

**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 WESTERN
ENVIRONMENTAL LAW CENTER'S
OPPOSITION TO SOUTHERN
NEVADA WATER AUTHORITY'S
MOTION TO DISMISS INDIVIDUAL
PROTEST CLAIMS AND TO
EXCLUDE EVIDENCE REGARDING
SPRING VALLEY APPLICATIONS**

I. INTRODUCTION

The arguments raised by the WESTERN ENVIRONMENTAL LAW CENTER (“WELC”) on behalf of Protestants the Toiyabe Chapter of the Sierra Club, White Pine County, Abigail Johnson, Katherine and William Rountree, and John Tryon (collectively “Protestants”) in their Response To SNWA’s Motions To Dismiss And To Exclude Evidence (“Opposition Brief”) have no merit and should be rejected by the State Engineer because: (1) certain claims raise issues that are outside the scope and jurisdiction of the State Engineer’s authority, (2) the State Engineer is not obligated to consider certain claims, (3) the State Engineer has previously rejected and dismissed identical protest claims, and (4) no evidence was submitted in support of certain claims.

As a preliminary matter, any protest claims that are subject to dismissal through SNWA’s pre-hearing motion to dismiss claims (or motion to exclude evidence) but which have not been addressed by Protestants’ Opposition Brief should be deemed waived. In *Walls v. Brewster*, 112

State 'S EXHIBIT 53
DATE: 9-11-06

Nev. 175 (1996), the court held that a party's failure to serve any opposition may be deemed an admission that the motion is meritorious:

After the February 4, 1994 arbitration was continued past February 9, 1994, Brewster filed her motion to dismiss, and Walls had ten days to respond. DCR 13(3); WDCR 12(2). Walls received two extensions of time within which to file the opposition; however, no opposition was filed prior to the deadline.

“Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.” DCR 13(3). We conclude that it was proper for the district court to construe Walls' failure to respond to Brewster's motion to dismiss as an admission that the motion was meritorious and as a consent to grant the motion.

112 Nev. 175, 178 (emphasis added); *King v. Carlidge*, 124 P.3d 1161, 1162 (Nev. 2005) (citing *Walls v. Brewster*). While SNWA has entered into stipulations with other Protestants to both withdraw and preserve certain protest issues for argument at the hearing, the above-referenced Protestants have not entered into such a stipulation with SNWA. Accordingly, these uncontested issues should be deemed waived, admitted, and/or conceded by Protestants. See Attachment A to this brief for a table listing the uncontested and contested issues.

II. ARGUMENT REGARDING MOTION TO DISMISS INDIVIDUAL CLAIMS

A. The State Engineer's Limited Consideration Of "Environmental Soundness" Is Only One Of Several Criteria Used To Evaluate The Public Interest In The Applications.

There is no dispute that the State Engineer has a statutory duty under NRS 533.370 to consider the "environmental soundness" of the Project as it relates to the exporting basin.¹

However, the scope of the State Engineer's consideration of environmental soundness is far more

¹ The WELC Protestants' Opposition Brief misconstrues the SNWA's argument regarding economic impacts. See Opposition Brief, at pgs. 1 to 4. The SNWA does not address the issue of potential economic impacts in its motion to dismiss individual claims, nor does the SNWA argue that the State Engineer should not consider this issue. The SNWA motion to exclude evidence simply argues that: (1) to the extent any evidence of economic impacts is not linked directly to any of the Protestants' protest claims, it should be stricken as not relevant; and (2) any evidence that does not meet the requirements of the Intermediate Order for expert reports should be excluded.

limited than is suggested by Protestants. The plain language of the statute and its legislative history show that the environmental soundness of the Applications is but one of several criteria the State Engineer contemplates in evaluating the public interest. This evaluation requires a balancing of competing priorities among potential uses and consideration of the following factors:

- (a) whether the applicant has justified the need to import water to another basin;
- (b) if the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- (c) whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- (d) whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
- (e) any other factor the State Engineer determines to be relevant.

NRS 533.370(5) (emphasis added); *see also* Minutes of the Assembly Committee on Natural Resources, Agriculture, and Mining, Seventieth Session, April 21, 1999, at pg. 3 (listing the criteria for determining whether additional studies are needed). In the proper context, the “environmental soundness” of the project is merely one consideration among the many public interest factors, and these two words should not be construed to control the entire hearing process before the State Engineer.

The legislative history states that these factors are to be considered by the State Engineer in order to determine “. . . if additional studies were needed prior to postponing action on an application.” Minutes of the Assembly Committee on Natural Resources, Agriculture, and Mining, Seventieth Session, April 21, 1999, at pg. 3 (attached as Exhibit B to WELC Protestants’

opposition brief). These are not elements which must be proved by the Applicant, but rather a partial list of various public interest factors to consider when determining if additional studies are needed.

No additional environmental impact studies are in fact needed for the State Engineer to act on these applications, and the Protestants have not shown that any are necessary. SNWA satisfied any Nevada water law requirement that a comprehensive study of the project be completed when it prepared the environmental report on the project in 1994. *See* SNWA Exhibit 545, item 14. Environmental studies that are required by federal law are currently underway that will evaluate the potential impact of the pending Applications. The State Engineer should not postpone action on the Applications because any issues associated with specific environmental media will be resolved through those independent studies and the agencies with specific statutory authority to address them. Moreover, as was held in *United States v. Alpine Land & Reservoir Co.*, 341 F.3d 1172, 1184 (9th Cir. 2003), the State Engineer may properly rule on transfer applications “without requiring a cumulative impacts study.” Thus, the State Engineer may fulfill his duty to guard the public interest under NRS 533.370 simply by considering the “environmental soundness” of the project and balance that consideration with several other public interest factors, including the public interest in making water available for beneficial uses.

B. The State Engineer’s Limited Consideration Of “Environmental Soundness” Does Not Expand His Jurisdiction Into The Specific Issues Of Air And Water Quality.

Although the WELC Protestants admit that the State Engineer need not consider whether the Applications violate the federal and state statutes governing air and water quality (*see* Opposition Brief, pg. 6), they nonetheless argue in their protests that the Applications should be denied because of these same federal and state statutes. *See* Toyiabe Chapter, Sierra Club

(Protest to Applications 54003-54005, at ¶¶ 5, 7 (the Applications “affect the quality of remaining ground water,” and will lead to “degradation of air quality in an area that presently exceeds Federal air quality standards established by the Clean Air Act for the protection of human health”); County of White Pine Protest to all Applications, at ¶¶ 5, 17 (the Applications “will adversely affect the quality of the remaining ground water,” and “create air contamination and air pollution in violation of State and Federal Statutes”); Abigail Johnson Protest to Application 54006, at ¶¶ 1, 2, 12 (the Applications will “adversely affect the quality of remaining ground water,” “degrade the quality of water from existing wells,” and “create[] air contamination and air pollution in violation of State and Federal Statutes”).

To explain these inconsistent positions, the WELC Protestants now argue that the State Engineer may evaluate the potential impacts to the air and water quality in the exporting basin as part of the process of weighing the various public interest factors under NRS 533.370(5), which include a general evaluation of “environmental soundness.” *See* Opposition Brief at 6. This argument is incorrect. The State Engineer has previously held that any review of potential impact on air quality or water quality is “not within the jurisdiction of the State Engineer under Nevada water law.” State Engineer Ruling No. 5078, at pg. 31, 33 (emphasis added).

The State Engineer finds that his authority in the review of water right applications is limited to considerations identified in Nevada’s water policy statutes, *County of Churchill, et al. v. Ricci*, 341 F.3d 1172 (9th Circuit 2003) citing to *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 918 P.2d 697 (Nev. 1996), and the issue as to air quality is relegated to another agency of government; therefore the protest claim is dismissed.

State Engineer Ruling No. 5465 at 21 (emphasis added); *see also* State Engineer Ruling No. 5506 at 15 (holding that “the issue as to water quality is relegated to another agency of government”). These decisions unequivocally hold that the State Engineer may only consider issues identified in Nevada water law, and that the issues of air and water quality are specifically

excluded from the State Engineer's jurisdiction under Nevada water law.

The WELC Protestants have also failed to distinguish the holding of State Engineer Ruling Nos. 5078 and 5465, and did not even address State Engineer Ruling No. 5506. The fact that Ruling No. 5078 involved change applications as opposed to interbasin transfer applications is an irrelevant distinction, as the Ruling was not limited to change applications, but rather covered the entire jurisdiction of the State Engineer "under Nevada water law," which necessarily includes NRS 533.370. *Id.* at 31. The fact that Ruling No. 5078 stated in dicta that there was no information to support the protest claim regarding air quality does not distinguish the Ruling, as the weight of authority clearly demonstrates that the State Engineer does not have authority to consider air and water quality issues. Here, as in Ruling Nos. 5078, 5465, and 5506, the Protestants' claims that the Applications violate federal and state statutes governing air and water quality raise issues outside the State Engineer's inquiry, they should be dismissed.

C. There Is No Vested Right To Maintain Groundwater At A Particular Level, Thus The Protest Claims Regarding This Issue Should Be Dismissed.

The WELC Protestants not only mischaracterize the SNWA's argument regarding the supposed vested right to maintain groundwater at a particular level, but they also attempt to revise the substance of their protest claims on this issue. Neither tactic should be permitted. The Protestants did not claim in their protests that the Applications would cause an "unreasonable" lowering of the water table, but rather that *any* reduction whatsoever in the static water table was grounds for denial of the Applications. *See* County of White Pine Protest to all Apps. at 2, ¶¶ 2, 4; Toiyabe Chapter, Sierra Club Protest to Apps.54003-54005, at 2, ¶ 5; and Abigail Johnson Protest to Application 54006, at 2, ¶¶ 1, 2. The Protestants have provided no authority to support their protest claim regarding the vested right to maintain groundwater at a specific level or flow.

Given that the Protestants do not have a cognizable interest in maintaining the groundwater at an absolute level or flow, any protest claims on that basis should be dismissed.

D. The Protestants' Claim That The Applications Would Sanction Water Mining Is Meritless And Should Be Dismissed Because There Is No Evidence That The Withdrawals Will Exceed the Perennial Yield.

Although the Protestants and the SNWA dispute the available perennial yield in Spring Valley, the Protestants have provided no evidence that the project, if approved by the State Engineer, will in fact exceed the perennial yield. As the Protestants are aware, the State Engineer will not permit a withdrawal which will exceed the perennial yield. The SNWA has based its project on the State Engineer's estimate of the perennial yield, and has never asserted that its withdrawals from Spring Valley will exceed this figure. Accordingly, any argument that the proposed appropriation would exceed the available yield of the Spring Valley basin, and thereby sanction water mining, have no merit and should be dismissed.

E. The Protestants Have Provided No Authority That Would Permit The State Engineer To Consider "Scenic and Recreational Values," Thus Such Protest Claims Have No Merit And Should Be Dismissed.

The WELC Protestants have cited no authority that would expand the State Engineer's jurisdiction to include a consideration of the "scenic and recreational values" allegedly impacted by the Applications. Out of the many public interest considerations, the Protestants have again focused exclusively on the "environmental soundness" factor in an effort to turn the entire hearing process into an Environmental Impact Statement-like analysis. However those two words do not mandate that the State Engineer assess the impact of the Applications on scenery and recreation activity. As in State Engineer Ruling No. 5011, where the protestant provided no citation to authority that the county of origin holds such values in trust, the State Engineer here should find that these protest claims are without merit and should be dismissed.

F. The Rountree Protests Do Not Satisfy The Statutory Requirements And Should Therefore Be Dismissed.

The protests filed by William and Katherine Rountree do not satisfy the statutory requirements for protests because they do not include any information regarding the existence or location of any water rights which could be affected by the proposed Applications. The protests include only generalized language that does not identify any protectible interests, does not identify the location of the “D-X Ranch,” and does not attach any list of specific protest grounds. While the protests state “SEE ATTACHMENTS” in reference to the specific protest grounds, the attachment has zero relationship to Spring Valley and concerns only the Applications in Snake Valley. Therefore the SNWA has been provided no notice through the Rountree protest as to any issues related to the protests in Spring Valley. Accordingly, the Rountree protests should be dismissed.

III. ARGUMENT REGARDING MOTION TO EXCLUDE EVIDENCE

As noted in the original Motion to Exclude Evidence, the WELC Protestants have submitted evidence that should be excluded from the hearing. None of the arguments raised in the WELC Protestants’ Opposition Brief have merit, and all the evidence, witnesses and documents submitted by these Protestants should be excluded.

A. Evidence Related To The White Pine County Plans Is Not Relevant And Should Be Excluded.

The White Pine County related plans are not relevant to the Applications because they were prepared over a decade ago and have little bearing on the specific groundwater pumping issues in Spring Valley. The White Pine County plans, including analysis of water resources and economic impacts, also relate to a power development proposal that has never come to fruition. Contrary to the WELC Protestants’ assertion that the plans are “directly relevant to show what

White Pine County's future plans are," the plans show only what might have, but never did, happen in Spring Valley.

The plans that Dr. Harris co-authored should also be excluded because none of them were specifically prepared for this hearing, as required by the Intermediate Order. Dr. Harris should similarly be barred from testifying on these issues. The three reports, WELC 3050, 3051, and 3052, are generally related to economic trends in the area, but are not directly related to anything raised in the pending hearing. Since Dr. Harris is, as WELC recognizes, being offered as an expert, he must comply with the Intermediate Order. Thus his reports prepared in unrelated contexts have little bearing on his proposed testimony and should be excluded.

As for the questions of species and environmental concerns, the State Engineer should not engage in a separate environmental analysis that duplicates simultaneous review by other agencies. The State Engineer's role is to determine if additional studies are necessary to supplement the information already available. The BLM is currently preparing an EIS that will address the concerns raised by the WELC Protestants. Thus the existing and pending studies will more than adequately address any environmental concerns raised in the Opposition Brief. Accordingly, determining whether an application is "environmentally sound" is as simple as recognizing that the necessary impact analysis will be completed through other agencies' statutory duties, and conditioning the water permits on the completion of that process.

B. Witness Testimony And Related Exhibits That Do Not Comply With The Intermediate Order Should Be Excluded.

1. Dr. Deacon

SNWA argues that Dr. Deacon should not be permitted to testify about the potential impacts on water resources. Dr. Deacon's report focuses almost exclusively on the possible water supply impacts of the applications. Although WELC claims that Dr. Deacon is a wildlife

biologist, his opinion merely repeats conclusions made by Dr. Meyers and then speculates on the impact on water supply for various species. If the report were limited to the habitat needs of the various species, that would be one issue. But his testimony will concern another issue: “the effect that the groundwater applications would have on the aquatic ecology of Spring Valley.” This is essentially a question of hydrology, since it does not require Dr. Deacon’s opinion about the needs of the species, fish and snails, but rather to speculate as to the supposed impact on water supply following SNWA’s pumping. This opinion has already been offered by Dr. Meyers, and submitting a biologist to repeat a conclusion offered by another expert is cumulative, and is beyond Dr. Deacon’s stated qualifications.

As the Intermediate Order required, each witness is limited to testify about the points described in the submittals. Nonetheless, the WELC Protestants have offered Dr. Deacon to testify about whatever they please at the hearing, incorrectly assuming that SNWA is “confused” about the role the different witnesses play. If the WELC Protestants had actually offered Dr. Deacon to testify about the biology of the snails and fish, in the abstract, that may be proper. But he is not qualified to offer an opinion that analyzes water supply impacts. It would be up to the State Engineer to examine the conclusions of both the hydrogeologist and the biologist and determine if there was an impact. But WELC would have Dr. Deacon synthesize all the data at once, and offer an ill-informed opinion on matters that he is not qualified to testify on. More importantly, WELC has already self-limited the testimony since WELC’s witness statement states that Dr. Deacon will testify concerning groundwater pumping impacts on aquatic ecology, and not the aquatic ecology itself. Since WELC described only improper testimony for Dr. Deacon, his testimony and reports must be excluded.

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2. Dr. Charlet

Similar to the WELC Protestants' submission of Dr. Deacon, Dr. Charlet is offered to testify "as to his expert opinion regarding the effect that the groundwater applications would have on the terrestrial ecology of Spring Valley." Thus he faces a similar problem: he is not qualified to testify about hydrology. Therefore, for the same reason Dr. Deacon's testimony should be excluded, Dr. Charlet cannot testify to the only matter he has been offered to testify on.

3. Dr. Bredehoeft

The SNWA argues that Dr. Bredehoeft's testimony and report should be excluded because they rely solely on Tom Meyer's report and merely repeat those conclusions. As the Intermediate Order requires, each witness is required to prepare a report of their own specifically for the hearing. But Dr. Bredehoeft has only recycled Dr. Meyer's opinions. The WELC Protestants claim that Dr. Bredehoeft oversaw and reviewed Dr. Meyer's work. But this is not the same as preparing the report himself. The SNWA has not suggested that Dr. Bredehoeft had to prepare his own model, only that he must do his own work to be able to testify at this hearing. Since the testimony and report simply repeat Dr. Meyers' work, does not contain any independent foundation for his opinions, is cumulative, and Dr. Bredehoeft offers nothing of his own, his testimony should be excluded.

4. Dr. Lanner

Dr. Lanner should not be permitted to testify about the impacts of the Applications on anything, since he is not qualified to describe or opine on the potential impact of the applications on water conditions. Dr. Lanner is offered as an expert in the biology of swamp cedars, but no more. The WELC Protestants have not offered Dr. Lanner's testimony to describe the biology of swamp cedars, as claimed in the Opposition Brief, but as an expert as to the "effect that the

applications would have on the Spring Valley ‘swamp cedars.’” Therefore, since Dr. Lanner is offered only to testify about a matter beyond his expertise—namely, the impact of the applications on water supply—his testimony should be excluded.

5. Dr. Harris

Dr. Harris’ proffered testimony would be entirely speculative. He has no qualifications to testify as an expert about the potential impacts on water resources. Thus his analysis, based on those speculative impacts, of resulting economic conditions is outside of his claimed expertise.

6. Ms. Rajala

The WELC Protestants argue that Ms. Rajala is “uniquely qualified to be a fact witness to testify about the makeup of the economy of White Pine County.” Opposition Brief, at pg. 16. But Ms. Rajala will testify about “economic aspects of agricultural and recreational activity in Spring Valley and White Pine County, and White Pine County’s economic development and water plans.” The Protestants claim that this is “fact witness” testimony. But as noted in the Motion to Exclude Evidence, Ms. Rajala is, at best, a custodian of records for the County, with no particular experience or expertise related to these issues.

Also, the documents that Ms. Rajala purports to rely on are not public documents. Such documents should be excluded because Ms. Rajala is not qualified to testify as to the documents’ contents, and no other witnesses have been offered that can verify them.

IV. CONCLUSION

For the foregoing reasons, the SNWA requests that the individual protest claims listed in its motion to dismiss claims be dismissed and not addressed at the hearings on the subject Applications, and that the Protestants’ exhibits cited in SNWA’s motion to exclude evidence not

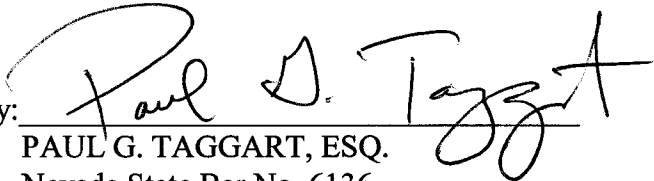
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be admitted into the State Engineer's record at the hearing.

DATED this 28th day of July, 2006.

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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 WESTERN ENVIRONMENTAL LAW CENTER'S OPPOSITION TO SOUTHERN NEVADA WATER AUTHORITY'S MOTION TO DISMISS INDIVIDUAL PROTEST CLAIMS AND TO EXCLUDE EVIDENCE REGARDING SPRING VALLEY APPLICATIONS, as follows:

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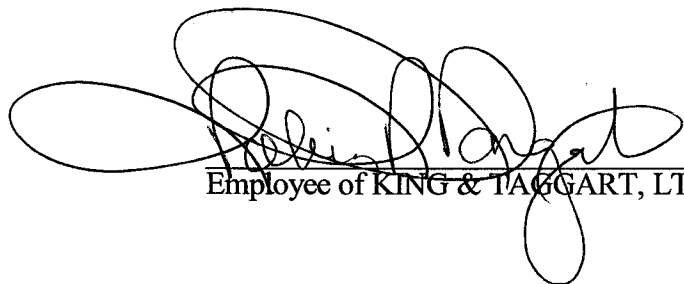
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Attachment A

<i>Protestant</i>	<i>Claim To Be Dismissed</i>	<i>Addressed in WELC Response</i>
County of White Pine (pg. 3, ¶ 9) Toiyabe Chapter, Sierra Club (at pg. 1) Abigail Johnson (at pg. 3, ¶ 6)	The Applications will affect the ability of the BLM and FWS to manage public lands.	Not Addressed
Toiyabe Chapter, Sierra Club (at pg. 1, ¶ 1)	The Applications would be inconsistent with federally owned water rights in wilderness study areas.	Not Addressed
County of White Pine (at pg. 1, ¶ 3, and pg. 6, ¶ 28)	The proposed appropriations will conflict with and interfere with groundwater sought in previously filed Applications in the Spring Valley Basin.	Not Addressed
Rountree (Protested Apps. 54014, 54015, and 54020)	William and Katherine Rountree have rights in the Spring Valley basin that would be affected by the proposed diversions.	Addressed
County of White Pine (at pg. 3, ¶ 9) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 6) Abigail Johnson (at pg. 3, ¶ 6)	The Applications threaten adverse environmental impact and possibly jeopardize the existence of species protected by the ESA.	Addressed
County of White Pine (at pg. 4, ¶ 17) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 7) Abigail Johnson (at pg. 3, ¶ 12)	The Applications will create dust, negatively impacting the quality of air in the Spring Valley region.	Addressed
County of White Pine (at pg. 2, ¶ 5) Toiyabe Chapter, Sierra Club (pg. 2, ¶ 5) Abigail Johnson (at pg. 1, ¶¶ 1, 2)	The Applications may impair the water quality in the Spring Valley region.	Addressed

Attachment A

<i>Protestant</i>	<i>Claim To Be Dismissed</i>	<i>Addressed in WELC Response</i>
County of White Pine (at pg. 4, ¶ 13) Toiyabe Chapter, Sierra Club (at pg. 1, ¶ 2) Abigail Johnson (at pg. 3, ¶ 8)	The Applicant has not obtain all rights-of-way necessary for the proposed appropriations.	Not Addressed
County of White Pine (at pg. 4, ¶ 16) Toiyabe Chapter, Sierra Club (at ¶ 9, 11) Abigail Johnson (at pg. 4, ¶¶ 11, 13)	The Applications do not provide all the statutorily-required information.	Not Addressed
County of White Pine (at pg. 3, ¶ 7) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 7) Abigail Johnson (at pg. 2, ¶ 4)	The Applications do not have comprehensive water resource development planning information.	Not Addressed
County of White Pine (at pg. 5, ¶ 18, pg. 6, ¶ 25) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 10) Abigail Johnson (at pg. 4, ¶ 13, pg. 5, ¶ 19)	The applications failed to include an independent, formal and publicly reviewable assessment.	Not Addressed
County of White Pine (at pg. 5, ¶ 18, pg. 6, ¶ 25) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 10) Abigail Johnson (at pg. 4, ¶ 13, pg. 5, ¶ 19)	The State Engineer is required by Nevada water law to examine alternative appropriate uses of water.	Not Addressed
County of White Pine (at pg. 6, ¶ 29) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 11) John Tryon (at pg. 1, ¶ 3) Abigail Johnson (at pg. 5, ¶ 20)	The Applications cannot be granted if there is insufficient information to determine potential impacts from the appropriations.	Not Addressed
County of White Pine (at pg. 5, ¶ 19)	The Protestants have been denied due process of law because the SNWA has not provided “the relevant information” on the Applications as required by law.	Not Addressed

Attachment A

<i>Protestant</i>	<i>Claim To Be Dismissed</i>	<i>Addressed in WELC Response</i>
County of White Pine (at pg. 2, ¶¶ 2, 4) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 5) Abigail Johnson (at pg. 2, ¶¶ 1, 2)	There is a vested right to maintain groundwater at a specific level or flow.	Addressed
County of White Pine (at pg. 4, ¶ 15) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 4) Abigail Johnson (at pg. 2, ¶ 10)	SNWA lacks the financial capability for developing and transporting water under the subject permit.	Not Addressed
City of Ely / County of White Pine (at pg. 6, ¶ 28)	The previous denial of an unrelated, factually dissimilar group of applications in Spring Valley should preclude the State Engineer from granting the subject applications.	Not Addressed
County of White Pine (at pg. 2, ¶ 4) Toiyabe Chapter, Sierra Club (at pg. 2, ¶ 8) Abigail Johnson (at pg. 2, ¶ 2)	The proposed appropriation would exceed the available yield of the Spring Valley basin and thereby sanction water mining.	Addressed
County of White Pine (at pg. 4, ¶¶ 12, 14) Toiyabe Chapter, Sierra Club (at pg. 1, ¶ 3) Abigail Johnson (at pg. 3, ¶¶ 7, 9)	The Applications will sanction and encourage the willful waste of water.	Not Addressed
County of White Pine (at pg. 6, ¶ 30) Toiyabe Chapter, Sierra Club (at pg. 2) Abigail Johnson (at ¶ 21)	The Protestants may incorporate by reference every other protest to the Applications.	Not Addressed
County of White Pine (at pg. 6, ¶ 29) Nye County (at pg. 8, ¶ 29) John Tryon (at pg. 1, ¶ 3) Abigail Johnson (at pg. 5, ¶ 20)	The Protestants have the unqualified right to amend their protest as issues develop.	Not Addressed

Attachment A

<i>Protestant</i>	<i>Claim To Be Dismissed</i>	<i>Addressed in WELC Response</i>
County of White Pine (pg. 5, ¶ 20, pg. 6, ¶ 24) Abigail Johnson (at pg. 4, ¶¶ 14, 18)	The population projection numbers supporting the water demand projections are unrealistically high.	Not Addressed
White Pine County/City of Ely (pg. 3, ¶ 6, pg. 4, ¶ 11)	The Applications will destroy the scenic and recreational values of the State.	Addressed

STATE ENGINEERS OFFICE

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