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In the Matter of Applications  
53987, 53988, 53993-53997, 54003-54021

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STATE ENGINEERS OFFICE

Exhibit A.4

Protest by the Bureau of Indian Affairs, United States Department of Interior, on Behalf of the Ely Shoshone Indian Colony.

- I. The Ely Shoshone Indian Colony is located within the town of Ely, Nevada, in White Pine County.

The Ely Colony was established by an Act of June 27, 1930, (48 Stat. 820). On September 28, 1931, 9.945 acres were purchased. A 55 year lease was obtained from White Pine County, for a Housing and Urban Development project approved January 22, 1973, for 11.0681 acres. Congress approved (P.L. 95-191, November 18, 1977) the withdrawal of Public Domain lands totaling 90 acres for expansion of the reservation.

- II. The water rights of the Ely Shoshone Colony have never been judicially quantified by a court of appropriate jurisdiction. The water rights of the Ely Shoshone Colony are, therefore, based on the vested aboriginal right of the Indians and the federal reserved water rights doctrine recognized by the Supreme Court of the United States. See, e.g., Winters v. United States, 207 U.S. 564 (1908); Arizona v. California, 373 U.S. 546 (1963); and United States v. Cappaert, 426 U.S. 128 (1978).

Domestic water is supplied by the town of Ely. A water well was completed on the 90 acre addition, but no water permit obtained from the State Engineer, which is not required, because of reserved water rights. The well is currently capped and not in use.

The water supply for the three tracts of land of the Ely Shoshone Colony may be impaired by the appropriation and diversion proposed by these applications.

- III. Groundwater flows along complex pathways through basin-fill aquifers, carbonate rock aquifers, or both (Harrill, et al., 1988). If approved, the appropriations and diversions proposed by these applications will eventually lower or further lower the groundwater table underlying the Ely Shoshone Colony, reduce yield from the existing well and increase cost of wells needed for future development. The senior water rights of the Ely Shoshone Colony, its water resources and water-related attributes would, therefore, suffer negative impacts.

IV. Interbasin groundwater flow may exist between Basin 179 - Steptoe Valley (in which the Ely Shoshone Colony is located), Basin 180 - Cave Valley, Basin 183 - Lake Valley and Basin 184 - Spring Valley. Groundwater withdrawals in the three basins surrounding Steptoe Valley may eventually result in lowering the groundwater table under the lands of the Ely Shoshone Colony. The Las Vegas Valley Water District has submitted a total of twenty-six (26) applications to appropriate groundwater in the three basins (Exhibit B).

- The sum of the diversions committed in Basin 183 as of December 1988 and the diversions proposed by the Las Vegas Valley Water District in that Basin exceed the estimated perennial yield by 38,186 acre-feet per year (Exhibit C) and the estimated recharge by 37,186 acre-feet per year (Exhibit D).

Because of interconnection of the four basins, overdraft of groundwater resources in one basin may affect groundwater availability in the other basins. The overdraft will cause groundwater levels to decline, reduce well yields or increase pumping costs, and cause land subsidence and fissuring. The cumulative effects of the diversions in the three basins may cause impacts at the Ely Shoshone Colony more quickly and/or to a greater degree than diversions under each application alone and thereby impair the senior water rights of the Ely Shoshone Colony.

V. In these applications, the points of discharge for return flow (treated effluent) have not been specified. The possibility exists that the return flow may be discharged into a hydrologic basin other than the basin of origin. This being the case, depletions to the spring and wells in the areas where the Ely Shoshone Colony has senior water rights would occur more quickly and in greater magnitude than if treated effluent were returned to the basin of origin.

VI. According to NRS 533.060, "Rights of the use of water shall be limited and restricted to so much thereof as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes ....". Further, NRS 533.070 states that "The quantity of water from either a surface or underground source which may hereafter be appropriated in this state shall be limited to such water as shall reasonably be required for the beneficial use to be served." Implicit in these statements is a prohibition against waste and unreasonable use of water. It is unclear whether the quantity of water contemplated by these applications, individually and in combination with other applications by the LVVWD, are necessary and an amount reasonably required for municipal and domestic purposes. Past open and notorious practices would indicate otherwise.

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VII. The applications do not clearly indicate the place of use, the description of proposed works, estimated cost of works, number and type of units to be served or annual consumptive use. Nor, as described in VI., is it clear that the appropriations sought are necessary and in the amount reasonably required for the beneficial uses applied for. Therefore, the applications are defective and should be summarily rejected by the State Engineer.

VIII. Summary of Grounds for Protest

The BIA on behalf of the Ely Shoshone Indian Colony protests the granting of all applications in the following basins because of their proximity to the basins in which the Colony is located: 180 - Cave Valley, 183 - Lake Valley, and 184 - Spring Valley.

The applications are protested on the following grounds:

- a) The economic development of the Ely Shoshone Reservation will be harmed if water and water-related resources of the reservation are diminished or impaired as a result of the diversions proposed by these applications.
- b) The diversions proposed by these applications will cause the water table under the reservation area to fall, thereby increasing the pumping cost on domestic and irrigation wells.
- c) Available scientific literature is not adequate to reasonably assure that the groundwater appropriations and diversions proposed by these applications will not impact the senior and reserved water rights of the Ely Shoshone Colony. The State Engineer will, therefore, be unable to make a determination that injury will not occur to other waterusers, including that of the Tribe.
- d) The cumulative effects of the diversions proposed by the applications within the regional groundwater flow system of above mentioned basins will impair the senior water rights of the Ely Shoshone Colony more quickly and/or to a greater degree than the diversion under each application alone. The diversions proposed by LVVWD in one basin exceeds the water available for appropriation.
- e) Depletions to the regional groundwater flow system, and hence wells in the Ely area will occur more quickly and/or in greater magnitude if return flow (or treated effluent) is not discharged in the basin of origin.

- f) It is unclear whether the quantity of water claimed by these applications, individually and in combination with the other applications by the LVVWD, is necessary and is an amount reasonably required for municipal and domestic purposes.
- g) The applications do not clearly indicate the place of use, the description of proposed works, estimated cost of works, number and types of units to be served, or annual consumptive use. Nor is it clear that the diversions sought are necessary and in an amount reasonably required for the beneficial uses applied for. Therefore the applications are defective and should be summarily rejected by the State Engineer.

The Bureau of Indian Affairs reserves the right to amend this exhibit as more information becomes available.

IN THE MATTER OF APPLICATIONS  
 BY THE LAS VEGAS VALLEY WATER DISTRICT  
 LISTED BELOW

EXHIBIT B

Protest by the Bureau of Indian Affairs,  
 United States Department of Interior

The following applications were submitted by the Las Vegas Valley Water District for appropriations in basins within the central corridor, the recharge area for the central corridor, and/or other parts of the regional flow system (Nevada Division of Water Resources , 1990).

Appli- cation no.	Basin no.	Basin Name	Proposed diversion rate, ft <sup>3</sup> /s
53987	180	CAVE VALLEY	6
53988	180	CAVE VALLEY	10
53993	183	LAKE VALLEY	6
53994	183	LAKE VALLEY	6
53995	183	LAKE VALLEY	6
53996	183	LAKE VALLEY	10
53997	183	LAKE VALLEY	10
54003	184	SPRING VALLEY	6
54004	184	SPRING VALLEY	6
54005	184	SPRING VALLEY	6
54006	184	SPRING VALLEY	6
54007	184	SPRING VALLEY	6
54008	184	SPRING VALLEY	6
54009	184	SPRING VALLEY	6
54010	184	SPRING VALLEY	6
54011	184	SPRING VALLEY	6
54012	184	SPRING VALLEY	6
54013	184	SPRING VALLEY	6
54014	184	SPRING VALLEY	6
54015	184	SPRING VALLEY	6
54016	184	SPRING VALLEY	6
54017	184	SPRING VALLEY	6
54018	184	SPRING VALLEY	6
54019	184	SPRING VALLEY	10
54020	184	SPRING VALLEY	10
54021	184	SPRING VALLEY	10
54022	195	SNAKE VALLEY	6
54023	195	SNAKE VALLEY	6
54024	195	SNAKE VALLEY	6
54025	195	SNAKE VALLEY	6
54026	195	SNAKE VALLEY	10
54027	195	SNAKE VALLEY	10
54028	195	SNAKE VALLEY	10
54029	195	SNAKE VALLEY	10
54030	195	SNAKE VALLEY	6

IN THE MATTER OF APPLICATIONS  
BY THE LAS VEGAS VALLEY WATER DISTRICT  
LISTED BELOW

EXHIBIT C

Protest by the Bureau of Indian Affairs,  
United States Department of Interior

Committed diversions, perennial yields, and available and proposed diversions for basins within the central corridor, the recharge area for the central corridor, and/or other parts of regional flow systems (Nevada Division of Water Resources, 1990; Nevada Department of Conservation and Natural Resources, 1988).

Basin No.	Basin Name	Committed Diversions, A-ft/yr	Estimated Perennial Yield, A-ft/yr	Available Diversion, A-ft/yr	No. of Applications	Proposed LVVWD Diversion Rate, A-ft/yr	Available Diversion Less Proposed Diversion, A-ft/yr
156	HOT CREEK VALLEY	1890	5500	3610	1	7245	-3635
168	THREE LAKES VALLEY (NORTHERN PART)	0	4000	4000	4	23183	-19183
169A	TICKAPOO VALLEY (NORTHERN PART)	0	2500	2600	3	18836	-16236
169B	TICKAPOO VALLEY (SOUTHERN PART)	0	3400	3400	3	18836	-15436
170	PENoyer VALLEY	5670	4000	-1670	3	18836	-20506
171	COAL VALLEY	45	5000	5955	4	23183	-17228
172	GARDEN VALLEY	377	6000	5623	5	27530	-21907
173A	RAILROAD VALLEY (SOUTHERN PART)	5188	2800	-2388	3	15938	-18326
173B	RAILROAD VALLEY (NORTHERN PART)	24575	75000	50425	18	95629	-45204
174	JAKES VALLEY	32	12000	11968	5	27530	-15562
180	CAVE VALLEY	31	14000	13969	2	11591	2378
181	DRY LAKE VALLEY	175	2500	2325	2	11591	-9266
182	DELAMAR VALLEY	120	1000	880	2	11591	-10711
183	LAKE VALLEY	22556	12000	-10656	5	27530	-38186
202	PATTERSON VALLEY	1216	4500	3284	4	23183	-19899
205	LOWER MEADOW VALLEY WASH	22915	5000	-17915	2	11591	-29506
207	WHITE RIVER VALLEY	21183	37000	15817	5	27530	-11713
208	PAHROC VALLEY	19	2000	1981	7	44917	-42936
209	PAHRANAGAT VALLEY	5678	25000	18322	5	27530	-9208
210	COYOTE SPRINGS VALLEY	0	18000	18000	5	27530	-9530
211	THREE LAKES VALLEY (SOUTHERN PART)	256	5000	4744	6	37672	-32928
212	LAS VEGAS VALLEY	81773	25000	-56773	3	21734	-78507
216	GARNET VALLEY	1651	400	-1251	1	7245	-8496
217	HIDDEN VALLEY (NORTH)	18	50	32	1	7245	-7213
218	CALIFORNIA WASH	510	36000	35490	2	14489	21001
220	LOWER HOAPA VALLEY	6906	35000	28094	1	7245	20849
Totals		203884	343750	139866	102	596960	-457094

IN THE MATTER OF APPLICATIONS  
BY THE LAS VEGAS VALLEY WATER DISTRICT  
IN THE BASINS LISTED BELOW

EXHIBIT D

Protest by the Bureau of Indian Affairs,  
United States Department of the Interior

Committed diversions and recharge rates for basins within the central corridor, the recharge area for the central corridor, and/or other parts of the regional flow systems (Nevada Division of Water Resources, 1990; Harrill, et al., 1988; and Nevada Department of Conservation and Natural Resources, 1988).

Basin No.	Basin Name	Committed	Proposed	Total	Estimated	Recharge
		Diversions, A-ft/yr	LVW&D Diversions, A-ft/yr	Diversion, A-ft/yr	Recharge Rate, A-ft/yr	Less Total Diversion, A-ft/yr
156	HOT CREEK VALLEY	1890	7245	9135	7000	-2135
168	THREE LAKES VALLEY (NORTHERN PART)	0	23183	23183	2000	-21183
169A	TICKAPOO VALLEY (NORTHERN PART)	0	18836	18836	2600	-16236
169B	TICKAPOO VALLEY (SOUTHERN PART)	0	18836	18836	3400	-15436
170	PENoyer VALLEY	5670	18836	24506	4300	-20206
171	COAL VALLEY	45	23183	23228	2000	-21228
172	GARDEN VALLEY	377	27530	27907	10000	-17907
173A	RAILROAD VALLEY (SOUTHERN PART)	5188	15938	21126	5500	-15626
173B	RAILROAD VALLEY (NORTHERN PART)	24375	95629	120004	46000	-74004
174	JAKES VALLEY	32	27530	27562	17000	-10562
180	CAVE VALLEY	31	11591	11622	14000	2378
181	DRY LAKE VALLEY	175	11591	11766	5000	-6766
182	DELAMAR VALLEY	120	11591	11711	1000	-10711
183	LAKE VALLEY	22656	27530	50186	13000	-37186
202	PATTERSON VALLEY	1216	23183	24399	6000	-18399
205	LOWER MEADOW VALLEY WASH	22915	11591	34506	1500	-33006
207	WHITE RIVER VALLEY	21183	27530	48713	38000	-10713
208	PAHRDC VALLEY	19	44917	44936	2200	-42736
209	PAHRANAGAT VALLEY	5678	27530	34208	1800	-32408
210	COYOTE SPRINGS VALLEY	0	27530	27530	2100	-25430
211	THREE LAKES VALLEY (SOUTHERN PART)	256	37672	37928	6000	-31928
212	LAS VEGAS VALLEY	81773	21734	103507	30000	-73507
216	GARNET VALLEY	1651	7245	8896	400	-8496
217	HIDDEN VALLEY (NORTH)	18	7245	7263	400	-6863
218	CALIFORNIA WASH	510	14489	14999	100	-14899
220	LOWER HOAPA VALLEY	6906	7245	14151	100	-14051

IN THE MATTER OF APPLICATIONS BY THE  
LAS VEGAS VALLEY WATER DISTRICT

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