted by protestant as part of this amended protest.

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

FILED

MAR 9 2011

STATE ENGINEER'S OFFICE  
**PROTEST**

IN THE MATTER OF APPLICATION NUMBER **53992**

FILED BY **LVVWD / SNWA**  
ON **October 17, 1989** TO APPROPRIATE THE  
WATERS OF **UNDERGROUND**

Comes now **Elko Band Council**

whose post office address is **1745 Silver Eagle Drive Elko Nv. 89801**

whose occupation is a **Tribal Government** and protests the granting

of Application Number **53992**, filed on **October 17, 1989** by **LVVWD / SNWA** to appropriate the

waters of **UNDERGROUND** situated in **Lincoln** County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin.
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrangat and Moapa NWRs, 3 State WMAs, and Pahrangat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be **DENIED** and that an order be entered for such relief as the State Engineer deems just and proper.

Signed *[Signature]* **3-18-11**

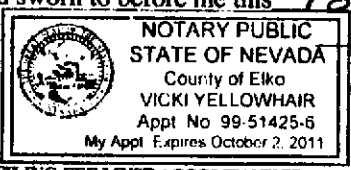
**Gerald Temoke**  
*Printed or Typed name, if agent*

**1745 Silver Eagle Drive**  
**Elko Nv. 89801**  
*Address, City, State, Zip*

Address  
Phone Number **(775) 738-8889**

RECEIVED  
2011 MAR 21 PM 2:23  
STATE ENGINEER'S OFFICE

Subscribed and sworn to before me this **18** day of **March**



*[Signature]*  
Notary Public  
State of **Nevada**  
County of **Elko**

FILED  
MAR 31 2011  
STATE ENGINEER'S OFFICE  
PROTEST

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY LVVWD / SNWA  
ON October 17, 1989 TO APPROPRIATE THE  
WATERS OF UNDERGROUND

Comes now THE GREAT BASIN BUSINESS & TOURISM COUNCIL

whose post office address is P.O. BOX 117, BAKER, NEVADA 89311

whose occupation is Developing & Promoting Eco Tourism and protests the granting

of Application Number 53992 filed on October 17, 1989 by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in LINCOLN County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal water.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: Undue limitation of future economic activity and growth in the basin of origin, undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins, loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin.
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected Snake Valley and Great Basin.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including Pahrnagat and NWRs and White River Valley and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be DENIED

and that an order be entered for such relief as the State Engineer deems just and proper

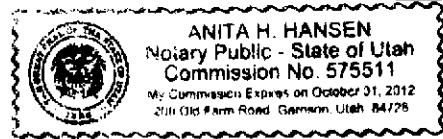
Signed Terrance P. Steadman

Terrance P. Steadman, President  
Printed or Typed name, if agent

Address P.O. Box 117  
Baker, NV, 89311  
Address, City, State, Zip

Phone Number 775-234-7264

Subscribed and sworn to before me this 18th day of March  
Anita H. Hansen



Notary Public  
State of Utah  
County of Millard

RECEIVED  
MAR 21 PM 1:10  
STATE ENGINEER'S OFFICE

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

MAR 21 2011

STATE ENGINEER'S OFFICE  
PROTEST

IN THE MATTER OF APPLICATION NUMBER 53992

FILED BY LVVWD / SNWA

ON October 17, 1989 TO APPROPRIATE THE  
WATERS OF UNDERGROUND

Comes now Terry P. and Debra J. Steadman

whose post office address is P.O. Box 117, Baker, NV. 89311

whose occupation is a Restaurant, Bar and C-store operator and protests the granting

of Application Number 53992 filed on October 17, 1989 by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in LINCOLN County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal well
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: Undue limitation of future economic activity and growth in the basin of origin, undue harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins, loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin:
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected Snake Valley and Great B
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including Pahrnagat and NWRs and White River Valley and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be DENIED

and that an order be entered for such relief as the State Engineer deems just and proper.

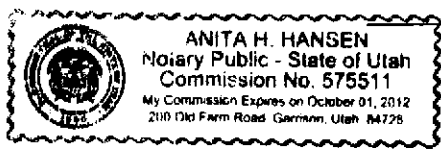
Signed Terry P. and Debra J. Steadman

Terry P. and Debra J. Steadman  
Printed or Typed name, if agent

P.O. Box 117  
Baker, NV. 89311  
Address, City, State, Zip

Phone Number 775-234-7378

Subscribed and sworn to before me this 18th day of March



Anita H. Hansen  
Notary Public  
State of Utah  
County of Millard

RECEIVED  
2011 MAR 21 PM 1:00  
STATE ENGINEER'S OFFICE

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY Las Vegas Valley Water District  
ON October 17, 1989, 20, TO APPROPRIATE THE  
WATERS OF Underground Source



FILED  
MAR 15 2011  
STATE ENGINEER'S OFFICE

PROTEST

Comes now Nevada Department of Wildlife

Printed or typed name of protestant

whose post office address is 1100 Valley Road, Reno, NV 89512

Street No. or PO Box, City, State and ZIP Code

whose occupation is and protests the granting

of Application Number 53992, filed on October 17, 1989, 20

by Las Vegas Valley Water District to appropriate the

waters of Underground Source situated in Lincoln

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

Pumping of this nature within proximity to wetlands, springs and streams is not environmentally sound, is not in the public interest and will adversely affect existing rights.

THEREFORE the Protestants requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Agent or protestant

Tim Hunt, P.E.

Address

Printed or typed name, if agent

4600 Kietzke Lane, D-1355

Street No. or PO Box

Reno, NV 89502

City, State and ZIP Code

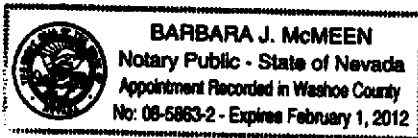
775-688-1564

Phone Number

STATE ENGINEER'S OFFICE

2011 MAR 15 PM 3:51

RECEIVED



Subscribed and sworn to before me this 14<sup>th</sup> day of March, 20 11

Notary Public

State of Nevada

County of Washoe

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.  
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.



The Nevada Department of Wildlife (NDOW) is responsible for protecting, restoring and managing fish and wildlife within the state.

The amount of water applied for under this and associated applications are of sufficient amounts to be likened to the dewatering processes of the mining industry with the exceptions that mining, by its very nature is temporary and the water pumped is generally either returned to the source via rapid infiltration basins or injection wells or the water is used as a substitutive use for irrigation water. All practices either return the water to the source or use the water for beneficial purposes within the basin. None of these practices are to be anticipated, there is no expectation that this project is temporary in nature and all water pumped will permanently leave the basin, effectively providing all of the adverse affects with none of the mitigation of mine dewatering.

The proposed Points of Diversion for the majority of the applications are located on the Bench/Bottom interface. These proposed POD's and the high requested diversion rates will be capturing water from the fracture flow aquifer of the range front as well as the alluvial aquifer of the valley bottom. This could in effect cut off the shallow fracture flows that maintain the springs streams and wetlands in the area as well as change the deeper aquifer flow gradient reducing the artesian flows which also help maintain the springs streams and wetlands in the area. The State Engineer has historically recognized 100 feet as the dividing line between surface water and ground water, however subsurface geomorphology is complex at best and these complexities need to be address to reduce potential impacts on artesian aquifers with surface water expressions. A 100 foot surface seal will likely do little to reduce the impacts on the springs with pumping volumes of this size within close proximity to surface water sources.

Pumping of this nature within proximity to wetlands, springs and streams is not environmentally sound, is not in the public interest and will adversely affect existing rights and therefore must be denied pursuant to NRS § 534.370(5).

It must be noted that the Nevada Department of Wildlife objects to the proposed water exportation project in its entirety but lacks the financial ability to protest all of said applications and are only officially protesting those nearest to its protectable interests.

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

IN THE MATTER OF APPLICATION NUMBER 53992  
FILED BY LVVWD / SNWA  
ON 10/17/89 TO APPROPRIATE THE  
WATERS OF UNDERGROUND.

STATE ENGINEER'S OFFICE  
PROTEST

Comes now the Toiyabe Chapter of the Sierra Club

whose post office address is P.O. Box 8096, Reno, NV 89507

whose occupation is a Conservation Organization and protests the granting  
of Application Number 53992, filed on 10/17/89

by LVVWD / SNWA to appropriate the  
waters of UNDERGROUND situated in LINCOLN

County, State of Nevada, for the following reasons and on the following grounds, to wit:

Please see attached one page Statement of Reasons

THEREFORE the Protestant requests that the application be DENIED  
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Dennis Ghiglieri

Dennis Ghiglieri

Printed or Typed name, if agent

Address Toiyabe Chapter of the Sierra Club  
P.O. Box 8096, Reno, NV 89507

Address, City, State, Zip

Phone Number (775) 329-6118

Subscribed and sworn to before me this 7th day of MARCH, 2011

Lori Wray

Notary Public



State of NEVADA

County of WASHOE

RECEIVED  
2011 MAR -9 PM 2:28  
STATE ENGINEER'S OFFICE

**Attachment to Protest of Toiyabe Chapter, Sierra Club Against**

**Application No. 53992, Filed 10/17/89**

**by the LVVWD and owned by the SNWA.**

This attachment lists and briefly describes the reasons and grounds for this protest of Toiyabe Chapter, Sierra Club ("Protestant") against Application Number **53992**. The LVVWD /SNWA ("Applicant") has filed this Application to appropriate groundwater from **DELAMAR VALLEY** Basin (*Basin # 182*) as part of its massive proposed network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County.

1. There is insufficient water available in the proposed source of supply.
2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
5. The proposed action is not an appropriate long-term use of Nevada's water.
6. The Applicant has not justified the need to import water from another basin.
7. The Applicant has not implemented a sufficient conservation plan.
8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
9. The Applicant has a duplicative application 79264 filed in 2010 which may require a duplicative hearing for the same groundwater.
10. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahranaagat and Moapa National Wildlife Refuges, Pahranaagat and White River Valleys and Lake Mead National Recreation Area, and Overton and Key Pittman and Wayne E. Kirsch Wildlife Management Areas.
11. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.