

**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 54021,
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.

**REPLY TO 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**

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 Reply to Nye County Opposition
to the 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.

The scope and procedures for hearings before the State Engineer are provided in Nevada
Administrative Code (“NAC”) 533.010, which “[m]ust be liberally construed to secure the just,
speedy and economical determination of all issues presented to the state engineer.” Further, “[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 Finally, the state engineer may define or limit the issues to be
considered at the hearing. NAC 533.210 (2).

State	'S EXHIBIT 52
DATE:	9-11-06

For interbasin water transfers, NRS 533.370(6) sets out the factors the State Engineer must consider. Specifically, the factors the State Engineer must consider are: (1) whether the applicant has justified the need to import the water from another basin; (2) whether any required conservation plan has been adopted and effectively implemented by the applicant; (3) whether the proposed action is environmentally sound as it relates to the basin from which the water is being exported; (4) whether the proposed action is an appropriate long-term use that will not unduly limit growth and development in the transferring basin; and (5) other factors that the State Engineer determines are relevant. Further, the State Engineer's public interest review under NRS 370(5) is limited to concerns that arise exclusively within the water law statutes of Nevada. *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 918 P.2d 697 (Nev. 1996); *see also County of Churchill, et al. v. Ricci*, 341 F.3d 1172 (9th Cir. 2003).

In the Motion to Dismiss Individual Protest Claims Regarding Spring Valley Applications, SNWA provides substantial statutory and case law, as well as previous State Engineer Rulings, that invalidate various protest points raised by Nye County. The basis for dismissal are (1) the claims that the Applications conflict with existing federal water rights, or existing privately held water rights, cannot be substantiated, (2) certain claims raise issues that are outside the scope and jurisdiction of the State Engineer's authority, (3) the State Engineer is not obligated to consider certain claims, (4) the State Engineer has previously rejected and dismissed identical protest claims, and (5) no evidence was submitted in support of certain claims. There is nothing to prevent the State Engineer from limiting Nye County's protest points for the above-mentioned reasons, prior to the Spring Valley hearing, in order to prevent delay and expense to participating parties or to the Office of the State Engineer.

Nye County in their opposition to the motion to dismiss does not address the substance of

the issues raised in the Motion to Dismiss Individual Protest Claims. In fact, they offer no contravening evidence to the legal arguments made by SNWA in their motion to dismiss. Instead, Nye County merely claims that they are an interested party and that they must have a full opportunity to be heard. SNWA does not disagree with this. However, the State Engineer can dismiss Nye County protest points where the State Engineer is not obligated to consider certain claims, the State Engineer has previously rejected and dismissed identical protest claims, or where no evidence was submitted in support of certain claims.

The basis for dismissal of the majority of the Nye County protest points is that the State Engineer has already ruled on the issue or there is established case and statutory law on point. *See SNWA's Motion to Dismiss Individual Protest Claims Regarding Spring Valley Applications and Memorandum in Support.* In fact, Nye County submitted the exact same protest for the Applications filed by SNWA in Tikapoo Valley and Three Lakes Valley leading to Ruling 5464, as well as in SNWA Application 54073 in Garnet Valley and Application 54074 in Hidden Valley leading to Ruling 5008.¹ Tellingly, Nye County offers no contradicting evidence to the established law cited in SNWA's motion to dismiss. Because the law in this area is already determined, the State Engineer should grant the Motion to Dismiss Individual Protest Claims Regarding Spring Valley Applications as they relate to Nye County to avoid unnecessary delay and expense and ensure a speedy and economical determination of the issues presented. (See NAC 533.110 and NAC 533.018)

The State Engineer may define or limit the issues to be considered at the hearing. NAC 533.210 (2). Generally, the limiting of issues may occur in proceedings before the State

¹ Applications were filed by the Las Vegas Valley Water District, SWNA's predecessor-in-interest.

Engineer where the protestants put on their case-in-chief first. This way if the protestant wishes not to pursue a protest point, it will simply not put on related evidence. In addition, where the law is settled on an issue it may be limited before the applicant puts on their case, thus preventing unnecessary delay and expense to participating parties. Here, however, the proceedings before the State Engineer are reversed and the Applicant will present its case-in-chief first, followed by the Protestants. Intermediate Order at 14. In addition, a separate rebuttal case after the protestants' case will not be permitted. Intermediate Order at 15. This means that any limiting of issues must be done prior to hearing, as attempted by SNWA in its Motion to Dismiss Individual Protest Claims. Otherwise, SNWA must, in its case-in-chief, put evidence on to counter all protest points from all Protestants as well as anticipate rebuttal evidence, even if the protest point has no merit or where the Protestant may decide not to pursue the protest point. This will cause unnecessary delay and expense.

The only authority cited in the opposition motion by Nye County, *Revert v. Ray*, 95 Nev. 782 (1979), is misplaced. The *Revert* case deals with judicial review of a State Engineer's determination - not the factors the State Engineer must consider when reviewing an application for an interbasin transfer of water. In *Revert*, the referenced standard of review of a State Engineer's determination was whether the decision was arbitrary, oppressive, or a manifest abuse of discretion and the court's inquiry was limited to "substantial evidence" required to "resolve all critical issues presented." *Revert*, 95 Nev. at 787. Nothing in *Revert* would prevent the State Engineer from dismissing Nye County's protest points that are outside the scope and jurisdiction of the State Engineer's authority, where the State Engineer is not obligated to consider certain claims, or where the State Engineer has previously rejected and dismissed identical protest claims.

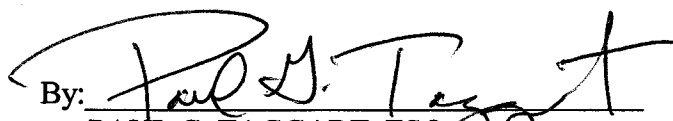
SNWA recognizes that Nye County indicated that they would only participate in cross-examination at the administrative hearing.² However, their limited participation, if allowed, does not mean that the State Engineer cannot dismiss certain claims before the hearing to prevent unnecessary delay and expense. Here, Nye County has had an opportunity to be heard but has failed to present any substantial evidence on the issues raised. Also the issues raised by Nye County are not "critical" to the determination of the SNWA's water Applications because the State Engineer has previously rejected and dismissed identical protest claims. Accordingly, the State Engineer can rule favorably in the Motion to Dismiss and not run afoul of *Revert*.

For the foregoing reasons, the SNWA requests that the Motion to Dismiss certain protest claims of Nye County be granted.

DATED this 28th day of July, 2006.

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² SNWA reserves the right to object to Nye County limiting its participation to cross-examination. Nye County was not included in the Motion to Dismiss Protestants for Failure or Neglect to Prosecute.

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 REPLY TO 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:

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:

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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:

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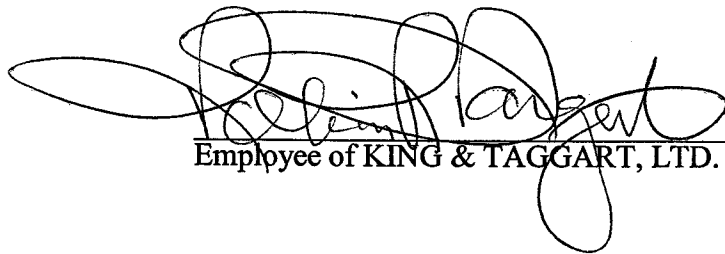
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DATED this 28th day of July, 2006.



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