

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) _____))	NYE COUNTY OPPOSITION TO SOUTHERN NEVADA WATER AUTHORITY MOTION TO DISMISS INDIVIDUAL PROTEST CLAIMS AND MOTION TO DISMISS PROTESTANTS FOR FAILURE OR NEGLECT TO PROSECUTE PROTESTS TO THE SPRING VALLEY APPLICATIONS WITH REASONABLE DILIGENCE
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COMES NOW Nye County (hereinafter also referred to as "County"), by and through its attorney, George N. Benesch, and offers its opposition to the Southern Nevada Water Authority's (hereinafter referred to as "SNWA") Pre-Hearing motions filed July 7, 2006 in these proceedings addressing its applications to appropriate underground water from the Spring Valley source or Hydrographic Basin No. 184.

Specifically, SNWA filed its Motion to Dismiss Individual Protests Claims Regarding Spring Valley applications and Motion to Dismiss Protestants for Failure or Neglect to Prosecute Protests to the Spring Valley Applications with Reasonable Diligence as well as its Motion to Exclude Evidence Related to Protests Against Applications in Spring Valley. This Opposition is directed to SNWA's Motion to Dismiss Individual Protest Claims and Motion to Dismiss Protestants for Failure or Neglect to Proceed With Reasonable Diligence, as SNWA's Motion to Exclude Evidence is not directed to Nye County.

State 'S EXHIBIT 51

DATE: 9-11-06

The Nevada Supreme Court, in addressing the standard of judicial review of decisions of the State Engineer in limiting the inquiry as to substantial evidence, unequivocally set forth as an integral part of this standard that the underlying administrative proceedings must be full and fair; all interested parties must have had a "full opportunity to be heard," the State Engineer must clearly resolve all crucial issues presented and the decision maker must prepare findings in sufficient detail to permit judicial review. Revert v. Ray, 95 Nev. 782, 787 (1979). The Court went on to provide that foregoing procedures are grounded in basic notions of fairness and due process and if they are not followed the resulting administrative decision is arbitrary, oppressive or accompanied by a manifest abuse of discretion. *Id.* The foregoing has been the standard for virtually all state administrative proceedings for almost thirty years.

Clearly, in arriving at the requirement that all interested parties must have a full opportunity to be heard, the Court did not sanction the premature dismissal of individual protest claims before a protesting party ever had a chance to present and otherwise explain its case. SNWA's interpretation of Protestants' evidence should properly be directed to closing arguments and not to pre-hearing dismissal of the grounds of a protest. It is a Protestant's burden to put on its case in support of its protest. The Applicant can only speculate as to how any Protestant will meet this burden. In the instant proceedings Nye County and other Protestants have indicated they do not intend to present a case-in-chief but will limit their participation to cross examination. Barring specific claims of a protest, as the Applicant suggests, is contrary to the requirement that these proceedings be full and fair and that each Protestant as an interested party have a full opportunity to be heard.

Even more strained is SNWA's Motion that Protestants themselves be dismissed for failure to prosecute protests with reasonable diligence. The backdrop for these proceedings is SNWA's lack of reasonable diligence in pursuing a decision on the underlying applications for some sixteen years. SNWA nonetheless now argues that the State Engineer should dismiss individual Protestants and not allow them to introduce evidence at the hearing because they have failed or neglected to prosecute their protest with reasonable diligence as a matter of equity, to avoid a violation of due process and to preserve judicial economy. How SNWA can argue for dismissal of a protestant as a matter of equity, to avoid a violation of due process and to preserve judicial economy is curious. Instantly, theories of equity and due process would seem to tip the balance in favor of not dismissing the Protestant Nye County, but the State Engineer does not possess equitable jurisdiction. SNWA's record on judicial economy and its other applications associated with this unprecedented water importation project speaks for itself. Clearly the action of dismissing a protestant and barring the introduction of evidence at a hearing is even a more egregious violation of the requirement of the fullness and fairness doctrine of Revert set forth above. Nye County has advised and the State Engineer has acknowledged that Nye County may only participate in cross-examination. Intermediate Order, p.6. Nye County appropriately notified the State Engineer and other parties that it may accordingly limit its role and the proffer of evidence in support of a case-in-chief should not have been expected. SNWA's attempt to now seek dismissal of this Protestant is inappropriate.

For the foregoing reasons, Nye County requests that SNWA's Motion to Dismiss Individual Protest Claims Regarding Spring Valley Applications and Motion to Dismiss

Protestants for Failure or Neglect to Prosecute Protests to the Spring Valley

Applications with Reasonable Diligence should properly be denied.

DATED this 21st day of July, 2006.

LAW OFFICE OF GEORGE N. BENESCH

By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Law Office of George N. Benesch, and that on this date I served, or caused to be served, a true and correct copy of the foregoing NYE COUNTY OPPOSITION TO SOUTHERN NEVADA WATER AUTHORITY MOTION TO DISMISS INDIVIDUAL PROTEST CLAIMS AND MOTION TO DISMISS PROTESTANTS FOR FAILURE OR NEGLECT TO PROSECUTE PROTESTS TO THE SPRING VALLEY APPLICATIONS WITH REASONABLE DILIGENCE, as follows:

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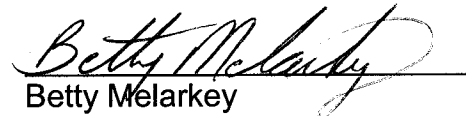
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DATED: July 21, 2006.


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