

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES**

* * *

IN THE MATTER OF APPLICATION
NOS. 54003 THROUGH 54020,
INCLUSIVE, FILED BY THE LAS
VEGAS VALLEY WATER DISTRICT TO
APPROPRIATE THE UNDERGROUND
WATERS OF SPRING VALLEY (184)
HYDROGRAPHIC BASIN, LINCOLN
AND WHITE PINE COUNTIES,
NEVADA.

**MOTION TO EXCLUDE EVIDENCE
RELATED TO PROTESTS AGAINST
APPLICATIONS IN SPRING VALLEY**

COMES NOW, the Southern Nevada Water Authority (“SNWA”), by and through its attorneys the law firms of KING & TAGGART, LTD and McQUAID BEDFORD & VAN ZANDT, LLP, and presents its Motion to Exclude Evidence associated with Individual Protest Claims Regarding Spring Valley Applications. This motion is in addition to and in support of the related Motion to Dismiss Individual Protest Claims (“Motion to Dismiss”).

SNWA respectfully requests that the State Engineer not consider any evidence offered in support of the claims listed for dismissal in the Motion to Dismiss. As noted, SNWA argues that the States Engineer should dismiss these protests to the Spring Valley Applications because: (1) the claims are not within the jurisdiction of the State Engineer, (2) the claims of existing, conflicting federal reserve water rights cannot be substantiated, (3) the State Engineer is not obligated to consider certain claims, and (4) the State Engineer has previously rejected and

State	'S EXHIBIT 43
DATE:	9-11-06

dismissed identical protest claims. Because of the multiplicity of the protests, the consolidated motion to dismiss also serves as the consolidated authority for the exclusion of evidence related to those protests and protest issues listed under each heading.

Also, SNWA respectfully requests that the State Engineer exclude certain evidence related to testimony of witnesses, reports prepared by witnesses, materials referred to by witnesses, and documentation submitted independent of witnesses. SNWA also asks that all evidence related to extra jurisdictional and irrelevant material also be excluded. By way of economy, this Motion to Exclude Evidence is organized by Protestant and addresses each witness, first, and the evidence linked to that witness. Then, if evidence appears to be unrelated to a witness, that evidence is addressed.

I. **UNITED STATES FISH AND WILDLIFE SERVICE.** As discussed in the Motion to Dismiss, the Fish and Wildlife Service (FWS) administers no land and has no water rights in the Spring Valley basin. The four National Wildlife Refuges (NWRs) addressed the FWS protest are not located in the Spring Valley Hydrographic Basin, and the FWS has presented no evidence that the NWRs will be impacted by the Applications in Spring Valley. FWS has submitted a lengthy list of proposed witnesses and exhibits. The list includes numerous witnesses and exhibits that should not be considered at this hearing. As noted above, analysis of the FWS evidence begins with the witnesses.

A. **FWS Witnesses That Failed to Comply with the Intermediate Order Should Be Excluded from Testifying as Experts or from Offering Expert Reports.**

Of the nine witnesses FWS identified, only two have attempted to submit reports and

resumes (CVs) as required by the March 8, 2006 Intermediate Order and Hearing Notice. The Intermediate Order states that a witness who is to provide expert testimony shall present a “written report prepared and signed by the witness.” Intermediate Order at 11. The other seven, even though they apparently plan to offer opinion testimony and evidence, have submitted neither a report nor CV. Based on that failure to comply with the Intermediate Order and the following description of witness testimony, the following witnesses and their testimony should be excluded.

1. **Kevin J. Kritz, Fish and Wildlife Biologist; FWS-2101**

“Mr. Kritz may testify about sage grouse habitat needs and distribution, the Nevada Sage Grouse Conservation Strategy and the Service’s role in conservation of the species; ecology of migratory birds, the Service’s role and responsibility in protecting migratory birds, National and State bird conservation plans, and Important Bird Areas and birds of conservation concern in central-eastern Nevada; and the bats of central-eastern Nevada, habitat requirements, and the Nevada bat conservation plan.”

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this witness should be barred from testifying.

2. **Susan Goodchild, Fish and Wildlife Biologist; FWS-2063, 2086, 2095.**

“Mr. Goodchild may testify about Pahrump poolfish habitat needs, distribution, and general history of the poolfish refugia; habitat needs and distribution of relict dace; general ecology of fishes; and threats to federally listed and State sensitive fish in Nevada.”

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this witness should be barred from testifying. The “Factual Witness Reports” submitted for Mr. Goodchild are not signed and does not address the impact of any of the application on the

identified species Therefore, Mr. Goodchild's submittal, and any testimony related to it, should be excluded.

3. **Annalaura Averill-Murray, Fish and Wildlife Biologist; FWS-2096.**

"Ms. Averill-Murray may testify about ecology of migratory birds, the Service's role and responsibility in protecting migratory birds, National and State bird conservation plans, and Important Bird Areas and birds of conservation concern in central-eastern Nevada; and the bats of central-eastern Nevada, habitat requirements, and the Nevada bat conservation plan; the distribution, biology, habitat requirements, and conservation status of springsnails, native fish, and amphibians of Spring and Snake valleys."

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this witness should be barred from testifying.

4. **Marianne Crawford, Fish and Wildlife Biologist; FWS-2097.**

"Ms. Crawford may testify about the species of mollusk, California floater; reasons for its sensitive status, habitat needs, distribution, and general life history."

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this witness should be barred from testifying.

5. **Steve Caicco, Botanist, United States Fish and Wildlife Service; FWS-2094.**

"Mr. Caicco may testify about the hydrological needs of wetland and riparian plant species, including the relationships between flow magnitude, timing, frequency, and duration and the sustainability of riparian and wetland ecosystems."

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this

witness should be barred from testifying.

6. **Kristine W. Wilson, Native Aquatics Program Coordinator, Utah Division of Wildlife Resources, FWS-2049, Attachments 1-16.**

“Ms. Wilson may testify as an expert about Columbia Spotted Frog and Least Chub Status, Distribution, Habitat Requirements, Conservation Agreements and Strategies, Utah’s Role in Conservation of the Species, and Potential Groundwater Withdrawal Impacts to Wetland Dependent Species, and information found in supporting documents.”

No written expert report is provided for Ms. Wilson that relates to SNWA’s applications in Spring Valley. The reports that are authored by Ms. Wilson relate to generalized studies in Utah. They are not signed, nor do they contain any of the expert opinions or conclusions that would relate to SNWA or its applications in Spring Valley. Ms. Wilson’s reports and testimony should be excluded.

7. **Jay Banta, Refuge Manager, Fish Springs National Wildlife Refuge; FWS-2100.**

“Mr. Banta may testify about spring inflows to the Refuge, the utilization by wildlife of the wetlands fed by those springs, and the necessity of those continued levels of inflow for the mission of the Refuge, and the biodiversity of the West Desert area of the eastern Great Basin.”

All of the proposed testimony relates to areas of expertise and opinion that require submittal of an expert report. Since the FWS has not submitted the required documentation, this witness should be barred from testifying.

B. **FWS Expert Witnesses and Their Reports That Offer Only Irrelevant Evidence Should Be Excluded.**

The remaining FWS witness, Roger Congdon, should also be excluded from testifying because their purported testimony does not offer any evidence that is relevant to the FWS protest.

As stated in the motion to dismiss, the FWS protest only alleged injury to NWRs, of which none exist in Spring Valley, and alleged injury to threatened and endangered species, of which none have been identified in Spring Valley.

The Cogdon report should also be excluded because the report contains no information specific to this hearing that were raised in the FWS protests, and is irrelevant because FWS has no land or water right interests in the Spring Valley Basin. According to the FWS witness list,

“Dr. Congdon may testify as an expert regarding the potential impacts of the currently proposed pumping by SNWA in Spring Valley and surrounding valleys, potential impacts to the potentiometric surface in the alluvial and carbonate aquifers, potential impacts to springs and other water resources, and the use of MODFLOW model developed by Prudic et al. (1995) and by Schaefer and Harrill (1995).”

Dr. Congdon’s report and testimony should be excluded because they deal solely with issues that are unrelated to any of FWS’s protest points. As discussed in the Motion to Dismiss, FWS does not possess any water rights or own any land that is linked to or present in the Spring Valley Hydrographic Basin. All of Dr. Congdon’s testimony concerns water flows in the Spring Valley Basin, but without having any rights to this water, testimony on Spring Valley Water flows should be excluded as irrelevant to the FWS protest.

Further, all of Dr. Congdon’s exhibits should be excluded because they do not establish any link between pumping in Spring Valley and the only water resources issues raised in the FWS protest, namely the National Wildlife Refuges, which are located outside of the Spring Valley Hydrographic Basin. Therefore all testimony related to MODFLOW and other water resource information should be excluded.

C. **All Evidence Related to Water Resources Should Be Excluded Because FWS Has No Basis to Protest Water Use in Spring Valley.**

FWS has not identified any water rights in the Spring Valley Hydrographic Basin. Nor have they identified any NWRs within the basin, as the four NWRs listed all fall outside of the Spring Valley Basin. Therefore, all references to water resources should be excluded from the hearing because they are irrelevant to the protest points raised by the FWS. Accordingly, the following evidence should be excluded from consideration: FWS-2001 to 2005, 2010, 2017 to 2018, 2026 to 2029, 2048.

D. **All Evidence Related to Species and Other Environmental Concerns Should Be Excluded.**

As discussed in the Motion to Dismiss, a hearing before the State Engineer is not the proper forum for resolving environmental or species concerns. *See* Motion to Dismiss, sec. B. Environmental and species review are already under way, and any review by the State Engineer would be duplicative and unnecessary. Hence, all of the documents FWS submitted related to environmental concerns and species should be excluded from the hearing. Accordingly, the following evidence should be excluded from consideration: FWS-2006 to 2009, 2011 to 2016, 2019 to 2025, 2030 to 2047, 2049 to 2113

II. **NATIONAL PARK SERVICE.**

A. **The National Park Service Has Failed to Submit Evidence or Testimony for Numerous Protest Points and These Should Be Excluded from the Hearing.**

The National Park Service (“NPS”) offers no evidence, witnesses, or expert testimony

regarding the following protest points:

Protest Point X (prohibition against waste and unreasonable use of water),

Protest Point XI (application information regarding the place of use, proposed works, number of units, etc).

Protest Points I, II, IV and V (Lehman Caves and Baker, Nevada Admin Site)

NPS fails to provide any evidence related to points X and XI. And, tellingly, none of the NPS witnesses directly address or provide evidence of potential impacts to water rights for Lehman Caves National Monument or the administrative site located near Baker Nevada as a result of the Applications in Spring Valley. Since there is no evidence to support these protest points the NPS should not be allowed to address these issues at the hearing beginning on September 11, 2006.

B. NPS Witnesses That Failed to Comply with the Intermediate Order Should Be Excluded from Testifying as Experts or from Offering Expert Opinions.

1. Tod Williams, Chief of Resources Management, Great Basin National Park; NPS-2501.

According to the NPS witness list, Mr. Williams may provide testimony regarding:

- 1) the establishment of GBNP as a representative segment of the Great Basin of the Western United States that possesses outstanding resources and significant geological and scenic value;
- 2) water-related resources located within the park that have been identified by the United States Geological Services in Scientific Investigations Report 2006- 5099 as being generally susceptible to the effects of ground-water withdrawals in adjacent basins.

The report associated with Tod Williams, (NPS-2501), does not indicate who authored the

report and does not contain a signature. Further, the report does not qualify as an expert report as it does not contain a complete statement of all opinions to be expressed. Rather, it lists “bio-physical resources” in watersheds identified in a USGS Report. It offers no opinion or facts as to impacts on these resources if the SNWA Applications are approved. The report does not comply with the requirements of the Intermediate Order and there is no way to determine its authorship, its credibility, the data it cites, and the foundation for its statements. Accordingly, Exhibit NPS-2501 should be excluded and should not be considered as a qualifying expert report. And, since the report does not qualify under the Intermediate Order, Mr. Williams testimony should also be excluded.

Even if Mr. Williams report is accepted, the report and any associated testimony should be limited. According to his statement of qualifications, Mr. Williams is not qualified to discuss water-related resources located within the park and impacts resulting from groundwater pumping, since he is not a hydrogeologist. Further, Mr. Williams is not qualified to discuss information presented in the USGS Report the cites. Mr. Williams is also not qualified to discuss cave resources and his testimony should be limited. All the evidence presented regarding cave resources in the Williams Report comes from “the unpublished NPS 2006 management document titled ‘Caves Resources Condition Report.’” (Williams Report pp. 19, 29 and 37; Attachment 3 to Williams Report.)

2. **Eric Lord, Water Rights Specialist, National Park Service; NPS-2503.**

Mr. Lord’s resume does not indicate that he is qualified as an expert to provide the legal

opinions expressed in his Witness Statement. Mr. Lord's report contains numerous legal opinions regarding the status of the NPS water rights as they relate to appropriative and federal reserved water rights. In addition, he draws legal conclusions regarding the water rights outstanding in Spring Valley. Although Mr. Lord has attended law school, there is no indication from his statement of qualification that he is a practicing attorney and able to provide such legal opinions, nor is he offered as such an expert. Further, any general experience in the area of water rights Mr. Lord may have obtained was in Colorado and there is no indication that he has any experience in Nevada water rights. He is not a licensed Nevada water rights surveyor. Therefore, Mr. Lord should not be allowed to testify on the issue of water rights in GBNP.

The Lord report does not contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions. Intermediate Order p. 11. The Lord Witness Statement merely lists water rights supposedly held for the benefit of GBNP. It in no way presents an opinion on these supposed water rights or potential impacts to these waters resulting from the applications in question and thus does not qualify as an expert report.

C. The NPS Should Be Limited to Issues Raised in the Protests and Not Be Allowed to Expand the Scope of These Hearings.

The only water resources specified in NPS protests are for water associated with the reservation of Lehman Caves National Monument, the administrative site located near Baker Nevada, and Cave Springs (Application # 20749). Unlike FWS, the NPS submits all of its documentary evidence as attachments to the purported reports of the listed witnesses. Thus the following discussion specifically refers to the objectionable portions of each report.

Mr. Williams lists water related resources that were not raised by the NPS in their protests. Mr. Williams goes through an exhaustive list of resources including vegetative resources, macro invertebrates, and sensitive wildlife. However, none of these resources, except for the Bonneville Cutthroat Trout, are presented in the NPS protest as being affected by the SNWA Applications. Mr. Williams' report and testimony should be limited to issues raised in the NPS protests.

D. All NPS evidence related to water resources outside of the Spring Valley Hydrographic Basin or related to water rights the NPS has no interest in should be excluded.

Most of the resources listed by Mr. Williams occur on the East side of the GBNP in Snake Valley (Williams Report pp. 10-37) and purport to describe resources in the areas affected by "pumping in both Spring and Snake Valley." *Id.* at 10. This hearing deals solely with applications in Spring Valley and the NPS should not be permitted to present evidence of potential impacts from pumping in Snake Valley. Further, the NPS has provided no evidence of a water right interest in the numerous springs and streams listed in the Williams Report.

Any evidence presented by Mr. William P. Van Liew, Hydrologist, National Park Service, Water Resources Division (NPS-2502), regarding impacts to water sources should be limited to those water rights claimed in the NPS protests.

In his expert report, Mr. Van Liew concludes that "[e]ventually, if pumping continues long enough, it is reasonable to assume that capture and depletion of existing surface-water resources will occur somewhere." Van Liew Report at 19. But the only surface water resources specified in the NPS protests are for water associated with reservation of Lehman Caves National Monument,

the administrative site located near Baker Nevada, and Cave Springs (application # 20749).

The Van Liew report, however, does not mention potential impacts on Lehman Caves or other cave formations in GBNP, nor does he mention any impacts on water rights at the administrative site in Baker. Cave Springs, which is located in Snake Valley hydrographic basin, is mentioned as “likely susceptible to depletion” due to ground water pumping. Van Liew Report at 15-16. He does not specify if this is a result of pumping from Spring Valley or Snake Valley.

Instead, Mr. Van Liew states that

[t]he most likely areas where existing surface-water resources might eventually be captured by large-scale ground-water pumping in southern Spring Valley are along a spring-line on the west side of the southern Snake Range (on the east side of Spring Valley) and at Big Springs and along Big Springs Creek in southern Snake Valley.

Van Liew Report at 19.

In their protests, the NPS does not claim any water rights in the Big Springs and along Big Springs Creek. Additionally, Mr. Van Liew mentions likely depletion of Spring Creek Spring, Rowland Spring, Snake Creek, Baker Creek, Lehman Creek, and Strawberry Creek, none of which are sources of water rights claimed by NPS in their protests. Van Liew Report at 16. Therefore, the State Engineer should not hear any evidence regarding impacts to these surface water flows or other waters not claimed by the NPS. Because the NPS has shown no interest in these waters, they should not be permitted to provide evidence of any supposed impacts to these waters.¹ Since Mr. Van Liew’s report does not relate to matters actually protested by the NPS, it

¹ Appendices A and B of Mr. Van Liew’s report shows pictures of various water sources. These pictures should also be excluded to the extent that they depict water sources the NPS has provided no evidence of possession.

should be excluded from evidence.

III. WESTERN ENVIRONMENTAL LAW CENTER.

A. The Western Environmental Law Center Has Failed to Submit Evidence or Testimony for Numerous Protest Points and These Should Be Excluded from the Hearing.

The following protest points are supported by no evidence submitted by these parties' counsel, WELC, and therefore should be dismissed:

1. Unsupported Protest Claims that Should be Dismissed.

Protestant Protest Points

Johnson 6(b): applications are not in the public interest because they would interfere with the purpose for which lands are managed under Federal Land Policy Management Act Act of 1976;
7: approval will cause willful waste;
9: will increase inefficient use of water and frustrate efforts at water demand management;
12: applications will cause air pollution;
14: population projections are unreliable;
15. Current LVVWD conservation programs are ineffective;
16. Project costs will cause water price increases thereby reducing demand;
17. Would allow LVVWD "to lock up water resources for use sometime in the distant future beyond current planning horizons";
18. Current trends "suggest that demand forecasts overstate future needs";
19. Current Las Vegas Valley water consumption is twice that of similar municipalities.

Tryon 2. Further growth in Las Vegas Valley is not in the public interest.

Sierra Club

1. Appropriation "would interfere with the purpose for which land is managed under FLPMA." No evidentiary submissions address the FLPMA or other federal

- statutes dealing with land management;
- 3. Will encourage willful waste;
- 7. Degradation of air quality;
- 10. Will discourage lower cost, more efficient alternatives.

White Pine County

- 6. Appropriations “will deprive the county . . . of the water needed for its environmental and economic well being and will unnecessarily destroy or damage environmental, ecological, scenic and recreational values that the state holds in trust . . . “ No evidence was submitted by the WELC on the destruction of environmental, scenic or recreational values (or uses) of the area; although WELC Exhibits 3056 and 3057 describe some of the existing recreational uses and the values of the residents in promoting those uses, there is no connection to the SNWA Applications;
- 9. Appropriation “would interfere with the purpose for which land is managed under FLPMA.” No evidentiary submissions address the FLPMA or other federal statutes dealing with land management;
- 12. Approval will cause waste of water;
- 14. Will increase inefficient use of water and frustrate efforts at water demand management;
- 17. Will cause air pollution;
- 20. Population projections are unrealistic;
- 21. Las Vegas Valley water conservation programs are ineffective;
- 22. Project cost will lead to water rate increases, which will cause reduced demand;
- 23. Project “will lock up vital water resources for possible use sometime in the distant future”;
- 24. Water demand forecasts overstate future water demand needs;
- 25. Project cost will lead to water rate increases, which will cause reduced demand(identical protest point to #22);
- 26. Current per capita water consumption rate in Las Vegas Valley is twice that of other municipalities in the Southwest.

In addition to the exclusion of these specific points for a lack of evidence, all evidence connected with the White Pine County plans should be excluded. None of the protestants represented by WELC raise any protest points addressing the White Pine County water resources

plan, or any protest points related to any adverse consequences of the groundwater project on the White Pine County plans.

Also, WELC argues that application number 54003 site is close to a Wilderness Study Area boundary. But this point is moot because the WSA at issue no longer exists. Even if it were still an appropriate point of consideration, none of the WELC evidence addresses this.

B. Certain Submissions or Expert Reports Do Not Comply with the Intermediate Order Should Be Excluded from the Hearing.

As discussed in each category below, the following witnesses and evidence should be excluded from the hearing. This request is also made based on the failure to comply with the Intermediate Order and the following description of witness testimony.

1. John D. Bredehoeft, WELC-3010, 3011.

“Dr. Bredehoeft will present testimony as to his expert opinion regarding the effect that the groundwater applications would have on the hydrology of Spring Valley and surrounding valleys.”

The report is defective and fails to comply with the order, because Bredehoeft failed to rely on any actual data to form his opinions. Instead, he relies only on opinions of one other expert, and merely repeats those conclusions as his own. He claims proposed groundwater appropriation will cause Spring Valley groundwater storage depletion within 100 years, based on the model developed by Myers, but based on no analysis of his own. Bredehoeft has developed no model and produced no data of his own: he simply describes the Myers and USGS methodology and in his own “CONCLUSIONS” section, Bredehoeft restates their conclusions. Because he offers nothing of his own, the Bredehoeft report repeats conclusions in Meyers’ report (Exhibit

3001) and should be excluded.

2. **Ronald M. Lanner, WELC-3040, 3041.**

Lanner's testimony and report should also not be allowed because they are duplicative of the Charlet report and offers no additional evidence or opinion. Moreover, he is not a hydrogeologist and is not qualified to offer these opinions.

3. **Thomas R. Harris, WELC-3050, 3053.**

Harris is not offered as an expert, so he should be precluded from offering any expert opinion at the hearing on consequences of the groundwater project on the local economy.

4. **Karen Rajala, WELC-3054, 3055, 3056.**

Rajala does not appear to be qualified to testify on any of the subject matter presented on her behalf; it appears she is a custodian of records rather than a fact or expert witness as to this subject matter.

C. **All Evidence Related to Species and Other Environmental Concerns Should be Excluded.**

1. **Jamed Everett Deacon; WELC-3020, 3021.**

Deacon's testimony and report should not be allowed because they are irrelevant. Issues addressing species will be dealt with in the EIS process and Fish & Wildlife Service review processes.

Deacon's report addresses species in Spring Valley. He discusses the several species of springsnail that are endemic to Spring Valley and notes that in Snake Valley, certain of these species are restricted to an area whose surface-water resources "likely are susceptible to ground-

water withdrawals” (at p.2), but makes no such claim about surface water being threatened by groundwater pumping in Spring Valley. He describes three fish species of concern, only one of which is listed as endangered in Spring Valley, the Pahrump Poolfish. The other two species he discusses are not listed under the ESA, namely the Bonneville Cutthroat Trout, and the relict Dace.

He fails to show or point to any specific evidence that groundwater pumping in Spring Valley will, in fact, reduce habitat or impact the quality of the habitat. He makes statements about the water table and Shoshone Ponds; however, Deacon is not a hydrogeologist and he cites to no evidence to support his bald conclusion. Further, analysis of any alleged potential impact on status of species is undertaken in the EIS process and is beyond the state engineer’s scope of review (see specific argument and citation in SNWA’s Motion to Dismiss).

2. David Alan Charlet, WELC-3030, 3031.

Charlet’s testimony and report should not be allowed because they are irrelevant. Issues addressing species will be dealt with in EIS process and Fish & Wildlife Service review processes. Charlet describes the prevalent vegetation throughout Spring Valley and provides an unsupported opinion on impacts. These conclusions are unsupported by any evidence that the groundwater pumping will have any adverse affect on *surface* water conditions that these species depend on. He provides no evidence that the trees or the shrub depend on *groundwater*. Further, potential adverse impact on flora is appropriately left to the EIS process, not for the State Engineer’s analysis.

3. **Ronald M. Lanner, WELC-3040, 3041.**

Lanner's testimony and report should not be allowed because they are irrelevant. Issues addressing species will be dealt with in EIS process and Fish & Wildlife Service review processes. He describes the Swamp Cedars but offers no additional evidence or any additional point of view or expert opinion. Without any support, he states that "since the swamp cedar's root systems are concentrated in the upper one foot of soil," "and almost entirely in the upper two feet, drawdown of water from this part of the soil profile can be expected to be devastating to the trees," but there is no evidence that the groundwater pumping will affect surface water. Additionally, potential adverse impact on the trees is appropriate subject for analysis in the EIS, not in the SE's findings.

4. **Thomas R. Harris, WELC-3050, 3052, 3053.**

The Harris reports, "Estimated Economic Impacts of Ranching and Farming on the White Pine County Economy," and "White Pine County Comprehensive Tourism Master Plan," are not linked directly to any of the protestants' protest claims and should be stricken as not relevant to any claim. None of the Protestants represented by WELC raise claims about the importance of ranching and farming in Spring Valley or the potential adverse consequences. Similarly, no issue was raised as to tourism. The reports were not prepared as an expert report for the SNWA Applications and they do not meet the requirements of the Intermediate Order for expert reports; they are not signed by the author.

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5. **Karen Rajala, WELC-3054 to 3057.**

Even if Rajala could testify on the reports linked to her, WELC-3054 should be excluded. This report, “Summary of Information Regarding Economic Value Generated by Agricultural and Recreational Activity in Spring Valley,” is not linked directly to any of the Protestants’ protest claims and should be stricken as not relevant. None of the Protestants represented by WELC raise claims about the importance of agriculture and recreation in Spring Valley or the potential adverse consequences thereto.

WELC-3055 to 3057 should be excluded because they are no appropriate evidence for this hearing.. The “White Pine County Commission Memorandum re Revised Water Resources Plan” (3055); “White Pine County Outline of Goals, Objectives, Strategies for Revised Water Resources Plan” (3056); and “Partial Preliminary Draft Water Resources Plan” (3057) should be excluded as inappropriate submissions because they are informal, inter-county memoranda , notes and drafts, not finished or final public documents.

IV. **BUREAU OF LAND MANAGEMENT.**

A. **The Bureau of Land Management Has Failed to Submit Evidence or Testimony for Numerous Protest Points and These Should Be Excluded from the Hearing.**

The following protest points are supported by no evidence submitted by the Bureau of Land Management (BLM) and therefore should be dismissed:

1. Granting the Applications will prove detrimental to the public interest by “eliminating” the capability of the BLM to fulfill its legislated management responsibilities under: FLPMA, The Taylor Grazing Act, The Recreation and Public Purposes Act, The Wild and Free Roaming Horse and Burro Act, The

- Endangered Species Act, The Public Rangelands Improvement Act, The Water Resource Act, etc.
2. Certain “waters” that the BLM manages could be potentially impacted if the applications are granted.
 3. Withdrawal exceeds natural recharge.
 4. Withdrawal will lower the water table below the rooting zone for the phreatic vegetation.
 5. Withdrawal will cause desertification, which will (a) reduce forage for livestock and wildlife, and (b) decline the air quality.
 6. Negative affect on Pahrump Killifish, an endangered species in the Shoshone Ponds.
 7. PWR-107 rights in Spring Valley.

B. All Evidence from Unpublished or Draft Environmental Documents Should Be Excluded: BLM-1504 to 1512.

The BLM submits a number of excerpts from an unpublished draft version of the Resource Management Plan (“RMP”) / Environmental Impact Statement (“EIS”) for the BLM Ely Field Office (collectively “RMP/EIS”). *See e.g.* BLM 1504 through BLM 1512. These excerpts should be deemed inadmissible as evidence because they are unofficial, preliminary drafts which have not been published by the BLM or subjected to any public comment. In addition, no author has been identified by the BLM to authenticate or lay a foundation for the excerpts. As such, they are inherently unreliable and should not be admitted.

C. All BLM evidence that Fails to Comply with the Intermediate Order Should Be Excluded.

1. Testimony of Robert Boyd, Paul Podborney, and Brad Pendley.

Regarding witnesses, the BLM proposes to introduce testimony from the following individuals: Robert Boyd, Paul Podborney, and Brad Pendley. To the extent the BLM intends that these witnesses will provide expert testimony, any such testimony should be deemed

inadmissible because the requirements for submitting expert testimony as outlined in the State Engineer's Intermediate Order have not been met. The BLM has not provided a complete statement of their opinions or the basis for such opinions, the witnesses have not signed any reports, and no statement of qualifications for any witness has been provided. Accordingly, any purported expert testimony by Messrs. Boyd, Podborney, and Pendley does not satisfy the admissibility criteria in the Intermediate Order and should be excluded.

2. BLM-1504 to 1512.

If the BLM intends to submit these excerpts from the RMP/EIS as expert testimony, the excerpts should be deemed inadmissible because the requirements for submitting expert testimony as outlined in the State Engineer's Intermediate Order have not been met. The Intermediate Order requires that if a witness is to provide expert testimony:

the evidentiary exchange shall include a written report prepared and signed by the witness, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, any exhibits to be used as a summary of or in support of the opinions and a statement of the qualifications of the witness.

Intermediate Order, pg. 11. The RMP/EIS excerpts do not provide a complete statement of opinions or the basis for such opinions, are not signed by a witness, and do not provide a statement of qualifications for any witness. Accordingly, the RMP/EIS excerpts do not satisfy the admissibility criteria in the Intermediate Order and should be excluded.

3. BLM-1501.

The "impacts" and "conclusion" sections of the BLM proposed exhibit 1501 (entitled "Water Rights Hearings For Applications Filed By SNWA In Spring Valley (HA #184)") should

be deemed inadmissible as evidence because there are no facts, documents or other basis to substantiate the conclusions.² If the BLM intends to submit the “impacts” and “conclusions” sections of BLM 1501 as expert testimony, the conclusions should be deemed inadmissible because the requirements for submitting expert testimony as outlined in the State Engineer’s Intermediate Order have not been met. There is no basis or reasons stated for these conclusions, no inclusion of exhibits to be used as a summary of or in support of the opinions, and no statement of the qualifications of the witness. Accordingly, the “impacts” and “conclusion” sections do not satisfy the admissibility criteria in the Intermediate Order and should be excluded.

D. All Evidence Related to Species and Other Environmental Concerns Should Be Excluded.

The BLM has submitted exhibits that concern issues which are outside the scope of the State Engineer inquiry, namely, the conservation of the sage-grouse and preservation of the swamp cedar in Spring Valley. See BLM 1513 and BLM 1528. As argued in other pre-hearing motions submitted herewith, an water rights appropriation hearing before the State Engineer is not the proper forum to either consider or resolve environmental issues because it would duplicate the efforts of other agencies of the federal government. The BLM is currently preparing an EIS to identify and disclose potential effects associated with the project. Thus, other agencies are already evaluating environmental issues and no additional environmental analysis is required by the State Engineer. Accordingly, BLM 1513 and 1528 are irrelevant and should be deemed inadmissible and excluded from the hearings.

² At this time the SNWA does not object to the first nineteen (19) pages of BLM 1501.

E. Evidence Related to the White Pine Power Project Should Be Excluded as Antiquated and Irrelevant.

The BLM submits a number of excerpts from technical reports related to the White Pine Power Project (“WPPP”). *See e.g.* BLM 1514 through BLM 1517, and BLM 1519. These WPPP excerpts, which are over twenty (20) years old, should be deemed inadmissible as evidence because they are irrelevant to the Spring Valley Applications. While portions of these excerpts do address conditions in Spring Valley, which was a proposed alternative site for the power plant, there are currently underway environmental impact statements for Spring Valley that are specific to the proposed use of the Applications and will supersede these dated, irrelevant excerpts. In addition, no author has been identified by the BLM to authenticate or lay a foundation for the WPPP excerpts. As such, they are inherently unreliable and should not be admitted.

If the BLM intends to submit the WPPP excerpts as expert testimony, the excerpts should be deemed inadmissible because the requirements for submitting expert testimony as outlined in the State Engineer’s Intermediate Order have not been met. The WPPP excerpts do not provide a complete statement of opinions or the basis for such opinions, are not signed by a witness, and do not provide a statement of qualifications for any witness. Accordingly, the WPPP excerpts do not satisfy the admissibility criteria in the Intermediate Order and should be excluded.

V. BUREAU OF INDIAN AFFAIRS.

The Bureau of Indian Affairs (BIA) apparently appears on behalf of the Ely/Shoshone Indian Tribe, in support of the protest against application 54019.

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A. The BIA Offers No Evidence to Support Numerous Protest Points and Those Points Should Therefore Be Excluded from Consideration.

The following protest points are supported by no evidence submitted by the Bureau of Land Management (BLM) and therefore should be dismissed protest Points

1. Application will lower static groundwater level; adversely impact water quality;
2. Adversely effects springs, seeps and phreatophytes that provide water and habitat for wildlife and livestock.
3. Exceed annual recharge and safe yield of the basin; cause negative pumping gradients and impact static groundwater levels.
4. Export of the water will harm economic development in the region and will impact environmental, ecological, scenic and recreational values.
5. Granting application without comprehensive planning is detrimental.
6. Harm species and interfere with federal land management.
7. Encourage waste of water.
8. LVVWD has not obtained necessary rights of way across federal lands.
9. Encourage inefficient use of water in the proposed service area.
10. LVVWD lacks the financial capacity to complete the project.
11. Fails to comply with statutory requirements for an application.
12. Will exceed safe yield and cause environmental harm.
13. Lack of information needed to determine impact on public interest.
14. Population projections upon which need is based are inaccurate.
15. Conservation efforts by LVVWD have not worked and water is unnecessary.
16. Costs of project will lead to rate increases.
17. Application would tie up water uses for future use while preventing current use.
18. Water demand forecasts are simplistic and inaccurate.
19. Per capita water use in LVVWD is twice that of other areas and thus inefficient.
20. Potential impacts of this unprecedented project cannot be estimated.

Since the BIA offers no evidence to support any of these protests, all of them should be excluded from the hearing.

B. BIA Offers No Witnesses to Testify to Matters Contained in Documentary Evidence and That Evidence Should Therefore Be Excluded as Inadmissible and Irrelevant: BIA-4501 to 4514.

As to the first protest point, regarding alleged treaty rights based on the Treaty of Ruby Valley, the BIA simply includes a list of documents without any proposed witness to testify about

them. Without witnesses testimony to establish the provenance of the excerpts and other partial documentary evidence submitted, it is unclear how the BIA proposes to admit the documents.

If the BIA is to substantiate protest point 1, it would need to offer testimony about the alleged process that establishes water rights for the tribe. As it stands, however, the BIA has not offered any evidence that would substantiate the claimed rights in the Spring Valley Hydrographic Basin. Further, the evidence offered is also irrelevant because it does not address any interests in the subject area of the protests.

And the documents are irrelevant because they concern an ongoing process with the federal government, and do not document what any existing rights are that are or could be impacted by the application.

VI. CONCLUSION.

Each of the witnesses and exhibits submitted by the Protestants listed above should be excluded from consideration in this hearing. Except as noted, each witness or exhibit fails to comply with the requirements the Engineer established in the intermediate order. More importantly, each party has, for many of its protest points, failed to submit any evidence in support of them, and they must not be considered at the hearing. Therefore, SNWA asks that the State

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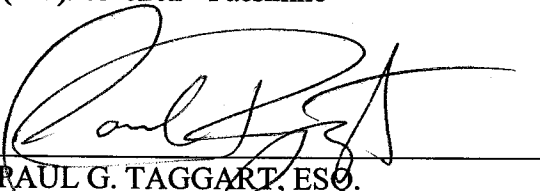
Engineer excluded all the witnesses and evidence described in this motion from the hearing.

DATED this 7 day of July, 2006.

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By:


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Nevada State Bar No. 7199
Attorneys for SNWA

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES**

IN THE MATTER OF APPLICATION
NOS. 54003 THROUGH 54020,
INCLUSIVE, FILED BY THE LAS
VEGAS VALLEY WATER DISTRICT TO
APPROPRIATE THE UNDERGROUND
WATERS OF SPRING VALLEY (184)
HYDROGRAPHIC BASIN, LINCOLN
AND WHITE PINE COUNTIES,
NEVADA.

**[PROPOSED] ORDER GRANTING
MOTION TO EXCLUDE EVIDENCE
RELATED TO PROTESTS AGAINST
APPLICATIONS IN SPRING VALLEY**

For good cause appearing, the witnesses and documentary evidence referenced in the Motion To Exclude Evidence Relating To Protests Against Applications In Spring Valley, as listed in Attachment A appended hereto, are inadmissible and should therefore be excluded from the hearings.

DATED: July __, 2006

State Engineer, State of Nevada
Department of Conservation and Natural
Resources, Division of Water Resources

Attachment A

<i>Witness To Be Excluded</i>	<i>Evidence To Be Excluded</i>	<i>Reason For Exclusion</i>
Kevin J. Kritz, Fish & Wildlife Biologist	FWS-2101	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.
Susan Goodchild, Fish & Wildlife Biologist	FWS-2063 FWS-2086 FWS- 2095	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.
Annalaura Averill-Murry, Fish & Wildlife Biologist	FWS-2096	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.
Marianne Crawford, Fish & Wildlife Biologist	FWS-2097	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.
Steve Caicco, Botanist, U.S. Fish & Wildlife Service	FWS-2094	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.
Kristine W. Wilson, Native Aquatics Program Coordinator, Utah	FWS-2049, Attachments 1-16	The reports provided by Ms. Wilson do not relate to nor provide expert opinions or conclusions regarding SNWA's applications in Spring Valley.
Jay Banta, Refuge Manager, Fish Springs National Wildlife Refuge	FWS-2100	The witness failed to submit a report and resume (CV) as required by the Intermediate Order.

Attachment A

<i>Witness To Be Excluded</i>	<i>Evidence To Be Excluded</i>	<i>Reason For Exclusion</i>
Roger Congdon	FWS-2001, Attachments 1-9	The reports provided by Dr. Congdon are unrelated to the FWS's protest points. Further, his exhibits should be excluded because they do not establish any link between pumping in Spring Valley and the water resources issues raised in the FWS protests.
	FWS-2001 to FWS-2005 FWS-2010 FWS-2017, FWS-2018 FWS- 2026 to FWS-2029 FWS-2048	All evidence related to water resources should be excluded because FWS has no basis to protest water use in Spring Valley.
	FWS-2006 to FWS-2009 FWS-2011 to FWS-2016 FWS-2019 to FWS-2025 FWS-2030 to FWS-2047 FWS-2049 to FWS-2113	All evidence related to species and other environmental concerns should be excluded because a hearing before the State Engineer is not the proper forum for resolving these concerns.
	National Park Service's protest points X (prohibition against waste and unreasonable use of water) and XI (application information regarding the place of use, proposed works, number of units)	NPS failed to provide any evidence related to these protest points.

Attachment A

<i>Witness To Be Excluded</i>	<i>Evidence To Be Excluded</i>	<i>Reason For Exclusion</i>
	National Park Service's protest points I, II, IV, and V (Lehman Caves and Baker, Nevada Admin Site)	NPS failed to provide any evidence related to these protest points. None of the NPS witnesses directly address or provide evidence of potential impacts to water rights for Lehman Caves National Monument or the administrative site as a result of ground water withdrawals in Spring Valley.
Tod Williams, Chief of Resources Management, Great Basin National Park	NPS-2501	The report associated with Tod Williams (NPS-2501) does comply with the requirements of the Intermediate Order.
	NPS-2502	Mr. Van Liew's report does not relate to matters actually protested by the NPS. Evidence related to water resources outside of the Spring Valley Hydrographic Basin or related to water rights the NPS has no interest in should be excluded.
Eric Lord, Water Rights Specialist, National Park Service	NPS-2503	Mr. Lord's resume does not indicate that he is qualified as an expert to provide the legal opinions expressed in his witness statement. There is not indication that Mr. Lord has an experience in Nevada water rights. Mr. Lord is not a licensed Nevada water rights surveyor.

Attachment A

<i>Witness To Be Excluded</i>	<i>Evidence To Be Excluded</i>	<i>Reason For Exclusion</i>
John D. Bredehoeft	WELC-3010 WELC-3011	The report associated with Mr. Bredehoeft does comply with the requirements of the Intermediate Order.
Ronald M. Lanner	WELC-3040 WELC-3041	Mr. Lanner's testimony should not be allowed because they are duplicative of the Charlet report. Moreover, he is not qualified to offer these opinions. Mr. Lanner's report and testimony should not be allowed because they are irrelevant.
Thomas R. Harris	WELC-3050 WELC-3053	Mr. Harris is not offered as an expert, so he should be precluded from offering expert opinion at the hearing.
Karen Rajala	WELC-3054 WELC-3055 WELC-3056	Ms. Rajala does not appear to be qualified to testify on any of the subject matter presented on her behalf. In addition her report (WELC-3054) is not linked directly to any of the protestants' protest claims and should be stricken as not relevant to any claim.
James Everett Deacon	WELC-3020 WELC-3021	Mr. Deacon's report and testimony should not be allowed because they are irrelevant.

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David Alan Charlet	WELC-3030 WELC-3031	Mr. Charlet's report and testimony should not be allowed because they are irrelevant.
Thomas R. Harris	WELC-3050 WELC-3052 WELC-3053	Mr. Harris' reports are not linked directly to any of the protestants' protest claims and should be stricken as not relevant to any claim.
	BLM-1504 to BLM-1512	All evidence from unpublished or draft environmental documents should be excluded. If the BLM intends to submit these excerpts as expert testimony, the excerpts should be deemed inadmissible because the requirements for submitting expert testimony as outlined in the Intermediate Order have not been met.
Robert Boyd, Paul Podborne, Brad Pendley		To the extent that these witnesses will provide expert testimony, any such testimony should be deemed inadmissible because the requirements for submitting expert testimony as outlined in the Intermediate Order have not been met.

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	BLM-1514 to BLM-1517 BLM-1519	These excerpts should be deemed inadmissible because they are irrelevant to the Spring Valley Applications.
Ray Roessel, Hydrologist, Bureau of Indian Affairs		The BIA provides no report and also does not present a CV establishing Mr. Roessel's qualifications as an expert.
	BIA-4501 to BIA-4514	The evidence offered is irrelevant because it does not address any interests of the subject area of the protest.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of KING & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the MOTION TO EXCLUDE EVIDENCE RELATED TO PROTESTS AGAINST APPLICATIONS IN SPRING VALLEY, addressed to:

By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed to:

SEE ATTACHED SERVICE LIST

By FACSIMILE: I transmitted via facsimile from the law offices of KING & TAGGART, a true and correct copy of the above-identified document, in the ordinary course of business, to the individual and facsimile number listed below:

SEE ATTACHED SERVICE LIST

By E-MAIL:

SEE ATTACHED SERVICE LIST

By HAND DELIVERY, via:

Reno-Carson Messenger Service
 interoffice-type messenger
 other type of delivery service: _____

by placing a true and correct copy of the above-identified document in an envelope containing the above-identified document, in the ordinary course of business, addressed to:

SEE ATTACHED SERVICE LIST

DATED this 7th day of July, 2006.



Employee of KING & TAGGART, LTD.

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Carson City, Nevada 89701

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL
RESOURCES, DIVISION OF WATER RESOURCES**

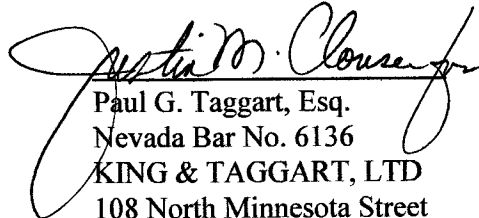
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HYDROGRAPHIC BASINS, LINCOLN
AND WHITE PINE COUNTIES,
NEVADA.

**ERRATA TO PROPOSED ORDER
GRANTING MOTION TO EXCLUDE
EVIDENCE RELATED TO PROTESTS
AGAINST APPLICATIONS IN SPRING
VALLEY**

The Southern Nevada Water Authority (the "SNWA") inadvertently included an early, incomplete version of its Attachment A for the Proposed Order Granting Motion To Exclude Evidence Relating To Protests Against Applications In Spring Valley, which was filed on July 7, 2006. Attached is the correct, complete version of Attachment A.

Dated: July 12TH, 2006

Respectfully submitted,



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Attorneys for Southern Nevada Water Authority

2006 JUL 12 PM 1:48

STATE ENGINEER

Attachment A

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Ray Roessel, Hydrologist, Bureau of Indian Affairs		The BIA provides no report and also does not present a CV establishing Mr. Roessel's qualifications as an expert.
	BIA-4501 to BIA-4514	The evidence offered is irrelevant because it does not address any interests of the subject area of the protest.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of KING & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the MOTION TO DISMISS PROTESTANTS FOR FAILURE OR NEGLECT TO PROSECUTE PROTESTS TO THE SPRING VALLEY APPLICATIONS WITH REASONABLE DILIGENCE, addressed to:

By **U.S. POSTAL SERVICE**: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed to:

SEE ATTACHED SERVICE LIST

By **FACSIMILE**: I transmitted via facsimile from the law offices of KING & TAGGART, a true and correct copy of the above-identified document, in the ordinary course of business, to the individual and facsimile number listed below:

SEE ATTACHED SERVICE LIST

By **E-MAIL**:

SEE ATTACHED SERVICE LIST

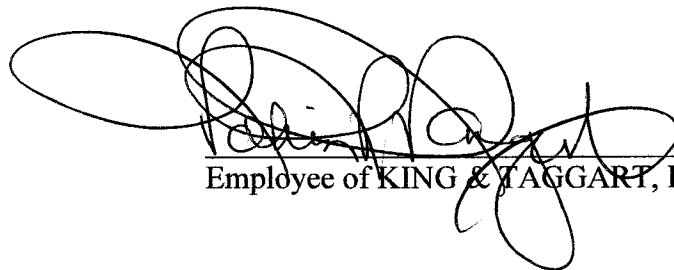
By **HAND DELIVERY**, via:

Reno-Carson Messenger Service
 interoffice-type messenger
 other type of delivery service: _____

by placing a true and correct copy of the above-identified document in an envelope containing the above-identified document, in the ordinary course of business, addressed to:

SEE ATTACHED SERVICE LIST

DATED this 12th day of July, 2006.



Employee of KING & TAGGART, LTD.

SERVICE LIST

By U.S. POSTAL SERVICE:

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By HAND DELIVERY:

Tracy Taylor, P.E., State Engineer
Department of Conservation and Natural Resources
901 South Stewart Street, 2nd Floor, Suite 2200
Carson City, Nevada 89701

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
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**[PROPOSED] ORDER GRANTING
MOTION TO DISMISS PROTESTANTS
FOR FAILURE OR NEGLECT TO
PROSECUTE PROTESTS TO THE
SPRING VALLEY APPLICATIONS
WITH REASONABLE DILIGENCE**

For good cause appearing, each of the Protestants as listed in Attachment A appended hereto should be dismissed for failure or neglect to prosecute their protests to the Spring Valley Applications with reasonable diligence.

DATED: July __, 2006

State Engineer, State of Nevada
Department of Conservation and Natural
Resources, Division of Water Resources