

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 DISMISS PROTESTANTS
FOR FAILURE OR NEGLECT TO
PROSECUTE PROTESTS TO THE
SPRING VALLEY APPLICATIONS
WITH REASONABLE DILIGENCE**

COMES NOW, the Southern Nevada Water Authority (hereinafter "SNWA"), by and through its attorneys the law firms of KING & TAGGART, LTD and McQUAID BEDFORD & VAN ZANDT, LLP, and presents its Motion to Dismiss Protestants for Failure or Neglect to Prosecute Protests to the Spring Valley Applications With Reasonable Diligence. This motion is filed pursuant to the Intermediate Order and Hearing Notice, dated March 8, 2006, which requested that all pre-hearing motions be filed with the State Engineer on or before Friday, July 7, 2006.

As a matter of equity, to avoid a violation of due process, and to preserve judicial economy, the individual Protestants listed in Attachment A to this Motion should be dismissed and not permitted to introduce evidence at the hearings on the Spring Valley Applications because they have failed or neglected to prosecute their protests to the Applications with reasonable diligence.

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State McQuaid	'S EXHIBIT 45
DATE:	9-11-06

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

In October 1989, the Las Vegas Valley Water District (“LVVWD”) filed applications 54003 through 54021 to appropriate groundwater in the Spring Valley Hydrographic basin in Lincoln and White Pine Counties in Eastern Nevada (the “Applications”). The SNWA is now the successor-in-interest to the Applications, all of which relate to SNWA’s Clark, Lincoln and White Pine Counties Groundwater Development Project (hereinafter the “Project”).

On January 5, 2006, the State Engineer held a pre-hearing conference to discuss issues related to future administrative hearings on the protested applications. In order to determine how many persons would participate in the pre-hearing conference and how many persons would be presenting formal cases-in-chief at the administrative hearings, the State Engineer included in the Notice of Pre-hearing conference a form that asked Protestants to declare whether they intended to participate in the pre-hearing conference and future administrative hearings. The Protestants were asked to return this form to the office of the State Engineer by December 2, 2005.

The majority of the surveyed Spring Valley Protestants either returned the provided form indicating that they would not be participating in the pre-hearing conference or any future administrative hearings or neglected to return the form signifying their intent as to their participation in proceedings. *See* Attachment “A”.

By its Intermediate Order and Hearing Notice dated March 8, 2006 (hereinafter the “Intermediate Order”), the State Engineer ordered that a hearing be held beginning Monday, September 11, 2006, on the Applications pertaining to the Spring Valley basin. Applications dealing with appropriations from the other basins were deferred to later hearings. The Intermediate Order requested that if any of the Protestants did not intend to present a case-in-

chief, then they should provide notice of this fact to the State Engineer by Friday, June 2, 2006. SNWA is not aware of any such notices being provided by Protestants who have changed their mind and decided against presenting a case-in-chief.

The Intermediate Order states that “[o]nly those persons or entities that have indicated their intent to present a case-in-chief or to participate in cross-examination are considered parties to the administrative hearing for purposes of service of evidentiary documents, witness lists, notice, and motions.” Intermediate Order, p. 7. The Intermediate Order also stated that, “Pursuant to NRS § 533.365, protests are specific to an individual protestant in that they are verified by affidavit; therefore, the State Engineer finds that they do not run to any successor.” Intermediate Order, p. 7.

II. ARGUMENT

A. The State Engineer Has Discretion To Dismiss The Putative Protestants Who Have Failed To Prosecute Their Protests To The Spring Valley Applications With Reasonable Diligence.

Nevada Administrative Code (“NAC”) 533.010 provides that the rules regarding the practice and procedure of hearings before the state engineer on protests (or to change the place of diversion) are to be liberally construed to ensure a “just, speedy and economical” determination of all issues presented to the State Engineer. A protest hearing will be conducted as a quasi-judicial proceeding with the objective of developing an adequate record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the office of the state engineer. NAC 533.180 (*emphasis added*). Through pre-hearing conferences, the State Engineer may “. . . resolve other matters which may promote orderly conduct, expedite the hearings or achieve a settlement.” NAC 533.170(1)(h) (*emphasis added*). Accordingly, in the interest of expediting the hearings, the State Engineer has

discretion to dismiss the putative Protestants who have failed to prosecute their protests with diligence.

B. Equitable Concerns, Avoiding Due Process Violations, and Judicial Economy Would All Be Served By Dismissing The Putative Protestants Who Have Failed Or Neglected To Prosecute Their Protests With Reasonable Diligence.

As a matter of equity, to avoid potential due process violations, and to preserve judicial economy, the State Engineer should exercise his discretion to dismiss Protestants who have failed or neglected to prosecute their protests with reasonable diligence.

If the State Engineer allows the Protestants listed in Attachment "A", none of whom have diligently prosecuted their protests, to participate in the hearings, SNWA will be prejudiced because it will be forced to defend the Applications with insufficient notice as to the identity of the Protestants who will appear and participate in the hearings. These entities who have not affirmatively indicated their intent to appear at the hearings have not been subject to the State Engineer's requirement regarding service of evidentiary documents, witness lists, notices, and motions. *See* Intermediate Order, p. 7. If the entities who are not subject to these requirements are nonetheless allowed to participate in the hearings, the Applicant will not have sufficient notice as to the identity of the participants or the nature of their evidence, thereby presenting a potential due process violation.

Moreover, judicial economy will be served by dismissing these putative Protestants prior to the hearings. Where there is no indication that any of the above-identified entities intend to actively participate in the hearings, the State Engineer may exercise his discretion under NAC 533.010, 533.170(1)(h), and 533.180 to dismiss the entities in order to avoid "... unnecessary delay and expense to participating parties or to the office of the state engineer." By dismissing

the putative Protestants prior to the hearing, the State Engineer will expedite the hearing process and avoid causing unnecessary delay and expense to the actively participating parties.

III. CONCLUSION

For the foregoing reasons, SNWA requests that the putative Protestants listed in Attachment "A", be dismissed and that they not be allowed to actively participate at the hearings on the subject Applications.

DATED this 7 day of July, 2006.

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By: 

PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
MICHAEL J. VAN ZANDT, ESQ.
Nevada State Bar No. 7199
Attorneys for SNWA

Attachment A

PROTESTANT	APPLICATIONS PROTESTED
Ahivers, Janell	54021
Anderson, Joseph I.	54012
Anderson, Keith	54013
Anderson, Mary Ellen	54018
Arnold, Dolores. A.	54003
Ashby, Bruce	54013
Baca, Fred & Thiessen, John	54019
Barney, John	54017
Barton, Evan	54005
Bath Lumber Co.	54017
Bath, Donna	54019
Bath, James	54012
Benson, Walter	54021
Bida, Neva	54016
Bidart Brothers	54003, 54004, 54005, 54016, 54017, 54018, 54019, 54020, 54021
Bishop, Sarah	54010
Boland, Joseph M.	54012
Boundy & Forman, Inc.	54018
Burns, Lance	54016
Carrick, Donald	54009
Carson, Cory	54008
Carson, Dewey	54012
Carson, Kay	54014
Carson, Marietta	54013
Citizen Alert	54020
City of Caliente	54003 through 54021 (Inclusive)
Collard, Steve	54021
Collins, Mary	54017
Cooper, Don	54018
Cracraft, Cindy	54010
Cracraft, Danny	54009
Crane, Diana Barclay	54007, 54008, 54009, 54013, 54014
Cutler, Tara	54020
Day, Rutherford	54003, 54004, 54005
Edwards, Irvin Baker	54003, 54004
El Tejon Cattle Company	54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015
Eldridge, David	54016, 54017
Eldridge, Delbert D.	54006
Eldridge, Dennis	54008
Eldridge, Elva	54007
Eldridge, Gordon	54004
Eldridge, Helen	54021
Eldridge, Mary R.	54003
Eldridge, Nancy	54005
Escobedo, Juan M.	54004
Fackrell, Donald Terry	54010, 54020, 54021

Attachment A

PROTESTANT	APPLICATIONS PROTESTED
Fackrell, Sherlyn	54005
Forman, Marcia	54008
Forman, Richard	54011
Forman, Richie	54015
Forman, Selena M.	54016
Fraser, James F.	54015, 54017
Free, Lory M.	54003, 54005
Gaffin, Beverly R.	54004
George Eldridge & Sons, Inc.	54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021
Goeringer, Mary	54010, 54019, 54021
Griffith, Danny	54016
Gust, Sally	54020
Hackett, Helen	54003
Hannig, Max	54003
Hansen, Monte	54011
Hanson, Joan F.	54003
Harbecke, Robert L. & Fern A.	54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54015, 54016, 54017, 54018, 54019, 54020, 54021
Harper, Glen	54004
Havens, John & Vivian	54003
Havenstrite, Rick	54014
Heinfer, Randy, J.	54008
Hermansen, Christine	54012
Hiatt, Jess	54004
Higdon, Bonnie	54003
Hill, Bunny	54007
Hill, Edith Jean	54004
Hill, Harry James	54003
Hill, Merle C.	54006
Hollingshead, Garland N.	54004
Hollingshead, Karma H.	54005
Holt, Charlene	54005
Holt, Wesley	54004
Isom, Barry C.	54004
Isom, Linda H.	54003
Jensen, Lee	54003
Jones, Margaret	54004
Kaiser, Kristine P.	54012
Kinder, Art	54004
Kirkeby Ranch	54003, 54004, 54005, 54006, 54007, 54008, 54009, 54019
Krause, Rudolph	54005
Las Vegas Fly Fishing Club	54003 through 54021 (Inclusive)
Leavitt, Alton C.	54003
Lee, James I.	54003, 54004, 54005
Locke, Sarah	54012

Attachment A

PROTESTANT	APPLICATIONS PROTESTED
Maes, Daniel	54021
Mangum, Dennis	54020
Marcum, Robert	54019
Marquez, Chuck	54003
Mathis, Beatrice	54016
McKay, John R.	54003, 54004, 54005
McKrosky, Wanda	54003, 54004, 54005
McMurray, Lenora	54013
Mills, Laurel Ann	54005
Mosley, Mary	54003
Murrajo, Frances	54009
Neubauer, Dean G.	54007
Neubauer, Janet	54008
Nevada Cattlemen's Association, Eastern Unit	54003 through 54021 (Inclusive)
Nevada Farm Bureau Federation	54008, 54019
Nichols, Bob	54020
Nichols, Jim & Betty	54019, 54020
Norcross, Lyle	54006
Nye, Donna A.	54004
O'Connor, Helen	54003, 54004, 54005
Overson, Nancy	54009
Oxborrow, Edna	54021
Palczewski, Linda	54011
Pencek, Bruce	54005
Perkins, Carter L.	54015
Perondi, John	54015
Pioche Town Board	54003, 54004, 54005
Prestwich, Clarence S.	54004
Prestwich, Karen L.	54005
Reed, Duane	54006, 54007, 54009, 54011
Rollinson, Debbie	54008
Rowe, Margaret	54014
Sanders, Marsha Lynn	54006
Schroeder, Mark	54007
Shew, Larry	54021
Smith, Diana	54005
Sonnenberg, Amelia	54004
Spalding, Irene	54005
Sportsworld	54018
Sprouse, Karen	54006, 54007
Stasiak, Connie	54004
Stevens, Mildred L.	54005
Terry, Virginia B.	54021
Theiss, Roy	54019
Tomlinson, Tonya K.	54003, 54004, 54005
Tweedy, Candi	54011
Unincorporated Town of Pahrump	54003 through 54021 (Inclusive)
Van Camp, Freddy	54009
Wadsworth, John M.	54003, 54004, 54005
Weaver, Daniel	54015

Attachment A

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Weaver, Lois	54021
Weaver, Randy	54018
Weaver, Selena	54019
White Pine County Cowbells	54005, 54017
White, Barlow	54018
Wiedmeyer, Kelly	54021
Wiedmeyer, Thomas R.	54017
Williams, Patricia	54020
Williams, Paula	54010
Van Camp, Jack	54010

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WATERS OF SPRING VALLEY (184)
HYDROGRAPHIC BASIN, LINCOLN
AND WHITE PINE COUNTIES,
NEVADA.

**[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

Attachment A

PROTESTANT	APPLICATIONS PROTESTED
Ahivers, Janell	54021
Anderson, Joseph I.	54012
Anderson, Keith	54013
Anderson, Mary Ellen	54018
Arnold, Dolores. A.	54003
Ashby, Bruce	54013
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Carson, Cory	54008
Carson, Dewey	54012
Carson, Kay	54014
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Collard, Steve	54021
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Cooper, Don	54018
Cracraft, Cindy	54010
Cracraft, Danny	54009
Crane, Diana Barclay	54007, 54008, 54009, 54013, 54014
Cutler, Tara	54020
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Edwards, Irvin Baker	54003, 54004
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Eldridge, Dennis	54008
Eldridge, Elva	54007
Eldridge, Gordon	54004
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Forman, Richie	54015
Forman, Selena M.	54016
Fraser, James F.	54015, 54017
Free, Lory M.	54003, 54005
Gaffin, Beverly R.	54004
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Gust, Sally	54020
Hackett, Helen	54003
Hannig, Max	54003
Hansen, Monte	54011
Hanson, Joan F.	54003
Harbecke, Robert L. & Fern A.	54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54015, 54016, 54017, 54018, 54019, 54020, 54021
Harper, Glen	54004
Havens, John & Vivian	54003
Havenstrite, Rick	54014
Heinfer, Randy, J.	54008
Hermansen, Christine	54012
Hiatt, Jess	54004
Higdon, Bonnie	54003
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Hill, Edith Jean	54004
Hill, Harry James	54003
Hill, Merle C.	54006
Hollingshead, Garland N.	54004
Hollingshead, Karma H.	54005
Holt, Charlene	54005
Holt, Wesley	54004
Isom, Barry C.	54004
Isom, Linda H.	54003
Jensen, Lee	54003
Jones, Margaret	54004
Kaiser, Kristine P.	54012
Kinder, Art	54004
Kirkeby Ranch	54003, 54004, 54005, 54006, 54007, 54008, 54009, 54019
Krause, Rudolph	54005
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Mathis, Beatrice	54016
McKay, John R.	54003, 54004, 54005
McKrosky, Wanda	54003, 54004, 54005
McMurray, Lenora	54013
Mills, Laurel Ann	54005
Mosley, Mary	54003
Murrajo, Frances	54009
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Nye, Donna A.	54004
O'Connor, Helen	54003, 54004, 54005
Overson, Nancy	54009
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Perkins, Carter L.	54015
Perondi, John	54015
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Prestwich, Clarence S.	54004
Prestwich, Karen L.	54005
Reed, Duane	54006, 54007, 54009, 54011
Rollinson, Debbie	54008
Rowe, Margaret	54014
Sanders, Marsha Lynn	54006
Schroeder, Mark	54007
Shew, Larry	54021
Smith, Diana	54005
Sonnenberg, Amelia	54004
Spalding, Irene	54005
Sportsworld	54018
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Stasiak, Connie	54004
Stevens, Mildred L.	54005
Terry, Virginia B.	54021
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Tomlinson, Tonya K.	54003, 54004, 54005
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Wadsworth, John M.	54003, 54004, 54005
Weaver, Daniel	54015

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Weaver, Randy	54018
Weaver, Selena	54019
White Pine County Cowbells	54005, 54017
White, Barlow	54018
Wiedmeyer, Kelly	54021
Wiedmeyer, Thomas R.	54017
Williams, Patricia	54020
Williams, Paula	54010
Van Camp, Jack	54010

CERTIFICATE OF SERVICE

Pursuant to NRCPC 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 7th day of July, 2006.



Employee of KING & TAGGART, LTD.

SERVICE LIST

By U.S. POSTAL SERVICE:

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c/o Keith Pearson
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Panaca, Nevada 89042

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Carson City, Nevada 89701