

RFA DATE: 3/28/2011

APPLICATION NO. 54021

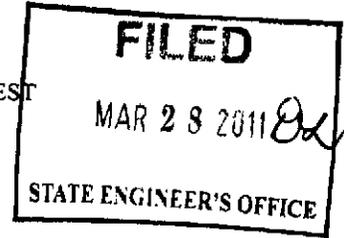
PROTESTED BY	DATE
✓ EKSDALE CENTER	3/4/2011
✓ HENRY C. VOGLER IV	3/7/2011
✓ TOIYABE CHAPTER OF THE SIERRA CLUB	3/9/2011
✓ GEORGE ELDRIDGE AND SON INC., 2011	3/10/2011
✓ RICHARD AND LESLEY SEARS	3/21/2011
✓ ELKO BAND COUNCIL	3/21/2011
✓ CENTRAL NEVADA REGIONAL WTR AUTH	3/22/2011
✓ LAS VEGAS FLY FISHING CLUB 2011	3/22/2011
✓ DUCKWATER SHOSHONE TRIBE	3/23/2011
✓ THE LONG NOW FOUNDATION	3/23/2011
✓ JUAB COUNTY	3/23/2011
✓ ELY SHOSHONE TRIBE	3/24/2011
✓ WHITE PINE COUNTY & CITY OF ELY 2011	3/24/2011
✓ CONF TRIBES OF THE GOSHUTE RES	3/24/2011
✓ GREAT BASIN WATER NETWORK	3/24/2011
✓ MILLARD COUNTY	3/24/2011
✓ USDA FOREST SERVICE, UTAH	3/25/2011
✓ UTAH LDS CHURCH	3/28/2011
✓ COL. JAMES R. BYRNE, NELLIS AFB	3/28/2011

State 'S EXHIBITS 78
DATE: 9/26/11

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Southern Nevada Water Authority
ON October 17, 1989, TO APPROPRIATE THE
WATERS OF Underground

PROTEST



Comes now Col. James R. Byrne

Printed or typed name of protestant

whose post office address is 4430 Grissom Avenue, Suite 100, Nellis AFB, NV 89191-6520

Street No. or PO Box, City, State and ZIP Code

whose occupation is Staff Judge Advocate

and protests the granting

of Application Number 54021, filed on October 17, 1989

by Southern Nevada Water Authority

to appropriate the

waters of underground

situated in Clark, Lincoln, White Pine, and Nye

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Exhibit A attached.

THEREFORE the protestant requests that the application be denied. The United States Air Force will reconsider its protest if it can be shown that the proposed appropriation, in combination with existing and pending appropriations, if approved and developed, will not affect the water resources and water rights for Creech Air Force Base and the southern portion of the Nevada Test and Training Range.

THEREFORE the Protestant requests that the application be denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

J.R. Byrne

Agent or protestant

Col. James R. Byrne

Printed or typed name, if agent

Address

4430 Grissom Avenue, Suite 101

Street No. or PO Box

Nellis AFB, NV 89191-6520

City, State and ZIP Code

702-652-5470

Phone Number

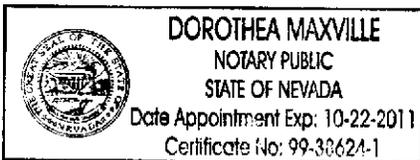
STATE ENGINEER'S OFFICE
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DO NOT
FILE

MAR 28 2011

LAG Y

Subscribed and sworn to before me this 28 day of March, 20 11



Dorothea Maxville
Notary Public

State of Nevada

County of Clark

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IN THE MATTER OF APPLICATIONS 53987-53992 and 54003-54021

EXHIBIT A

Protest by Colonel James R. Byrne on behalf of
Nellis Air Force Base

GENERAL

- I. The mission of the United States (U.S.) Air Force at Creech Air Force Base (AFB) is to provide a unique environment to train U.S. and allied combat pilots against realistic threats and targets currently encountered in various locations around the world. Creech AFB also provides direct support to conduct advanced weapons and tactics training and is the site for remotely piloted vehicles testing and training. Creech AFB is part of the Nevada Test and Training Range (NTTR) and is the gateway to the southern ranges located within Clark, Nye and Lincoln Counties. Creech AFB currently has a population of approximately 2,300 but future plans will expand the number of personnel over the next several years. Land withdrawn for NTTR provides a secure, flexible range for large-scale military testing and training that is not duplicated anywhere within the U.S. This land is critical to preparing flight crews from the U.S. and our Allies for developing and maintaining their battle skills in today's highly complex threat environments, as well as testing new weapons systems and platforms.
- II. The NTTR was originally established by Executive Order (EO) 8578 in 1940 as the Las Vegas Bombing and Gunnery Range. The range operated under the authority of numerous Executive Orders (EO) and Public Land Orders (PLO) until 1958 when operating authority was established in compliance with the Engle Act under PL 87-310. The NTTR public lands withdrawal was most recently renewed by Public Law 106-65, the Military Lands Withdrawal Act of 1999.
- III. The U.S. Air Force is entitled to federal reserved water rights for reserved lands within Creech AFB, Nellis AFB and the NTTR. The priority dates for reserved rights are senior to the appropriation sought by this application. The U.S. Air Force federal reserved water rights have not been judicially quantified.

FINDINGS

MAR 28 2011

- I. The applications filed on behalf of the Southern Nevada Water Authority (SNWA) propose to appropriate groundwater from the Indian Spring Valley Hydrographic Basin (Basin 161), Three Lakes Valley - North (Basin 168), Three Lakes Valley - South (Basin 211), Tikappo Valley - North (Basin 169A), and Tikapoo Valley - South (Basin 169B). The Nevada Department of Conservation and Natural Resources found that the perennial yield of the Indian Springs Valley (Basin 161) is equal to 500 acre-feet per year (AFY). While the stated perennial yield in the Indian Springs Valley Basin is 500 AFY, certificated and permitted rights total 1,380.47 AFY, which does not even account for

federal reserved water rights, or surface water rights required for natural and biological resources in the area.

- II. The Indian Springs Valley Basin is therefore already over-prescribed, yet the application filed on behalf of SNWA proposes to withdraw an additional 30,406.61 AFY, an amount for which there is no unallocated resources. The withdrawals proposed by these applications would further reduce the flows in the Indian Springs Valley Basin, an already over-allocated basin.
- III. The applications for water rights filed on behalf of SNWA fail to meet the requirements of the 1996 Nevada State Water Engineer's guidelines for approval of water rights applications, as reviewed and approved by the Nevada Supreme Court in *Pyramid Lake Paiute Tribe v. Washoe Co.*, 918 P.2d 697 (Nev. 1996). The guidelines require that the applications for water rights be in the public interest. These applications fail that test.
- IV. The "public interest," as it relates to Creech AFB, NTTR, Nellis AFB and their water resources, is of critical concern to both the federal government and the State of Nevada (through the State Engineer). Approval of these applications would be contrary to the "public interest" set forth by federal proclamation and by guidelines promulgated by the Nevada State Engineer.

CONCLUSIONS

- I. Nevada Revised Statute, 533.370(3), states that the Nevada State Water Engineer shall reject an application for a water permit "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest..." Based on the mandate set forth in 533.370(3), N.R.S., the State Water Engineer should reject this application for the following reasons.
 - A. The Indian Springs Valley Basin is currently over allocated, and additional allocations could adversely affect the mission of the U.S. Air Force within Creech AFB and the southern portion of the NTTR.
 - B. There is a lack of empirical data to support additional allocations. Without understanding the impact additional allocations will have on both short and long term interests, these allocations could cause irreparable harm.
 - C. There appears to be a movement underway by various entities to secure water rights. Other applicants have also filed for rights within this valley which should be considered in conjunction with the subject applications as aggregate impacts versus individual applications. The need to accurately measure and understand groundwater and recharge rates is imperative.

The approval and development of these applications will impair the senior water rights of the U.S. because:

- A. The proposed appropriation could potentially reduce the flow of existing wells operating at Creech AFB and Point Bravo.

The public interest would not be served by granting permits to these applications because:

- A. The water and water-related resources of Creech AFB and the southern portion of the NTTR are of high importance due to national security and would be diminished or impaired as a result of these applications.

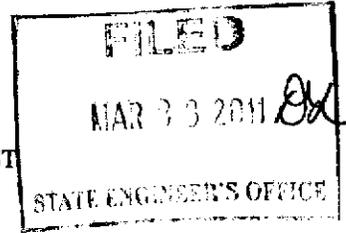
- II. The U.S. Air Force reserves the right to amend this exhibit as more information becomes available.

REFERENCES CITED

Nevada Department of Water Resources Home Page, <http://www.water.nv.gov/>, 2010.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Southern Nevada Water Authority
ON October 17, 1989



PROTEST

Comes now Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints, a Utah corporation sole

Printed or typed name of protestant

whose post office address is 50 East North Temple, 12th Floor, Salt Lake City, UT 84150

Street No. or PO Box, City, State and ZIP Code

whose occupation is Ranch and Water Right Owner

and protests the granting

of Application Number 54021, filed on October 17, 1989

by Southern Nevada Water Authority for the

waters of Underground situated in Basin 184 - Spring Valley, White Pine
an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

The Corporation of the Presiding Bishop owns and operates the Cleveland and Rogers Ranches and associated grazing permits as part of a large livestock operation in north Spring Valley. Both the fee ground and allotments are critical to the overall operation of this livestock program. The Corporation holds substantial surface and groundwater water rights associated with the Cleveland Ranch to include Cleve Creek (Certificate 902), vested rights (V00790 and V01217) and groundwater permits 54204 and 54205. The Corporation holds claims of vested right on 12 springs located on the Cleveland Ranch (V02817-V02828). This application by Southern Nevada Water Authority is in close proximity to both Cleve Creek and the Cleveland Ranch. This application was previously denied by the State Engineer in Ruling 5726. The Corporation supports Ruling 5726, and requests denial of this application based on that ruling and further information to be presented by the Protestant. The Protestant reserves the right to supplement this protest as part of any hearing.

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Terry F. Rudd (handwritten signature)

Agent or protestant

Terry F. Rudd, Authorized Agent

Printed or typed name, if agent

Address

50 E. North Temple, Rm 1205

Street No. or PO Box

Salt Lake City, Utah 84150-6320

City, State and ZIP Code

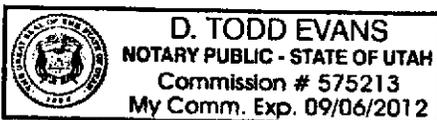
801-240-3840

Phone Number

RuddTF@ldschurch.org

E-mail

Subscribed and sworn to before me this 25 day of MARCH, 2011



Notary Public

State of UTAH

County of SALT LAKE

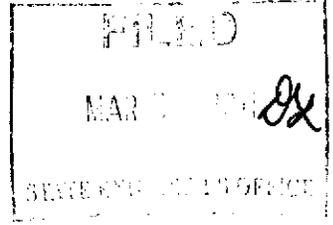
+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
 FILED BY Southern Nevada Water Authority (SNWA)
 ON October 17, 1989, 20



PROTEST



Comes now United States Department of Agriculture, Forest Service
Printed or typed name of protestant

whose post office address is 324 25th Street, Ogden, UT 84401
Street No. or PO Box, City, State and ZIP Code

whose occupation is _____ and protests the granting

of Application Number 54021, filed on October 17, 1989, 20

by Southern Nevada Water Authority (SNWA) for the

waters of underground source situated in White Pine
an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

The Forest Service is a cooperating agency in the preparation of a Draft Environmental Impact Statement (EIS) for the Clark, Lincoln, and White Pine Counties Groundwater Development Project, which is scheduled to be released in June, 2011. Groundwater modeling and information within the EIS show that potential groundwater drawdown areas in Spring Valley extend onto National Forest System (NFS) land. The Forest Service (FS) is concerned with potential injury to prior, existing water rights and public resources on NFS land. Several FS stockwater rights and additional springs are within or near the projected groundwater drawdown areas. Vested stockwater rights within the projected drawdown areas include: V03549 (Kraft Spring #2), V03562 (Basin Spring), V03563 (South Taft Spring), and V03560 (O'Toole Spring). Decreed stockwater rights within the projected drawdown areas include V02809 (Piermont Spring). This protest could be resolved if an acceptable monitoring and mitigation agreement can be reached between SNWA and the Forest Service.

THEREFORE the Protestant requests that the application be issued subject to prior rights, monitoring, and mitigation measures.

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Jeanne A. Evenden
Agent or protestant

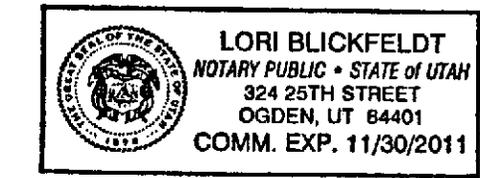
Jeanne A. Evenden
Printed or typed name, if agent

Address 324 25th Street
Street No. or PO Box

Ogden, UT 84401
City, State and ZIP Code

(801) 625-5150
Phone Number

jevenden@fs.fed.us
E-mail



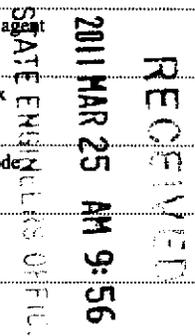
Subscribed and sworn to before me this 24 day of March, 20 11



Lori Blickfeldt
Notary Public

State of Utah

County of Weber



**+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

FILED
MAR 21 2011
PROTEST
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY LVVWD / SNWA
ON October 17, 1989 TO APPROPRIATE THE
WATERS OF UNDERGROUND.

Comes now the Great Basin Water Network with whom the individuals in Attachment A join
whose post office address is 1755 E. Plumb Lane #170, Reno, NV 89502
whose occupation is a Water Protection Network
of Application Number 54021, filed on October 17, 1989
by LVVWD / SNWA to appropriate the
waters of UNDERGROUND situated in WHITE PINE
County, State of Nevada, for the following reasons and on the following grounds, to wit:

Please see Attachment B for Reasons and Grounds

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STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be DENIED
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Susan B. Lynn
Susan B. Lynn

Address Great Basin Water Network
1755 E. Plumb Lane #170
Reno, NV 89502

Phone Number (775) 786-9955

Subscribed and sworn to before me this 23rd day of March, 2011



Lori Wray
Notary Public

State of NEVADA
County of WASHOE

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**ATTACHMENT B To Protest of GREAT BASIN WATER NETWORK Against
Application No. 54021, Filed October 17, 1989
by the Las Vegas Valley Water District and owned by the Southern Nevada Water Authority**

This attachment lists and briefly describes the reasons and grounds for this protest of Great Basin Water Network ("GBWN" or "Protestant") against Application Number 54021. The Southern Nevada Water Authority ("SNWA" or "Applicant") is the successor-in-interest to the Las Vegas Valley Water District which filed this Application to appropriate groundwater from Basin SPRING VALLEY (*Basin #184*) as part of SNWA's massive proposed groundwater development project and associated network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, GBWN asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

1. There Is Insufficient Water Available In The Proposed Source of Supply:

The State Engineer should deny the subject applications pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system or systems, will exceed the perennial yield of those basins. The State Engineer already has designated one or more hydrologically connected basins within the same flow system or systems as the basin that is targeted by this Application, effectively acknowledging that those basins and potentially the entire flow system are fully appropriated, if not over-appropriated.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable overappropriation in the interbasin flow system or systems, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation has not been completed, and until that process has been completed it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

2. The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells:

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system or systems. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system or systems, the proposed appropriation and use will result in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

3. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and SNWA's Pipeline Project, of which this Application is a part, would permit serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin.

A. Harm to Wildlife and Wildlife Habitat:

The proposed appropriation, export and use would result in significantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species.

The wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to, Pahrangat National Wildlife Refuge, Desert National Wildlife Refuge Complex, Great Basin National Park, Shoshone Ponds Natural Area, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, and Amargosa Valley Pupfish Station.

Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

B. Degradation of Air Quality:

The proposed appropriation, export, and use would result insignificantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely

will have serious harmful impacts on human and animal health in those basins and in additional downwind communities. In addition to causing respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

C. Destruction of Recreational and Aesthetic Values:

The decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas, including but not limited to Lake Mead National Recreation Area in Clark County, Nevada, and the Wasatch Front in Utah. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

D. Degradation of Water Quality:

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

E. Degradation of Cultural Resources:

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources in the basin expressly targeted in this Application and in hydrologically connected basins within the same interbasin flow system. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire Pipeline Project, of which this Application is a part, include but are not limited to Native American ritual worship sites and other sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Native Americans. These and other cultural resources that would be damaged if this Application is approved constitute an important part of Nevada's, and the Nation's, historical and cultural legacy. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) and 533.370(6)(c) because the proposed appropriation and use would cause degradation of cultural resources in the basin of origin and downgradient hydrologically connected basins that would be detrimental to the public interest and would be environmentally unsound.

4. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Economic Grounds And Would Unduly Limit Future Growth And Development In The Basin From Which The Export Is Proposed:

A. Undue Limitation Of Future Economic Activity and Growth In Basin Of Origin:

As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects

that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential development for both year-round and vacation use, and potential future energy development. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

B. Undue Economic Harm Will Extend To The Economies And Communities of Downgradient Hydrologically Connected and Downwind Basins:

These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's Pipeline Project radiates outward into downgradient hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural economies and communities of other basins, including but not limited to Snake Valley, White River Valley, Pahrangat Valley, and Moapa Valley. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it and SNWA's Pipeline Project, of which this Application is a part, would undermine the viability of existing rural economies in Nevada and Nevada's current and future economic diversity, and therefore would be detrimental to the public interest.

5. The Proposed Action Is Not An Appropriate Long-Term Use Of Nevada's Water:

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, and their economies, and to the environment, SNWA's rural water grab is not an appropriate long-term use of Nevada's scarce water resources. The State Engineer should require SNWA to actively pursue alternatives to the rural water grab, such as desalination, conservation and Colorado River Management alternatives, before granting water rights to SNWA from the subject valleys. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

6. The Applicant Has Not Justified The Need To Import Water From Another Basin:

By the same token, SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as cheaper and more reliable increased water conservation measures and the use of desalination for downstream Colorado River users in exchange for additional Colorado River water. The State Engineer should not permit such a massive interbasin transfer project, which is likely to cause long-term economic and environmental damage to the basins of origin and hydrologically connected downgradient basins, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basin of origin and hydrologically connected downgradient basins. Additionally, given the current population, housing, financial, and water use conditions and trends in southern Nevada, the water demand projections that SNWA has used to justify the Pipeline Project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

7. The Applicant Has Not Implemented A Sufficient Conservation Plan:

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area continues to exceed that of similarly situated western cities. The State Engineer should require SNWA to submit and demonstrate effective implementation of a conservation plan that utilizes all reasonably feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

8. The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:

A. Changed Circumstances, Uncertain Intent, Doubtful Financing:

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, have ranged into the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. See Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. See I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

B. Failure To Demonstrate Ability to Access Land Containing Point of Diversion:

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential points of diversion are located. This lack of access is evidence that the Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence.

9. Great Basin Water Network Reserves The Right To Amend This Protest As May Be Warranted By Future Developments:

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, the above-named Protestant reserves the right to amend the subject protest to include such issues as they develop.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District
ON October 17, 1989, 20



FILED
MAR 24 2011
STATE ENGINEER'S OFFICE

PROTEST

Comes now Millard County, a political subdivision of the State of Utah

Printed or typed name of protestant

whose post office address is 50 South Main, Fillmore, UT 84631

Street No. or PO Box, City, State and ZIP Code

whose occupation is by and through the Millard County Board of Commissioners and protests the granting

of Application Number 54021, filed on October 17, 1989, 20

by Las Vegas Valley Water District (predecessor to Southern Nevada Water Authority) for the

waters of underground in Spring Valley Hydrographic Area #184 situated in White Pine

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See attachment

RECEIVED
2011 MAR 24 AM 11:37
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Bart A. Whatcott
Agent of protestant

Bart A. Whatcott, Chairperson, Millard County Board of Commissioners

Printed or typed name, if agent

Address

50 South Main

Street No. or PO Box

Fillmore, UT 84631

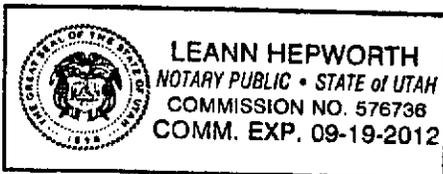
City, State and ZIP Code

(435) 864-3901

Phone Number

Subscribed and sworn to before me this 22nd day of March, 20 11

E-mail



Leann Hepworth
Notary Public

State of Utah

County of Millard

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**REASONS AND GROUNDS FOR MILLARD COUNTY'S PROTEST AGAINST
APPLICATION NO. 54021, FILED OCTOBER 17, 1989 BY LAS VEGAS VALLEY
WATER DISTRICT, PREDECESSOR TO
SOUTHERN NEVADA WATER AUTHORITY**

1. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby deplete and diminish the water resources, specifically groundwater, which is available to Millard County and its businesses and residents.

2. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby have a negative impact on the citizens of Millard County, Utah by depletion of the underground water aquifers and natural surface waters. Due to the recurring drought conditions throughout west Millard County, there is reduced recharge to the aquifers in this area and reduced surface water accumulations.

3. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby concentrate the use of water and lower the water table to such an extent that it will substantially reduce groundwater-dependent vegetation, which will destabilize soils and contribute to blowing dust resulting in reduced air quality in Millard County and northward into other Utah counties. Air quality is specifically impacted by the alkali nature of the soils in the area resulting in public health impacts and other social costs. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation.

4. In addition to the other effects of groundwater table drawdown, granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby eliminate specific sources and the overall available supply of groundwater in the hydrographic basin to support both existing economic activities and potential future economic growth. Existing economic activities that would be undermined include livestock and other ranching uses, agriculture, domestic uses, mining and prospecting uses, tourism and recreational uses. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, as well as potential future energy development. As a result, the proposed change(s) will have a negative impact on grazing, agriculture, mining, recreation, natural habitat, scenery and general aesthetics.

5. Based on the interconnectivity of the hydrogeologic structures in the Great Basin as identified by the USGS BARCASS report and other such investigations and reports, granting this application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby cause long-term detrimental effects on other ground water resources and flows in other parts of Millard County and other Utah counties, negatively impacting the agricultural industry of Millard County and other Utah Counties.

6. Granting the application and other applications filed contemporaneously therewith, will interfere with interbasin flow from Spring Valley to Snake Valley and thereby lower the static water level in the area of Millard County in the vicinity of the proposed underground pumping. Such changes will adversely affect the quality of the remaining ground

water and will further threaten springs, seeps, and phreatophytes which provide water and habitat critical to the use and survival of wildlife species.

7. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby cause economic harm to Millard County including but not limited to depletion of the county tax base in the area and potential damage to the ability of agricultural interests to develop and expand in the area of the proposed underground pumping under the application and the other applications filed contemporaneously therewith.

8. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby conflict impermissibly with and impair existing senior water rights and protectable interests in domestic and agricultural wells in the basin of origin and other hydrologically connected basins within the same interbasin flow system.

9. The State Engineer previously has found that there is too much uncertainty, too little sound data and too great a risk of unsustainable over-appropriation in the interbasin flow system of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. Sufficient data gathering and evaluation have not been completed concerning interbasin flow from Spring Valley to Snake Valley, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the interbasin flow system and associated carbonate rock province, including the basin targeted by this application.

10. Given the lack of growth in the Las Vegas area due to the recent economic downturn there, and due to the fact that the applicant recently announced in the BLM EIS that it intends to use the groundwater available under this and the companion applications as a backup if other resources fail, the application should be denied absent clear proof satisfactory to the State Engineer that applicant intends in good faith to carry out the groundwater development project and construct the work necessary to complete the project and put the groundwater to beneficial use with reasonable diligence, as required by NRS 533.370(1)(c)(1).

11. NRS 533.370(1)(c)(2) requires applicant to provide satisfactory proof to the State Engineer of the applicant's financial ability and reasonable expectation actually to construct the groundwater project and apply the water to the intended beneficial use with reasonable diligence. Those requirements are not attainable under the current Las Vegas area economic downturn with its resulting economic difficulties for applicant and its member municipalities and districts, and applicant will have failed this statutory requirement outright if the economic downturn continues much longer, requiring that the application be denied outright.

12. There is no groundwater left in the hydrographic area targeted by the application that can be safely appropriated above and beyond that which is already appropriated without disrupting the interbasin flow from Spring Valley to Snake Valley. Therefore, under NRS 533.370(5) the application should be denied.

13. The use of groundwater proposed and targeted by the application and the interference it will cause to interbasin flow from Spring Valley to Snake Valley conflicts with existing

water rights or with protectable interests in existing domestic wells as set forth in NRS 533.024. Therefore, under NRS 533.370(5) the application should be denied.

14. The use of groundwater proposed and targeted by the application and the interference it will cause to the interbasin flow from Spring Valley to Snake Valley threatens to prove detrimental to the public interest. Therefore, under NRS 533.370(5) the application should be denied.

15. Given the severity and duration of the economic downturn in the Las Vegas area and the resulting halt in economic growth, the applicant cannot justify the need to import water from another basin. Therefore the interbasin transfer of water targeted in the application and its resulting interference with interbasin flow from Spring Valley to Snake Valley should be denied as required by NRS 533.370(6)(a).

16. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby deplete the quantity and quality of water flow in various springs and seeps throughout the basin targeted by the application and will thereby diminish and otherwise damage riparian areas and the riparian vegetation, riparian wildlife, migrating birds and livestock that depend upon those riparian areas. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.

17. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby unreasonably deplete the water table throughout the basin targeted by the application and will thereby diminish and otherwise damage the phreatophytic vegetative species that depend on the water table as well as the wildlife and livestock that depend on those phreatophytic species. As stated in paragraph 3 above, this phreatophytic plant loss will destabilize soils and contribute to dust and other air quality problems. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.

18. As stated in the previous paragraphs, granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby unduly limit the future growth and development in the basin of origin from which the water will be exported. Accordingly under NRS 533.370(6)(d), the interbasin application targeted in the application should be denied.

19. If the application is not denied outright, then any permitted use under this application should be conditioned upon and preceded by sufficient comprehensive studies of groundwater resources in the area and interbasin flow from Spring Valley to Snake Valley, and the impacts on those resources by limited incremental ground water pumping and withdrawals at intermittent levels. No additional pumping and export of water should be allowed unless the intermittent staged pumping and exports from Spring Valley prove beyond a reasonable doubt not to interfere with the groundwater flow from Spring Valley to Snake Valley that could damage any and all of the resources of Millard County mentioned above.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District/SNWA
ON October 17, 2011

FILED
MAR 24 2011
STATE ENGINEER'S OFFICE

PROTEST

Comes now Confederated Tribes of the Goshute Reservation

Printed or typed name of protestant

whose post office address is 195 Tribal Center Road, Ibapah, Utah 84034

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 54021, filed on October 17, 2011

by Las Vegas Valley Water District/SNWA

for the

waters of underground (Basin 184- Spring Valley)

situated in White Pine

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment.

RECEIVED
2011 MAR 24 AM 11:59
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Amos Murphy

Agent or protestant

Amos Murphy

Printed or typed name, if agent

Address

195 Tribal Center Road

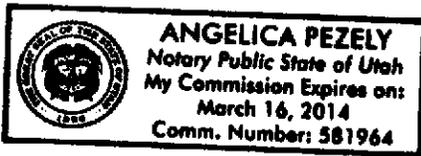
Street No. or PO Box

Ibapah, Utah 84034

City, State and ZIP Code

435.234.1162

Phone Number



Subscribed and sworn to before me this

23

day of

March

E-mail

, 20 11

State of

Angelica Pezely

Notary Public

County of

Utah
Salt Lake

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY THE LAS VEGAS VALLEY WATER DISTRICT
ON OCTOBER 17, 1989 TO APPROPRIATE
THE WATERS OF SPRING VALLEY (GROUNDWATER
BASIN 184)

}

FILED
AMENDED MAR 21 2011
PROTEST
STATE ENGINEER'S OFFICE

Comes Now, the County of White Pine, State of Nevada, with whom the City of Ely, State of Nevada joins
whose post office address is 953 Campton Street, Ely, Nevada 89301
whose occupation is Political Subdivision, State of Nevada and protests the granting
of Application Number 54021, filed on October 17, 1989
by Las Vegas Valley Water District and now owned by the Southern Nevada Water Authority to appropriate the
waters of SPRING VALLEY (GROUNDWATER BASIN 184) situated in Lincoln and White Pine
Counties, State of Nevada, for the following reasons and on the following grounds, to wit:

PLEASE SEE ATTACHED PROTEST GROUNDS

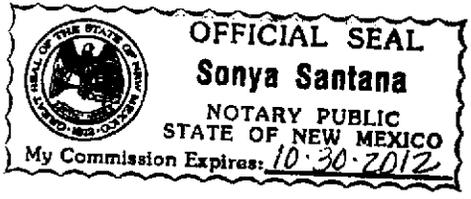
THEREFORE the Protestant requests that the application be **DENIED**, and that an order be entered for such relief as the State Engineer deems just and proper.

Signed [Signature]
Simeon Herskovits
Attorney for White Pine County and City of [Signature]
Simeon Herskovits
Attorney's Printed Name

Address Advocates for Community and Environment
P.O. Box 1075
El Prado, NM 87529
575-758-7202

RECEIVED
2011 MAR 24 PM 12:39
STATE ENGINEER'S OFFICE

Subscribed and sworn to before me this 21 day of March, 2011



[Signature]
Notary Public
State of New Mexico
County of Taos

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT TO AMENDED PROTEST OF WHITE PINE COUNTY AND THE
CITY OF ELY AGAINST APPLICATION NO. 54021, FILED OCTOBER 17, 1989,
BY THE LAS VEGAS VALLEY WATER DISTRICT AND OWNED BY THE
SOUTHERN NEVADA WATER AUTHORITY**

This attachment lists and briefly describes the reasons and grounds for this protest of White Pine County and the City of Ely ("Protestant") against Application Number 54021. The Southern Nevada Water Authority ("SNWA" or "Applicant") is the successor-in-interest to the Las Vegas Valley Water District which filed this Application to appropriate groundwater from Spring Valley as part of SNWA's massive proposed groundwater development project and associated network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, White Pine County and the City of Ely assert as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

1. There Is Insufficient Water Available In The Proposed Source of Supply:

The State Engineer should deny the subject applications pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system or systems, will exceed the perennial yield of those basins.

In addition, the State Engineer previously has found that there is too much uncertainty, too little sound data, and too great a risk of unsustainable overappropriation in the interbasin flow system or systems, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation has not been completed, and until that process has been completed it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application.

2. The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells:

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system or systems. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system or systems, the proposed appropriation and use will result in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells.

Additionally, the basin within which this Application proposes to appropriate and export water is the source of water for hydrologically connected downgradient basins where it already has been appropriated by senior water rights holders.

3. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Environmental Grounds And Would Be Environmentally Unsound As It Relates To The Basin From Which The Export Is Proposed:

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and SNWA's Pipeline Project, of which this Application is a part, would permit serious environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system, and therefore would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin.

A. Harm to Wildlife and Wildlife Habitat:

The proposed appropriation, export and use would result in significantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species.

The wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, include, but are not limited to, Pahrangat National Wildlife Refuge, Desert National Wildlife Refuge Complex, Great Basin National Park, Shoshone Ponds Natural Area, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, and Amargosa Valley Pupfish Station.

Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

B. Degradation of Air Quality:

The proposed appropriation, export, and use would result insignificantly lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off vegetation that is groundwater-dependent in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will make these previously moist and/or vegetated areas dramatically more susceptible to greatly increased mobilization of sediment, or dust. In other words, the desiccation of these areas will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have serious harmful impacts on human and animal health in those basins and in additional downwind communities. In addition to causing respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. These dust storms also will dramatically degrade the aesthetic and recreational value of the basins in which they occur and additional downwind areas. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

C. Destruction of Recreational and Aesthetic Values:

The decline in groundwater levels that will result from this Application and SNWA's Pipeline Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate many of the springs and wet areas, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins in the same interbasin flow system. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas. Similarly, the loss of water, wildlife, clean air, and good visibility will destroy the recreational uses and value of these basins and additional downwind areas, including but not limited to Lake Mead National Recreation Area in Clark County, Nevada, and the Wasatch Front in Utah. For these reasons, as well, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

D. Degradation of Water Quality:

The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application and SNWA's Pipeline Project, of which this Application is a part, would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

E. Degradation of Cultural Resources:

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources in the basin expressly targeted in this Application and in hydrologically connected basins within the same interbasin flow system. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire Pipeline Project, of which this Application is a part, include but are not limited to Native American ritual worship sites and other sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Native Americans. These and other cultural resources that would be damaged if this Application is approved constitute an important part of Nevada's, and the Nation's, historical and cultural legacy. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) and 533.370(6)(c) because the proposed appropriation and use would cause degradation of cultural resources in the basin of origin and downgradient hydrologically connected basins that would be detrimental to the public interest and would be environmentally unsound.

4. The Appropriation And Export Of Water Proposed In This Application Would Be Detrimental To The Public Interest On Economic Grounds And Would Unduly Limit Future Growth And Development In The Basin From Which The Export Is Proposed:

A. Undue Limitation Of Future Economic Activity and Growth In Basin Of Origin:

As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of

businesses related to recreational tourism, as well as residential development for both year-round and vacation use, and potential future energy development. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

B. Undue Economic Harm Will Extend To The Economies And Communities of Downgradient Hydrologically Connected and Downwind Basins:

These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's Pipeline Project radiates outward into downgradient hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural economies and communities of other basins, including but not limited to Snake Valley, White River Valley, Pahranaagat Valley, and Moapa Valley. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it and SNWA's Pipeline Project, of which this Application is a part, would undermine the viability of existing rural economies in Nevada and Nevada's current and future economic diversity, and therefore would be detrimental to the public interest.

5. The Proposed Action Is Not An Appropriate Long-Term Use Of Nevada's Water:

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, and their economies, and to the environment, SNWA's rural water grab is not an appropriate long-term use of Nevada's scarce water resources. The State Engineer should require SNWA to actively pursue alternatives to the rural water grab, such as desalination, conservation and Colorado River Management alternatives, before granting water rights to SNWA from the subject valleys. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

6. The Applicant Has Not Justified The Need To Import Water From Another Basin:

By the same token, SNWA has not justified the need to import water from another basin. SNWA has available to it other more feasible and cost-effective options, such as cheaper and more reliable increased water conservation measures and the use of desalination for downstream Colorado River users in exchange for additional Colorado River water. The State Engineer should not permit such a massive interbasin transfer project, which is likely to cause long-term economic and environmental damage to the basins of origin and hydrologically connected downgradient basins, when more cost-effective and environmentally sound alternatives are readily available to the Applicant. The current per capita water use in SNWA's service area currently exceeds that of similarly situated western cities. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basin of origin and hydrologically connected downgradient basins. Additionally, given the current population, housing, financial, and water use conditions and trends in southern Nevada, the water demand projections that SNWA has used to justify the Pipeline Project are no longer credible. So, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

7. The Applicant Has Not Implemented A Sufficient Conservation Plan:

Given the fragility of rural Nevada's high desert ecosystems and the absolutely vital role their scarce water resources play in supporting rural economies, agriculture, and flora and fauna, it should be mandatory for SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by sister western cities – before being permitted to transfer groundwater from rural basins of origin to SNWA's service area to feed its growth and excessive per capita water use.

SNWA's conservation plan falls far short of meeting this goal. The current per capita water use in SNWA's service area continues to exceed that of similarly situated western cities. The State Engineer should require SNWA to submit and demonstrate effective implementation of a conservation plan that utilizes all reasonably feasible conservation strategies to achieve concrete conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. Unless SNWA submits such a plan, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(b).

8. The Applicant Has Not Demonstrated The Good Faith Intent Or Financial Ability And Reasonable Expectation To Actually Construct The Work And Apply The Water To The Intended Beneficial Use With Reasonable Diligence:

A. Changed Circumstances, Uncertain Intent, Doubtful Financing:

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, have ranged into the tens of billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See Brendan Riley, Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>.* Further, General Manager, Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct such a project. *See I-Team, Dire Predictions Made on Las Vegas Water Supply, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>.* Because it appears that SNWA may never construct the project and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

B. Failure To Demonstrate Ability to Access Land Containing Point of Diversion:

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential points of diversion are located. This lack of access is evidence that the Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence.

9. White Pine County And The City Of Ely Reserve The Right To Amend This Protest As May Be Warranted By Future Developments:

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, White Pine County and the City of Ely reserve the right to amend the subject protest to include such issues as they develop.

10. Incorporation Of White Pine County And The City Of Ely's Original 1989 Protest By Reference:

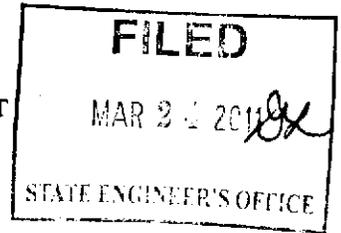
White Pine County and the City of Ely additionally incorporate by reference, as though fully set forth herein, the Reasons and Grounds for Protest stated in White Pine County and the City of Ely's original 1990 protest to application 54021.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District/SNWA
ON October 17, 1989



PROTEST



Comes now Ely Shoshone Tribe

Printed or typed name of protestant

whose post office address is 16 Shoshone Circle, Ely, Nevada 89301

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 54021

, filed on October 17

, 1989

by Las Vegas Valley Water District/SNWA

for the

waters of underground (Basin 184 - Spring Valley)

situated in White Pine

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment.

RECEIVED
2011 MAR 24 AM 10:00
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be

DENIED

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Alvin S. Marques
Agent of protestant

Alvin S. Marques

Printed or typed name, if agent

Address

16 Shoshone Circle

Street No. or PO Box

Ely, Nevada 89301

City, State and ZIP Code

775.289.3013

Phone Number

eilkmounter@yahoo.com

E-mail

Subscribed and sworn to before me this

23rd

day of

March

, 20 11



Delores Manchester
Notary Public

State of Nevada

County of White Pine

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

ATTACHMENT

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

**IN THE MATTER OF APPLICATION) PROTEST BY THE
NO. 54003-54021 FILED BY LAS VEGAS) ELY SHOSHONE TRIBE
VALLEY WATER DISTRICT AND)
OWNED BY SOUTHERN NEVADA)
WATER AUTHORITY TO APPROPRIATE)
UNDERGROUND WATERS OF SPRING)
VALLEY (HYDROGRAPHIC BASIN 184))**

SUMMARY

Pursuant to Nevada Revised Statute (“NRS”) 533.365, the Ely Shoshone Tribe (“Tribe” or “Protestant”) hereby protests Application No. 54003-54021 (“Application” or “Applications”), which were filed by the Las Vegas Valley Water District (“LVVWD”) on October 17, 1989, and later acquired by the Southern Nevada Water Authority (“SNWA”), to appropriate groundwater from Spring Valley (Hydrographic Basin 184).

Protestant states as grounds and reasons for this Protest that: (1) there is an insufficient amount of water available in the proposed source of supply; (2) the application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells; (3) the appropriation and proposed use would be detrimental to the public interest on environmental grounds, environmentally unsound and unsustainable; (4) the appropriation and proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the export basin and hydrologically connected basins; (5) the proposed use is not an appropriate long-term use of Nevada’s limited water supply; (6) the Applicant

has not justified the need to import water from another basin; (7) the Applicant has not implemented a sufficient water conservation plan in the basin(s) in which water will be delivered; (8) the Applicant has not developed a sufficient conservation plan to protect affected basins; (9) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (10) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (11) the appropriation and proposed use would violate the Tribe's reserved water rights; (12) the appropriation and proposed use would violate the Tribe's rights under the Treaty of 1863; (13) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (14) the appropriation and proposed use would unduly injure the Tribe's capacity for self-governance; (15) the applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and (16) failure to demonstrate ability to access land containing point of diversion. These protest grounds are explained below.

INTRODUCTION

SNWA has filed applications to appropriate and transfer large amounts of water from surface and groundwater sources in eastern Nevada, including Spring, Cave, Dry Lake, and Delamar Valleys, located in White Pine and Lincoln Counties. SNWA has also filed applications to appropriate and transfer large amounts of water from Snake Valley, which is located in Utah but extends hydrologically into eastern Nevada. Moreover, Spring and Snake Valleys are part of the Great Salt Lake Desert regional flow system, while Cave, Dry Lake and Delamar Valleys are part of the Colorado regional flow system. SNWA's groundwater development project ("GWD Project") proposes an interbasin

transfer of water via a 300+ mile pipeline to municipalities and other users in southern Nevada.

The Ely Shoshone Indian Reservation ("Reservation") covers over 3,600 acres of land in eastern Nevada (White Pine County). The aboriginal territory of the Tribe was at least partially defined in the Treaty of 1863 (13 Stat. 681-684), signed between the United States and the Tribe, among other Western Shoshone Tribes. The Reservation was first established by an Act of Congress in 1930 (46 Stat. 820). Subsequent Acts added lands to the Reservation in 1931, 1977, and in 2006. Currently, the Reservation is comprised of lands in both Steptoe Valley and White River Valley. The Reservation lies within the Colorado regional flow system, and as such, the Reservation is adjacent to the subject basin and/or hydrologically connected. The subject basin has been a vital area for the Tribe since time immemorial.

The Tribe has multitude of surface and ground water rights that include but are not limited to water rights that are federally reserved, decreed, acquired from existing senior state water right holders, and from the Treaty of 1863. Federal reserved water rights are in a quantity sufficient to fulfill any and all purposes of the Reservation and to satisfy the any and all present and future needs of the Reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981). Tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir. 1956). In addition, the Tribe's federal reserved water rights may be protected against off-reservation groundwater use/diversions, which are hydrologically connected with those reserved waters. *Cappaert v. United States*, 426 U.S. 128 (1976).

I. THERE IS NOT A SUFFICIENT AMOUNT OF WATER AVAILABLE IN THE PROPOSED SOURCE OF SUPPLY

The State Engineer should deny the Application pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. Pursuant to 533.370(5), “where there is no unappropriated water in the proposed source of supply . . . the State Engineer shall reject the application and refuse to issue the requested permit.” The State Engineer has previously ruled that the perennial yield of Spring Valley is 80,000 afy, while existing groundwater permits combine exceed that amount. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins, also indicating that the entire flow system is potentially fully appropriated, if not over-appropriated.

Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section XI below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. The Stipulations entered into by the SNWA and the U.S. Department of the Interior do not properly or adequately protect Tribal water rights or substitute for the required legal recognition and protection of the Tribe’s water rights. It is noteworthy that affected Tribes have consistently objected to the Stipulations, which were negotiated and entered without the legally required

consultation with affected Tribal governments. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863. Thus, the State Engineer must deny the Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, the State Engineer previously found that there is too much uncertainty, too little sound data, and too great of a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. That additional data gathering and evaluation have not been completed, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application. Thus, the State Engineer must deny the Application. The State Engineer has the discretion to require the Applicant to undertake the necessary hydrological study to collect scientifically sound data, fill the appropriate information gaps, reduce uncertainty, and reduce the risk of unsustainable water use and export.

II. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS IN DOMESTIC WELLS

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basin resulting in declining groundwater levels and unreasonable degradation of the level and

quality of the water in existing wells. This will undoubtedly increase water costs to domestic and local users, which include members of the Tribe.

Groundwater sources in the subject basin and downgradient basins are interconnected via the interbasin flow system, and the subject basin is one of several areas that feed downgradient basins. As such, overutilization and overappropriation in the subject basin will negatively impact existing reserved water rights held by Indian tribes, whether the Tribal reserved water rights have been adjudicated, quantified, or utilized. The Stipulated Agreements between SNWA and the Department of Interior agencies cannot substitute for a proper consideration, recognition, and protection of Indian water rights within the subject basin, within hydrologically connected basins, or within the Tribe's treaty lands defined in the Treaty of 1863. Neither can the Stipulated Agreements waive or substitute for properly considered Indian reserved water rights.

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and importantly, to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin, and in downgradient basins will have their domestic wells adversely impacted by the Application, if approved, and SNWA has not demonstrated or devised reasonable mitigation. Thus, the State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a substantial cone of depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone of depression around the well/pumping station. Due to the large amounts of water applied for by SNWA and the large number of

proposed wells (applications) for the SNWA's GWD Project, if approved, the multitude of cones of depression would eventually coalesce and cause widespread drawdown and water quality problems. A cone of depression caused by this Application, if approved, and the entirety of other SNWA applications would conflict with existing rights and be detrimental to the public welfare.

III. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND, UNSUSTAINABLE, AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS AS IT RELATES TO THE BASIN FROM WHICH THE EXPORT IS PROPOSED AND IN HYDROLOGICALLY CONNECTED BASINS

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in SNWA's GWD Project, of which this Application is a part, would threaten to cause serious and irreparable environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound and unsustainable as it relates to the basin of origin and hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), found that pumping ground water was jeopardizing the survival of an endangered species due to lowering of the water level. The Court found that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment"

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest,

as long as other public interests were not unreasonably compromised or could not be mitigated. While SNWA's GWD Project has developed monitoring plans, it should be made clear that monitoring plans absolutely are not adequate or sufficient mitigation. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental impacts that would result from the approval of this Application, among others within the SNWA GWD Project, outweigh strongly the use proposed by the SNWA GWD Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The severe and irreparable harms that would result from the approval of this Application, and others within the GWD Project, would prove to be extremely detrimental to the public interest at national, state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from widespread impacts, despite whether or not monitoring programs have been developed and would be implemented. These grounds, in addition to the other environmental reasons below, strongly weigh in favor of the State Engineer denying this Application.

A. Unsustainable Use and Long-Term Hydrologic and Environmental Impacts

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent

of 533.370(6)(c) is to protect natural resources of basins and prevent a repeat of the Owens Valley scenario, while providing for responsible use of available water. Within that scope, SNWA's GWD Project, which the subject Application is a part, is not a responsible use of available water, the appropriation(s) would not protect natural resources, and the appropriation and GWD Project would greatly limit and burden future economic growth and development within the export basin and hydrographically connected basins. Moreover, this appropriation and proposed use is not sustainable over the long-term, would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. The Tribe relies on these natural resources in the subject basin and in hydrologically connected basins for a large number of vital cultural and religious purposes.

B. Severe and Irreparable Harm to Ecosystems and Wildlife

As mentioned above, the State Engineer and the courts previously have considered harms to ecosystems and wildlife to be within the purview of the public interest. Accordingly and especially in this case, the State Engineer must consider whether harms to ecosystems and wildlife would be detrimental to the public interest. The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and their habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system.

Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. Wildlife taxa likely to be harmfully impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of invertebrates, including but not limited to rare butterfly species and springsnails. Threats to wildlife will include anything from actual extinction, threats to extinction, and drastically altered distributions. In addition to NRS 533.370(6)(c), the appropriation and proposed use from this Application and others that are part of the GWD Project, are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of important and necessary tribal cultural and religious resources.

The unique wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's GWD Project, of which this Application is a part, include but are not limited to Pahrnagat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, Amargosa Valley Pupfish Station, the Desert National Wildlife Refuge Complex, Great Basin National Park, and Swamp Cedars/Shoshone Ponds Natural Area. Many of these protected areas are even considered globally and/or regionally unique and imperiled ecosystems and hold great cultural importance to the Tribe.

Because of these severe and irreparably harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c) and 533.367.

C. Degradation of Cultural, Traditional, Historic, and Sacred Resources

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources, traditions, sacred sites, etc. in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, and the entirety of the GWD Project will cause severe and irreparable harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire GWD Project, of which this Application is a part, include but are not limited to: Native American ritual worship and various sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Tribal ancestors. Cultural resources also include spring ecosystems and various plant and animal species that the Tribe holds sacred and hold religious importance. These and other cultural resources that would be damaged or destroyed if this Application is approved constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

D. Degradation of Water Quality

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. The groundwater drawdown that would be caused by the

appropriation and export of water proposed in this Application would lower the static water table in both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound and unsustainable, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound and unsustainable in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

E. Degradation of Air Quality

It is within the purview of the State Engineer to consider whether the degradation of air quality will be detrimental to the public interest due to a specific action on the subject Application. The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in more xeric and causing groundwater-dependent vegetation to die off in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will cause previously moist and/or vegetated areas to be more susceptible to increased mobilization of particulate

matter, heavy metals, and other chemicals harmful to public health. In other words, the desiccation of these ecosystems will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities, where members of our Tribe live and/or where our sister tribes live. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas may contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. Because of these harmful impacts to the public interest, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

F. Destruction of Recreational and Aesthetic Values

Another major environmental consideration within the purview of the State Engineer's decision on this Application is the destruction of recreational and aesthetic values. These values are important to the public on local, regional, and national levels. The severe decline in groundwater levels that will result from this Application and SNWA's GWD Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate a large number of globally and regionally unique mesic ecosystems, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas for members of our Tribe. Similarly, the loss of water, wildlife, clean air, and good visibility will unduly harm the recreational uses and value of these basins and additional downwind areas. For these reasons, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

IV. THE APPROPRIATION AND EXPORT OF WATER PROPOSED IN THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST ON ECONOMIC GROUNDS AND WOULD UNDULY LIMIT FUTURE GROWTH AND DEVELOPMENT IN THE BASIN FROM WHICH THE EXPORT IS PROPOSED

The appropriation and proposed use would unduly limit future economic activity and growth in basin of origin. As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, mining and prospecting uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential and municipal developments for both year-round and vacation use, and potential future alternative energy developments that members of our Tribe may utilize and gain employment through. Many people would be negatively impacted from the proposed appropriation and SNWA's GWD Project, including residents of Spring Valley, residents of hydrologically connected basins, citizens of Nevada, tourists and travelers, and consumers of products originating from such basins. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

Undue economic harm will extend to the economies and communities of hydrologically

connected and downwind basins. These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's GWD Project radiates outward into downgradient and hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural and tribal economies and communities of other basins. Development of new and expansion of existing economic ventures would be unduly constrained because of inaccessibility to water. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

V. THE PROPOSED USE IS NOT AN APPROPRIATE LONG-TERM USE OF NEVADA'S WATER

Nevada Revised Statute § 533.370(6) provides that the State Engineer, in his determination of whether an application for an interbasin transfer of water must be rejected, shall consider whether the proposed action is an appropriate long-term use. As described in Section IV, the appropriation and export of water from the subject basin would unduly limit economic growth and development within the subject basin, and hydrologically connected basins, and thus be detrimental to the public interest. Population projections and economic growth and development projections in Clark County have proved to be inaccurate, especially in this time of severe economic recession. In contrast, the subject basin, and adjacent areas, have been cued for numerous alternative energy projects that include but are not limited to wind energy facility projects, solar energy facility projects, and electrical transmission line arrays. These types of projects spur additional economic growth and activity. Some of these projects will require water appropriations and this Application and other applications under SNWA's GWD

Project would be greatly detrimental to these energy projects in the subject basin and the corresponding need for additional economic growth and development that would transpire as a result of the construction and operation of those facilities. Moreover, the State Engineer must allow for unanticipated economic growth in the subject basin. The legislative history shows clearly that the State Engineer's decisions to approve or reject water appropriation applications must not unduly limit future economic growth.

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, to economies, to the environment, and to the Tribe, SNWA's GWD Project and this Application are not appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the pumping and exportation of water under this Application before granting water rights to SNWA from the subject basin. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

VI. THE APPLICANT HAS NOT JUSTIFIED THE NEED TO IMPORT WATER FROM ANOTHER BASIN

By the same token, SNWA has not justified the need to import water from another basin. Nevada Revised Statute § 533.370(6) provides that before the State Engineer can approve an application for an interbasin transfer, the applicant must have "justified the need to import the water from another basin." At least two issues are relevant here. First, this Application is not justified because the Applicant has numerous other more feasible and cost-effective options, such as increased water conservation among other options. The State Engineer should not permit such a massive interbasin

transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected basins, when alternatives are available to the Applicant that are more economically sound, environmentally sound, sustainable, and drastically in favor of the public interest and welfare. While the SNWA has instituted a water conservation plan for the Las Vegas area, the transition toward water conservation has been markedly slow over the last two decades. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin and potentially spur innovative water conservation technologies and industries in the Clark County and other areas of Nevada. Implementing significant water conservation policies and regulations can be accomplished fairly rapidly and do not require several decades to implement. Second, this Application has not justified the need to import water from another basin given the current population, housing, and water-demand trends within the import basin – the water demand and population projections that SNWA has been using to justify the GWD Project are not credible. As such, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

VII. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. While SNWA established a goal in the early 1990s of 25% conservation by 2010 and surpassed that

goal in advance, the water conservation plan and the 25% goal are not sufficient measures by which the State Engineer should approve an application. By the same reasoning, the State Engineer would have the discretion to accept a SNWA water conservation plan of 1% conservation in 25, 50, or even 100 years. The legislative intent of NRS 533.370(6) is to require a sufficient and highest practicable level of water conservation for the basin into which the water is imported so as to make an interbasin transfer a last resort. SNWA's current water conservation plan and goals are insufficient because substantial water conservation gains still can be obtained in Clark County and the Las Vegas Valley, at a fraction of the cost of the SNWA's GWD Project and without detriment to the public interest and welfare. As such, the State Engineer must require SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by conservation-minded water-scarce municipalities – before being permitted to transfer groundwater from the subject basin and other GWD Project basins. The State Engineer must require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. The State Engineer must also require SNWA to submit a conservation plan that compares those conservations measures to the GWD Project in terms of cost and timelines for export and import basins. Unless SNWA submits such a plan, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b).

VIII. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect

affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section III above, the Application and the GWD Project as a whole are environmentally unsound, unsustainable, and will have long-term environmental impacts within the subject basin and hydrologically connected basins within the same flow system. While biological and hydrological monitoring plans have been developed by SNWA, these plans are insufficient on numerous counts, including but not limited to being scientifically flawed and generally insufficient.

Second, NRS § 533.370(6)(d) provides that an application for interbasin transfer of water must not unduly limit future growth and development. The subject basin's future growth and development is already under way with the construction and operation of alternative energy projects and transmission lines, among other things. Predicting the amount of groundwater needed for future growth and development in the subject basin may be difficult, but the State Engineer should require SNWA to do so as part of a monitoring and mitigation plan for the export basin and/or as part of the water conservation plan for the import basin. SNWA has failed to provide reasonable and sufficient projections of future growth and development for the export basin. Just as SNWA's population and water demand projections did not predict that the Las Vegas Valley would experience an economic bust and substantial loss of population (and therefore much reduced water demand), SNWA's attempts to forecast future growth and economic development in the subject basin are also highly flawed.

Third, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone of depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or

rely on such water sources. The biological and hydrological monitoring plans do not provide safeguards from these potential impacts because: (1) monitoring plan and early detections in the plans are highly flawed; (2) monitoring and early detection for such purposes have proven to be insufficient in the past; (3) cones of depression are very likely to impact springs, seeps, and associated wildlife resources in the initial area of the cone of depression; and (4) cones of depression are likely to move downgradient and adversely impact downgradient springs, seeps, and associated wildlife.

Fourth, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone of depression and lowering of the water level that would result from the approval of this Application, and others associated with the GWD Project, is very likely to negatively affect water quality by drawing in low quality water and cause areas to coalesce. Such impacts will occur within the subject basin and in downgradient basins within the same flow system. SNWA has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor do the monitoring plans ensure that early detection will offset those impacts because once the groundwater impacts have been realized the impacts will persist over the long-term.

IX. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that natural.

resources, which by definition includes historic and cultural resources, endangered species, water quality, among other resources, are of public interest. By establishing the State Historic Preservation Office under NRS §383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes “that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin”¹ The State Engineer also has found that while “NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues.” Moreover, the “State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources.” Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The Application and proposed use from the subject basin will result in groundwater drawdown in the subject basin and in hydrologically connected basins and will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

¹ State Engineer's Ruling #5726 dated April 16, 2007, in the matter of applications 54003 through 54021.

X. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate the following, but not limited to: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863. Nevada Legislature's intent of giving the State Engineer authority to approve water applications has never been to do so in a manner that would violate state and federal mandates, or state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the export of water will violate some or all of the above-listed laws due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot violate federal and state laws. As such, the State Engineer's purview is to make decisions that are not in violation of law. To do otherwise is against the public interest and welfare. Therefore, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

XI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RESERVED WATER RIGHTS

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's federal reserved water rights. The State Engineer has the authority to deny the Application on those

grounds pursuant to either NRS §§ 533.370(5) or 533.370(6)(e). Given that Congress and the federal government are representatives of the public and they established a permanent and federally recognized homeland for the Tribe, Congress and the federal government have deemed the establishment of Indian reservations and their associated rights to be in the public interest. The designation of the Reservation concomitantly reserved water rights for the Tribe.

The Tribe has rights to large amounts of water, no matter if those rights are quantified, remain unquantified, or even unused. Such water rights are predicated on the fact that the date of creation of the Reservation not only reserved the land, but also reserved the rights to water in an amount necessary to fulfill the purposes of the reservation. *Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546, 600 (1963). As a result of *Winters*, the creation of the Reservation implied federal reserved water rights for the Tribe effective starting when the Reservation was formally established. *Arizona v. California*. Those reserved water rights remain regardless of utilization or quantification. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10th Cir. 1994).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's federal reserved water rights, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even adjacent basin and/or in separate basins that are downgradient and within the same hydrologic flow system. If the State

Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's reserved water rights. Pursuant to NRS § 533.370(6)(e), the State Engineer must consider violations of tribal reserved water rights as a highly relevant factor in acting on this Application that is part of an interbasin transfer. And as such, the State Engineer must deny this Application.

XII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATY OF 1863

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress, which the Supreme Court has determined has “plenary authority” of Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaty of 1863 designates and recognizes certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally recognized treaty lands are clearly within the public interest. As discussed above, Western Shoshone tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized.

Such water rights, to some extent, are predicated on the fact that the Treaty of 1863 designates a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaty. Those rights remain regardless of non-use or being unquantified. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10th Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful groundwater pumping that will infringe upon or diminish water necessary to satisfy the Tribe's reserved water right. It is important to emphasize that the Tribe's water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe's reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaty of 1863 are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems and laws, as in Nevada, do not affect the rights of the Tribe's treaty lands and Reservation. *Power Comm'n v. Oregon*, 349 U.S. 435 (1955).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even in separate basins that are

hydrologically connected. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's rights reserved and guaranteed under the Treaty of 1863. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

XIII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust or fiduciary relationship with Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government to government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands. Under 20 USC § 7401 Congress declared: it is "the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people." The Secretary of Interior in 25 CFR § 225.1 states that the Secretary "continues to have a trust obligation to ensure that the rights of a tribe or individual Indians are protected in the event of a violation." The Department of Justice's Policy on Indian Sovereignty and Government-to-Government Relations with the Indian Tribes states that "the Department shall be guided . . . by the United States' trust responsibility in the many ways in which the

Department takes action on matters affecting Indian tribes.” The federal-tribal relationship and the federal government’s responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government’s “trust responsibilities to protect Indian water rights.” See 43 USC § 371. There is a large list of federal mandates, policies, and federal court decisions regarding the federal government’s trust responsibilities to protect the Tribe’s interests, resources, and rights.² Thus, the federal government’s trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe’s water rights and resources within the Tribe’s aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

XIV. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE’S CAPACITY FOR SELF-GOVERNANCE

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority,

² See, e.g., *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Seminole Nation v. US*, 316 US 297 (1942); *Worcester v. Georgia*, 31 US 515; *Manchester Band of Pomo Indians v. US*, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir 1981); *Menominee Tribe v. US*, 101 Ct Cl 10, 19-20 (1944); *Pardvano v. Babbitt*, 70 F.3d 539, 545 (9th Cir 1995).

the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's capacity to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public interest. As such, the Application, and others that are part of the GWD Project, if approved, falls strictly counter to the public interest on this element. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and conducting an interbasin transfer of water in ways that will unduly injure the Tribe's water resources and rights will concomitantly injure the Tribe's ability for tribal self-governance, its ability to regulate its territory, and its ability to provide necessary benefits and services to its members on or off reservation lands. This is a highly relevant factor that the State Engineer should consider with the interbasin transfer decision. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

XV. THE APPLICANT HAS NOT DEMONSTRATED THE GOOD FAITH INTENT OR FINANCIAL ABILITY AND REASONABLE EXPECTATION TO CONSTRUCT THE WORK AND APPLY THE WATER TO THE INTENDED BENEFICIAL USE WITH REASONABLE DILIGENCE

The current economic recession has severely altered the economic boom trajectory that Las Vegas had been undergoing for many years. As a result of the recession, Las Vegas Valley population base has decreased, a large number of homes are now vacant, and demand for water has been truncated. It is highly uncertain at this point in time as to whether the Las Vegas economy will rebound. It is also

highly uncertain as to when the economy will rebound, and to what extent that economic rebound will affect the Las Vegas Valley. In contrast, the trajectory for eastern Nevada is moving in a positive direction. For example, the Spring Valley Wind Energy Facility was approved by the BLM recently and will bring over 225 construction and operation jobs to the county and approximately \$1.6 million dollars to the local tax base in the next year, part of which will go towards money for schools and other programs. This is just one of about 16 other wind projects that are planned for eastern Nevada that will bring jobs and economic gains to the eastern Nevada. These projects are all in the public interest as Congress, the federal government, and the Nevada Legislature all have similar initiatives to establish Nevada as leader in alternative energy developments and provide such clean energy to the public.

To date, the Applicant has not provided the State Engineer or the public with a cost projection for the pipeline project. Estimates for such a project, however, are in the billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See* Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct the GWD Project. *See* I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project, or at least not within a reasonable time frame, and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative

request to tie up Nevada's water resources indefinitely.

The Applicant has not conducted reasonable diligence to construct the GWD Project. Partial completion of ROW grants/NEPA process does not constitute reasonable diligence on SNWA's part to ensure that Nevada's water will be put to beneficial use. The only thing that the partial progress in the NEPA process and BLM ROW ensures is that SNWA intends to have the necessary grants and permits in place if such a need arises in the future. Even if BLM rights-of-way are granted by the BLM, there is no assurance that the water will be put to beneficial use within a reasonable amount of time. Moreover, the highly uncertain economic future in Las Vegas area provides rationale to deny this Application. Because of these reasons, the State Engineer should deny the Application under NRS § 533.370(1)(c).

Moreover, the Application does not clearly describe the place of use, the proposed works, the estimated projects costs of the works, the number and types of units to be served, or the annual consumptive use. It is also not clear as to whether the diversions sought by the Application, and others that are part of the SNWA GWD Project, are necessary and/or in an amount reasonably required for the beneficial uses that have been applied for.

XVI. FAILURE TO DEMONSTRATE ABILITY TO ACCESS LAND CONTAINING POINT OF DIVERSION

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence. Thus, the State Engineer should deny the Application under NRS § 533.370(1)(c).

XVII. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION

SNWA's proposed GWD Project is a massive project and adverse impacts from the Project are certain and they are likely to be both intensive and extensive over various spatial and temporal scales. New scientific or other data, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

XVIII. INCORPORATION OF OTHER PROTESTS TO SNWA'S APPLICATIONS BY REFERENCE

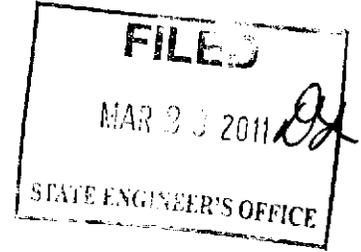
The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's GWD Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Southern Nevada Water Authority
ON October 17, 2011



PROTEST



1289
20-89

Comes now Juab County a political subdivision of the State of Utah
Printed or typed name of protestant
whose post office address is 160 North Main Nephi, UT 84648
Street No. or PO Box, City, State and ZIP Code
whose occupation is by and through the Juab County Board of Commissioners and protests the granting
of Application Number 54021, filed on October 17
by Southern Nevada Water Authority for the
waters of underground in Spring Valley Hydrographic Area #184 situated in White Pine
an underground source or name of stream, lake, spring or other source
County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment



THEREFORE the Protestant requests that the application be Denied
Denied, issued subject to prior rights, etc., as the case may be
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed Chad P. Winn
Agent or protestant
Chad P. Winn Acting Chairman Board of Commissioners
Printed or typed name, if agent
Address 160 North Main
Street No. or PO Box
Nephi Utah
City, State and ZIP Code
(435) 623-3410
Phone Number
glenn@co.juab.ut.us
E-mail

Subscribed and sworn to before me this 22 day of March, 20 11



Annette J. Lovell
Notary Public
State of Utah
County of Juab

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

**ATTACHMENT OF REASONS AND GROUNDS FOR JUAB COUNTY'S PROTEST
AGAINST APPLICATION NO. 54021, FILED OCTOBER 17, 1989 BY SOUTHERN
NEVADA WATER AUTHORITY**

This attachment lists and briefly describes the reasons and grounds for this protest of Juab County Utah ("Protestant") against Application Number 54021 The Southern Nevada Water Authority ("SNWA" or "Applicant") has filed this Application to appropriate groundwater from Spring Valley as part of its massive proposed network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County (the "Pipeline Project").

In sum, Protestant asserts as reasons and grounds for this Protest that: (1) there is insufficient unappropriated water in the proposed source of supply to support the application or the proposed use; (2) the proposed use would conflict impermissibly with existing water rights and protectable interests in domestic wells; (3) the proposed use would be detrimental to the public interest on environmental grounds and would be environmentally unsound as it relates to the basin from which the water is proposed to be exported; (4) the proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the water is proposed to be exported; (5) the proposed action is not an appropriate long-term use of water; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant does not have and is not effectively implementing an adequate or reasonable plan for conservation in the area of proposed use; and (8) the Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence. These protest grounds are further explained below.

1. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby deplete and diminish the water resources, specifically groundwater, which is available to Juab County and its businesses and residents.
2. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby have a negative impact on the residents of Juab County, Utah by depletion of the underground water aquifers and natural surface waters. Due to the recurring drought conditions throughout west Juab County, there is reduced recharge to the aquifers in this area and reduced surface water accumulations.
3. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby concentrate the use of water and lower the water table to such an extent that it will substantially reduce groundwater-dependent vegetation, which will destabilize soils and contribute to blowing dust resulting in reduced air quality in Juab County and northward into other Utah counties. Air quality is specifically impacted by the alkali nature of the soils in the area resulting in public health impacts and other social costs. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas is likely to contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation.
4. In addition to the other effects of groundwater table drawdown, granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby eliminate specific sources and the overall available supply of groundwater in the hydrographic basin to support both existing economic activities and potential future economic growth. Existing

economic activities that would be undermined include livestock and other ranching uses, agriculture, domestic uses, mining and prospecting uses, tourism and recreational uses. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, as well as potential future energy development. As a result, the proposed change(s) will have a negative impact on grazing, agriculture, mining, recreation, natural habitat, scenery and general aesthetics.

5. Based on the interconnectivity of the hydrogeologic structures in the Great Basin as identified by the USGS BARCASS report and other such investigations and reports, granting this application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby cause long-term detrimental effects on other ground water resources and flows in other parts of Juab County and other Utah counties, negatively impacting the agricultural industry of Juab County and other Utah Counties.
6. Granting the application and other applications filed contemporaneously therewith, will interfere with interbasin flow from Spring Valley to Snake Valley and thereby lower the static water level in the area of Juab County in the vicinity of the proposed underground pumping. Such changes will adversely affect the quality of the remaining ground water and will further threaten springs, seeps, and phreatophytes which provide water and habitat critical to the use and survival of wildlife species.
7. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby cause economic harm to Juab County including but not limited to depletion of the county tax base in the area and potential damage to the ability of agricultural interests to develop and expand in the area of the proposed underground pumping under the application and the other applications filed contemporaneously therewith.
8. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby conflict impermissibly with and impair existing senior water rights and protectable interests in domestic and agricultural wells in the basin of origin and other hydrologically connected basins within the same interbasin flow system.
9. The State Engineer previously has found that there is too much uncertainty, too little sound data and too great a risk of unsustainable over-appropriation in the interbasin flow system of which this basin is a part, for further appropriations to be permitted until substantial additional data were gathered and evaluated. Sufficient data gathering and evaluation have not been completed concerning interbasin flow from Spring Valley to Snake Valley, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the interbasin flow system and associated carbonate rock province, including the basin targeted by this application.
10. Given the lack of growth in the Las Vegas area due to the recent economic downturn there, and due to the fact that the applicant recently announced in the BLM EIS that it intends to use the groundwater available under this and the companion applications as a backup if other resources fail, the application should be denied absent clear proof satisfactory to the State Engineer that applicant intends in good faith to carry out the groundwater development project and construct the work necessary to complete the project and put the groundwater to beneficial use with reasonable diligence, as required by NRS 533.370(1)(c)(1).

11. NRS 533.370(1)(c)(2) requires applicant to provide satisfactory proof to the State Engineer of the applicant's financial ability and reasonable expectation actually to construct the groundwater project and apply the water to the intended beneficial use with reasonable diligence. Those requirements are not attainable under the current Las Vegas area economic downturn with its resulting economic difficulties for applicant and its member municipalities and districts, and applicant will have failed this statutory requirement outright if the economic downturn continues much longer, requiring that the application be denied outright.
12. There is no groundwater left in the hydrographic area targeted by the application that can be safely appropriated above and beyond that which is already appropriated without disrupting the interbasin flow from Spring Valley to Snake Valley. Therefore, under NRS 533.370(5) the application should be denied.
13. The use of groundwater proposed and targeted by the application and the interference it will cause to interbasin flow from Spring Valley to Snake Valley conflicts with existing water rights or with protectable interests in existing domestic wells as set forth in NRS 533.024. Therefore, under NRS 533.370(5) the application should be denied.
14. The use of groundwater proposed and targeted by the application and the interference it will cause to the interbasin flow from Spring Valley to Snake Valley threatens to prove detrimental to the public interest. Therefore, under NRS 533.370(5) the application should be denied.
15. Given the severity and duration of the economic downturn in the Las Vegas area and the resulting halt in economic growth, the applicant cannot justify the need to import water from another basin. Therefore the interbasin transfer of water targeted in the application and its resulting interference with interbasin flow from Spring Valley to Snake Valley should be denied as required by NRS 533.370(6)(a).
16. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby deplete the quantity and quality of water flow in various springs and seeps throughout the basin targeted by the application and will thereby diminish and otherwise damage riparian areas and the riparian vegetation, riparian wildlife, migrating birds and livestock that depend upon those riparian areas. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.
17. Granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby unreasonably deplete the water table throughout the basin targeted by the application and will thereby diminish and otherwise damage the phreatophytic vegetative species that depend on the water table as well as the wildlife and livestock that depend on those phreatophytic species. This loss of water will cause significant direct harm to many wildlife species and to wildlife habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. The list of species likely to be harmful-

ly impacted by the appropriation and export of water proposed in this Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of insects, including rare butterfly species. As stated in paragraph 3 above, this phreatophytic plant loss will destabilize soils and contribute to dust and other air quality problems. Accordingly, under NRS 533.370(6)(c), the interbasin application targeted in the application should be denied as not environmentally sound as it relates to the basin of origin.

18. As stated in the previous paragraphs, granting the application will interfere with interbasin flow from Spring Valley to Snake Valley and thereby unduly limit the future growth and development in the basin of origin from which the water will be exported. Accordingly under NRS 533.370(6)(d), the interbasin application targeted in the application should be denied.
19. If the application is not denied outright, then any permitted use under this application should be conditioned upon and preceded by sufficient comprehensive studies of groundwater resources in the area and interbasin flow from Spring Valley to Snake Valley, and the impacts on those resources by limited incremental ground water pumping and withdrawal to intermittent levels. No additional pumping and export of water should be allowed unless the intermittent staged pumping in Spring Valley proves beyond a reasonable doubt not to interfere with the groundwater flow from Spring Valley to Snake Valley that could damage all of the resources of Juab County mentioned above.

Protestant Reserves The Right To Amend This Protest As May Be Warranted By Future Developments:

SNWA's proposed groundwater export project is on a scale never before seen in Nevada, or in the United States. Thus, it is not possible to anticipate all potential adverse impacts without further study. New scientific or other data and changed circumstances may uncover different bases for this protest. Accordingly, the above-named Protestant reserves the right to amend the subject protest to include such issues as they develop.

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IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

2011 MAR 23 AM 10:39

_____)
 In the Matter of Application Number 54021)
 Filed on October 17, 1989 held by Southern)
Nevada Water Authority for Permission to)
 Appropriate the Public Waters of the State)
 of Nevada)
 _____)

STATE ENGINEERS OFFICE

PROTEST

Comes now The Long Now Foundation, whose post office address is Fort Mason Center, Landmark Building A, San Francisco, California 94123, and protests the granting of Application Number 54021, filed on October 17, 1989. Application No. 54021 is one of 19 applications (App Nos. 54003-54021) held by Southern Nevada Water Authority (SNWA) to appropriate water rights in the Spring Valley Basin. Recently re-noticed by the State Engineer of Nevada in order to reopen the protest period, the Long Now Foundation protests the granting of Application No. 54021 for permission to appropriate the public waters of the State of Nevada, for the following reasons and on the following grounds, to wit:

1. The full extent of the water exportation scheme contemplated by SNWA is unknown at this time and it is uncertain how many additional groundwater and/or surface water appropriations or change applications SNWA will file to supplement the amount of water sought by Application No. 54021. Before acting on the individual applications, the applicant should be required to provide a detailed abstract of the total duty of water sought for exportation including details as to the supplemental nature of the individual groundwater and surface water applications.

2. The applicant's answer to "Question 12" does not provide sufficient details for the proposed project or proposed water usage, to allow the public, interested parties, protestants, and the State Engineer to make a proper evaluation of the potential impacts of approving the application. Based on the scope and magnitude of the water exportation scheme proposed by Application Nos. 54021 et al., the applicant should be required to conduct the Hydrologic and Environmental Studies specified by NRS 533.368, before the State Engineer makes a final determination on the applications.

3. On information and belief, Application Nos. 54021 et al. seek to appropriate more groundwater than the perennial yield of the basin as currently recognized by the State Engineer.

4. On information and belief, Application Nos. 54021 et al. seek to appropriate more groundwater than the safe yield of the basin.

5. The application involves an interbasin transfer and should be rejected pursuant to NRS 533.370(6) for, among other reasons, the applicant's failure to:

- A. justify the need to import water to the other basin(s);
- B. demonstrate that a conservation plan(s) has been adopted and effectively carried out for the other basin(s);
- C. demonstrate that the proposed export of water from the basin is environmentally sound;
- D. demonstrate that the proposed action is an appropriate long-term use which will not limit growth and development in the basin; and,
- E. identify the specifics of the proposed project, including the basin(s) into which water will be imported.

6. The application for interbasin transfer should also be rejected pursuant to NRS 533.370 for the lack of information regarding:

- A. access to the use of public/private lands necessary for the construction of the works of diversion and the means of conveyance;
- B. financial ability to construct the works and apply the water to the intended use with reasonable diligence;
- C. technical feasibility to construct the works and apply the water to the intended use with reasonable diligence; and,
- D. justification for the quantity of water required for the proposed project.

7. Granting the application would threaten to prove detrimental to the public interest.

8. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of filing of the Application and the hearing on the protested Application.

9. Granting the application would threaten to prove detrimental to the public interest and the interests and rights of The Long Now Foundation for the reasons stated above, and because among other things, it would:

- A. result in degraded air quality and adverse impacts to visual resources in the region;
- B. result in adverse economic impacts due to degraded air quality and visual resources;
- C. result in adverse impacts to hydrological, biological, cultural, and environmental resources;
- D. result in adverse impacts to the riparian vegetation and natural habitat that support sensitive plant and animal species in the region;
- E. result in adverse impacts to the water resources in adjacent basins;
- F. result in interference with artesian water sources, springs, and seeps in the region; and,
- G. otherwise adversely affect the interests of The Long Now Foundation.

10. This Protestant incorporates in this Protest by reference, as if fully set forth herein, every relevant protest ground set forth in any other Protest filed by any other Protestant regarding this application.

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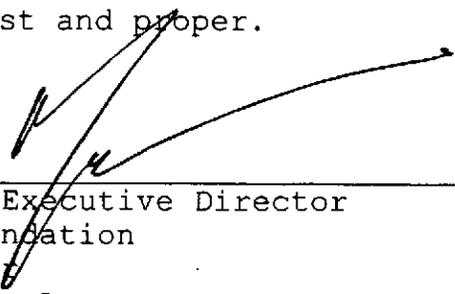
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THEREFORE this Protestant requests that the above-referenced application be denied and that an order be entered for such relief as the State Engineer deems just and proper.



Alexander Rose, Executive Director
The Long Now Foundation
Fort Mason Center
Landmark Building A
San Francisco, CA 94123
Tel: (415) 561-6582

Subscribed and sworn to before me this 21 day of March, 2011.

Laura Buzard - Welch

Notary Public



State of California

County of San Francisco

My Commission Expires: July 25, 2014

\$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE - ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

FILED
MAR 2 2011
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District/SNWA
ON October 17, 20 1989

PROTEST

Comes now Duckwater Shoshone Tribe

Printed or typed name of protestant

whose post office address is 511 Duckwater Falls, Duckwater, Nevada 89314

Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe

and protests the granting

of Application Number 54021, filed on October 17

19 20 89

by Las Vegas Valley Water District/SNWA

for the

waters of underground (Basin 184)

situated in White Pine

an underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment.

RECEIVED
2011 MAR 23 AM 11:43
STATE ENGINEER'S OFFICE

THEREFORE the Protestant requests that the application be

DENIED

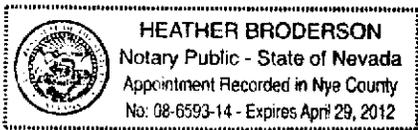
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Virginia Sanchez
Agent or protestant

Printed or typed name, if agent



Address

511 Duckwater Falls

Printed or typed name, if agent

Street No. or PO Box

Duckwater, Nevada 89314

City, State and ZIP Code

775.863.0227

Phone Number

E-mail

Subscribed and sworn to before me this 21st day of March, 20 11

Heather Broderon
Notary Public

State of

Nevada

County of

Nye

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

ATTACHMENT

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION)	PROTEST BY
NO. 54003-54021 FILED BY LAS VEGAS)	DUCKWATER SHOSHONE TRIBE
VALLEY WATER DISTRICT AND)	
OWNED BY SOUTHERN NEVADA)	
WATER AUTHORITY TO APPROPRIATE)	
UNDERGROUND WATERS OF SPRING)	
VALLEY (HYDROGRAPHIC BASIN 184))	

Pursuant to Nevada Revised Statute (“NRS”) 533.365, the Duckwater Shoshone Tribe (“Tribe” or “Protestant”) hereby protests Application No. 54003-54021 (“Application” or “Applications”), which were filed by the Las Vegas Valley Water District (“LVVWD”) on October 17, 1989, and later acquired by the Southern Nevada Water Authority (“SNWA”), to appropriate groundwater from Spring Valley (Hydrographic Basin 184).

SNWA has filed applications to appropriate and transfer large amounts of water from surface and groundwater sources in eastern Nevada, including: Spring, Cave, Dry Lake, and Delamar Valleys, located in White Pine and Lincoln Counties. SNWA has also filed applications to appropriate and transfer large amounts of water from Snake Valley, which is located in Utah but extends hydrologically into eastern Nevada. Moreover, Spring and Snake Valleys are part of the Great Salt Lake Desert regional flow system, while Cave, Dry Lake, and Delamar Valleys are part of the Colorado regional flow system. SNWA's groundwater development project (“GWD Project”) proposes an interbasin transfer of water via a 300+ mile pipeline to municipalities and other users in southern Nevada.

The Duckwater Shoshone Indian Reservation (“Reservation”) is located in Duckwater

Valley/Railroad Valley-North in Nye County, Nevada. The Reservation's current size is approximately 3,855 acres. The Tribe has water rights that date back at least as far as 1867, if not 1863, and the Tribe's reserved and secured rights are for both surface and ground water in an amount sufficient to fulfill the purposes of the Reservation, and to satisfy the present and future needs of the Reservation. *See Winters v. United States*, 207 U.S. 564 (1908); *Arizona v. California*, 373 U.S. 546 (1963) (Arizona I); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981). Moreover, tribal water rights are not limited to water sources that originate on tribal lands. *United States v. Ahtanum Irrigation District*, 236 F.2d 321 (9th Cir. 1956). Federal reserved water rights for the Tribe extend to groundwater in other basins or areas to the extent that water is necessary to accomplish any and all purposes of the Reservation. *Id.*

The subject basin has been part of the Tribe's aboriginal territory, and a centerpiece of Tribal activity and occupancy, since time immemorial. The subject basin falls within the Tribe's treaty lands, defined by the Treaty of 1863 in Ruby Valley (13 Stat. 681-684) between the United States and Western Shoshone Tribes, including the Duckwater Shoshone. A large number of tribal trust resources and interests exist within the subject basin, in hydrologically connected basins, and in all areas potentially impacted by the SNWA GWD Project.

SUMMARY

Protestant states as grounds and reasons for this Protest that: (1) there is an insufficient amount of water available in the proposed source of supply; (2) the application and proposed use would conflict with existing water rights and impermissibly diminish the sources of and protectable interests in domestic wells; (3) the appropriation and proposed use would be environmentally unsound, unsustainable, and detrimental to the public interest on environmental grounds; (4) the appropriation

and proposed use would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the export basin and in hydrologically connected basins; (5) the proposed use is not an appropriate long-term use of Nevada's limited water supply; (6) the Applicant has not justified the need to import water from another basin; (7) the Applicant has not implemented a sufficient water conservation plan in the basin(s) in which water will be delivered; (8) the Applicant has not developed a sufficient conservation plan to protect affected basins; (9) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (10) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (11) the appropriation and proposed use would violate the Tribe's rights under the Treaty of 1863 at Ruby Valley; (12) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (13) the appropriation and proposed use would unduly injure the Tribe's sovereignty and ability to regulate their territory; (14) the applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence; and (15) failure to demonstrate ability to access land containing point of diversion. These protest grounds are explained below.

I. THERE IS NOT A SUFFICIENT AMOUNT OF WATER AVAILABLE IN THE PROPOSED SOURCE OF SUPPLY

The State Engineer should deny the Application pursuant to NRS § 533.370(5), because there is insufficient water available for appropriation in the proposed source of supply. Pursuant to 533.370(5), "where there is no unappropriated water in the proposed source of supply . . . the State Engineer shall reject the application and refuse to issue the requested permit." The State Engineer has previously ruled

that the perennial yield of Spring Valley is 80,000 afy, while existing groundwater permits combine exceed that amount. The appropriation of this water, when added to the already approved appropriations in the basin of origin and hydrologically connected basins within the same flow system, will exceed the perennial yield of those basins, also indicating that the entire flow system is potentially fully appropriated, if not over-appropriated.

Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section XI below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. The Stipulations entered into by the SNWA and the U.S. Department of the Interior do not properly or adequately protect Tribal water rights or substitute for the required legal recognition and protection of the Tribe's water rights. It is noteworthy that affected Tribes have consistently objected to the Stipulations, which were negotiated and entered without the legally required consultation with affected Tribal governments. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863. Thus, the State Engineer must deny the Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, the State Engineer previously found that there is too much uncertainty, too little sound data, and too great of a risk of unsustainable overappropriation in the interbasin flow system, of which this basin is a part, for further appropriations to be permitted until substantial additional data

were gathered and evaluated. That additional data gathering and evaluation have not been completed, and until that happens it would be premature to permit any additional appropriation from hydrologically interconnected basins within the carbonate rock province, including the basin targeted by this Application. Thus, the State Engineer must deny the Application. The State Engineer has the discretion to require the Applicant to undertake the necessary hydrological study to collect scientifically sound data, fill the appropriate information gaps, reduce uncertainty, and reduce the risk of unsustainable water use and export.

II. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS IN DOMESTIC WELLS

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in domestic wells in the basin targeted by this Application and hydrologically connected basins within the same interbasin flow system. When added to the previously approved appropriations in the subject basin and hydrologically connected basins within the same interbasin flow system, the proposed appropriation and use will exceed the perennial yield of the subject basin resulting in declining groundwater levels and unreasonable degradation of the level and quality of the water in existing wells. This will undoubtedly increase water costs to domestic and local users, which include members of the Tribe.

Groundwater sources in the subject basin and downgradient basins are interconnected via the Great Salt Lake Desert flow system, and Spring Valley is one of several areas that is essentially the headwaters of downgradient basins. As such, overutilization and overappropriation in the subject basin will negatively impact existing reserved water rights held by Indian tribes, whether the Tribal reserved

water rights have been adjudicated, quantified, or utilized. The Stipulated Agreements between SNWA and the Department of Interior agencies cannot substitute for a proper consideration, recognition, and protection of Indian water rights within the subject basin, within hydrologically connected basins, or within the Tribe's treaty lands defined in the Treaty of 1863 in Ruby Valley. Neither can the Stipulated Agreements waive or substitute for properly considered Indian reserved water rights.

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and importantly, to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin, and in downgradient basins will have their domestic wells adversely impacted by the Application, if approved, and SNWA has not demonstrated or devised reasonable mitigation. Thus, the State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a substantial cone of depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone of depression around the well/pumping station. Due to the large amounts of water applied for by SNWA and the large number of proposed wells (applications) for the SNWA's GWD Project, if approved, the multitude of cones of depression would eventually coalesce and cause widespread drawdown and water quality problems. A cone of depression caused by this Application, if approved, and the entirety of other SNWA applications would conflict with existing rights and be detrimental to the public welfare.

III. THE APPROPRIATION AND PROPOSED USE WOULD BE

ENVIRONMENTALLY UNSOUND, UNSUSTAINABLE, AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS AS IT RELATES TO THE BASIN FROM WHICH THE EXPORT IS PROPOSED AND IN HYDROLOGICALLY CONNECTED BASINS

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in SNWA's GWD Project, of which this Application is a part, would threaten to cause serious and irreparable environmental harms in the basin from which water is proposed to be appropriated and exported and in hydrologically connected downgradient basins within the same interbasin flow system. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound and unsustainable as it relates to the basin of origin and hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), found that pumping ground water was jeopardizing the survival of an endangered species due to lowering of the water level. The Court found that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment"

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, as long as other public interests were not unreasonably compromised or could not be mitigated. While SNWA's GWD Project has developed monitoring plans, it should be made clear that monitoring plans absolutely are not adequate or sufficient mitigation. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental

impacts that would result from the approval of this Application, among others within the SNWA GWD Project, outweigh strongly the use proposed by the SNWA GWD Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The severe and irreparable harms that would result from the approval of this Application, and others within the GWD Project, would prove to be extremely detrimental to the public interest at national, state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from widespread impacts, despite whether or not monitoring programs have been developed and would be implemented. These grounds, in addition to the other environmental reasons below, strongly weigh in favor of the State Engineer denying this Application.

A. Unsustainable Use and Long-Term Hydrologic and Environmental Impacts

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins and prevent a repeat of the Owens Valley scenario, while providing for responsible use of available water. Within that scope, SNWA's GWD Project, which the subject Application is a part, is not a responsible use of available water, the appropriation(s) would not protect natural resources, and the appropriation and GWD Project would greatly limit and burden future economic growth and development within the export basin and

hydrographically connected basins. Moreover, this appropriation and proposed use is not sustainable over the long-term, would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. The Tribe relies on these natural resources in the subject basin and in hydrologically connected basins for a large number of vital cultural and religious purposes.

B. Severe and Irreparable Harm to Ecosystems and Wildlife

As mentioned above, the State Engineer and the courts previously have considered harms to ecosystems and wildlife to be within the purview of the public interest. Accordingly and especially in this case, the State Engineer must consider whether harms to ecosystems and wildlife would be detrimental to the public interest. The proposed appropriation, export and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in drying out springs, seeps, wetlands, wet meadows, and moist playas, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water will cause significant direct harm to many wildlife species and their habitat in the basin from which this Application proposes to appropriate and export water and in hydrologically connected downgradient basins within the same interbasin flow system. Among the species that will be harmfully impacted by this loss of water are a number of federally and state protected species, including federally listed threatened and endangered species, which will be threatened with extinction as a result of the proposed appropriation and export of this water. Wildlife taxa likely to be harmfully impacted by the appropriation and export of water proposed in this

Application, includes fish, amphibians, other aquatic species, groundwater-dependent mammals and other terrestrial species, bird species that depend on the springs, wetlands, wet meadows, and vegetation supported by groundwater, and a variety of invertebrates, including but not limited to rare butterfly species and springsnails. Threats to wildlife will include anything from actual extinction, threats to extinction, and drastically altered distributions. In addition to NRS 533.370(6)(c), the appropriation and proposed use from this Application and others that are part of the GWD Project, are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of important and necessary tribal cultural and religious resources.

The unique wildlife habitat areas and refugia likely to be harmed by the appropriation and export of water proposed in this Application and SNWA's GWD Project, of which this Application is a part, include but are not limited to Pahranaagat National Wildlife Refuge, Kirch Wildlife Management Area, Key Pittman Wildlife Management Area, Moapa Valley National Wildlife Refuge, Overton Wildlife Management Area, Ash Meadows National Wildlife Refuge, Amargosa Valley Pupfish Station, the Desert National Wildlife Refuge Complex, Great Basin National Park, and Swamp Cedars and Shoshone Ponds Natural Area. Many of these protected areas are even considered globally and/or regionally unique and imperiled ecosystems and hold great cultural importance to the Tribe.

Because of these severe and irreparably harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c) and 533.367.

C. Degradation of Cultural, Traditional, Historic, and Sacred Resources

The environmental harms described above also will lead to the pronounced degradation, and in

some instances destruction, of cultural resources, traditions, sacred sites, etc, in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, and the entirety of the GWD Project will cause severe and irreparable harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and export of water proposed under this Application and SNWA's entire GWD Project, of which this Application is a part, include but are not limited to: Native American ritual worship and various sacred sites, prehistoric Native American village or dwelling sites, Native American graves or burial sites, and scenes of historic massacres of Tribal ancestors. Cultural resources also include spring ecosystems and various plant and animal species that the Tribe holds sacred and hold religious importance. These and other cultural resources that would be damaged or destroyed if this Application is approved constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

D. Degradation of Water Quality

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. The groundwater drawdown that would be caused by the appropriation and export of water proposed in this Application would lower the static water table in

both the basin fill and carbonate rock aquifers within the affected basins to such an extent that brackish groundwater and other pollutants would infiltrate those aquifers. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins within the same interbasin flow system. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound and unsustainable, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound and unsustainable in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

E. Degradation of Air Quality

It is within the purview of the State Engineer to consider whether the degradation of air quality will be detrimental to the public interest due to a specific action on the subject Application. The proposed appropriation, export, and use would result in severely lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins within the same interbasin flow system. Those declining groundwater levels will result in more xeric and causing groundwater-dependent vegetation to die off in the subject basin and hydrologically connected downgradient basins. This pervasive desiccation, in turn, will cause previously moist and/or vegetated areas to be more susceptible to increased mobilization of particulate

matter, heavy metals, and other chemicals harmful to public health. In other words, the desiccation of these ecosystems will result in much more frequent and severe dust storms in the basin expressly targeted by this Application and in downgradient hydrologically connected basins in the same flow system. These dust storms likely will have catastrophic impacts on human and animal health in those basins and in additional downwind communities, where members of our Tribe live and/or where our sister tribes live. In addition to causing severe respiratory problems, the particulate matter that will be mobilized in dust storms in these areas may contain radioactive fallout that heretofore has been held in place by the groundwater-fed moisture in the soil and vegetation. Because of these harmful impacts to the public interest, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

F. Destruction of Recreational and Aesthetic Values

Another major environmental consideration within the purview of the State Engineer's decision on this Application is the destruction of recreational and aesthetic values. These values are important to the public on local, regional, and national levels. The severe decline in groundwater levels that will result from this Application and SNWA's GWD Project, of which this Application is a part, will kill off vegetation and wildlife, eliminate a large number of globally and regionally unique mesic ecosystems, and degrade air quality and visibility in the basin expressly targeted by this Application and hydrologically connected downgradient basins. These impacts will profoundly degrade the aesthetic values and appeal of all these basins and additional downwind areas for members of our Tribe. Similarly, the loss of water, wildlife, clean air, and good visibility will unduly harm the recreational uses and value of these basins and additional downwind areas. For these reasons, the State Engineer

should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

IV. THE APPROPRIATION AND EXPORT OF WATER PROPOSED IN THIS APPLICATION WOULD BE DETRIMENTAL TO THE PUBLIC INTEREST ON ECONOMIC GROUNDS AND WOULD UNDULY LIMIT FUTURE GROWTH AND DEVELOPMENT IN THE BASIN FROM WHICH THE EXPORT IS PROPOSED

The appropriation and proposed use would unduly limit future economic activity and growth in basin of origin. As detailed elsewhere in this Protest Attachment, permitting the appropriation and export of water proposed in SNWA's Application will exceed the perennial yield of and lead to declining groundwater levels in the basin from which the export is proposed. In addition to the other effects that this drawdown will cause, it will eliminate specific sources and the overall available supply of groundwater in the basin to support both existing economic activities and potential future economic growth in the basin of origin. Existing economic activities that would be undermined include livestock and other ranching uses, domestic uses, and recreational uses including self-guided and outfitter-led hiking, camping, fishing, hunting, birding, and the like. Future economic growth and development that would be unduly limited include the expansion of all of the above-listed activities, particularly the expansion of businesses related to recreational tourism, as well as residential and municipal developments for both year-round and vacation use, and potential future alternative energy developments that members of our Tribe may utilize and gain employment through. Many people would be negatively impacted from the proposed appropriation and SNWA's GWD Project, including residents of Spring Valley, residents of hydrologically connected basins, citizens of Nevada, tourists and travelers, and consumers of products originating from such basins. In light of the undue economic harm the proposed use would cause in the basin of origin, the State Engineer should deny this Application pursuant to NRS § 533.370(6)(d).

Undue economic harm will extend to the economies and communities of hydrologically connected and downwind basins. These economic harms will not be limited to the basin expressly targeted in this Application, but rather will extend outward as the groundwater depletion from SNWA's GWD Project radiates outward into downgradient and hydrologically connected basins within the same interbasin flow system and to downwind basins. Thus, the appropriation and export proposed in this Application also would cause the same host of economic harms to the rural and tribal economies and communities of other basins. Development of new and expansion of existing economic ventures would be unduly constrained because of inaccessibility to water. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because it would be detrimental to the public interest.

V. THE PROPOSED USE IS NOT AN APPROPRIATE LONG-TERM USE OF NEVADA'S WATER

Nevada Revised Statute § 533.370(6) provides that the State Engineer, in his determination of whether an application for an interbasin transfer of water must be rejected, shall consider whether the proposed action is an appropriate long-term use. As described in Section IV, the appropriation and export of water from the subject basin would unduly limit economic growth and development within the subject basin, and hydrologically connected basins, and thus be detrimental to the public interest. Population projections and economic growth and development projections in Clark County have proved to be inaccurate, especially in this time of severe economic recession. In contrast, the subject basin, and adjacent areas, have been cued for numerous alternative energy projects that include but are not limited to wind energy facility projects, solar energy facility projects, and electrical transmission line arrays. These types of projects spur additional economic growth and activity. Some of these projects

will require water appropriations and this Application and other applications under SNWA's GWD Project would be greatly detrimental to these energy projects in the subject basin and the corresponding need for additional economic growth and development that would transpire as a result of the construction and operation of those facilities. Moreover, the State Engineer must allow for unanticipated economic growth in the subject basin. The legislative history shows clearly that the State Engineer's decisions to approve or reject water appropriation applications must not unduly limit future economic growth.

Given the numerous more cost-effective alternatives available to SNWA and the devastating impacts to rural communities, to economies, to the environment, and to the Tribe, SNWA's GWD Project and this Application are not appropriate long-term use of Nevada's scarce resources. The State Engineer should require SNWA to actively pursue alternatives to the pumping and exportation of water under this Application before granting water rights to SNWA from the subject basin. In the meantime, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(d) as an inappropriate long-term use of water.

VI. THE APPLICANT HAS NOT JUSTIFIED THE NEED TO IMPORT WATER FROM ANOTHER BASIN

By the same token, SNWA has not justified the need to import water from another basin. Nevada Revised Statute § 533.370(6) provides that before the State Engineer can approve an application for an interbasin transfer, the applicant must have "justified the need to import the water from another basin." At least two issues are relevant here. First, this Application is not justified because the Applicant has numerous other more feasible and cost-effective options, such as increased water

conservation among other options. The State Engineer should not permit such a massive interbasin transfer project, which is likely to be so economically and environmentally damaging to the basins of origin and hydrologically connected basins, when alternatives are available to the Applicant that are more economically sound, environmentally sound, sustainable, and drastically in favor of the public interest and welfare. While the SNWA has instituted a water conservation plan for the Las Vegas area, the transition toward water conservation has been markedly slow over the last two decades. Thus, there is significant potential for more cost-effective conservation alternatives, which would avoid the devastating impacts to the basins of origin and potentially spur innovative water conservation technologies and industries in the Clark County and other areas of Nevada. Implementing significant water conservation policies and regulations can be accomplished fairly rapidly and do not require several decades to implement. Second, this Application has not justified the need to import water from another basin given the current population, housing, and water-demand trends within the import basin – the water demand and population projections that SNWA has been using to justify the GWD Project are not credible. As such, the State Engineer should deny the applications pursuant to NRS § 533.370(6)(a) because SNWA has not justified the need to import water from another basin.

VII. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out.

While SNWA established a goal in the early 1990s of 25% conservation by 2010 and surpassed that goal in advance, the water conservation plan and the 25% goal are not sufficient measures by which the State Engineer should approve an application. By the same reasoning, the State Engineer would have the discretion to accept a SNWA water conservation plan of 1% conservation in 25, 50, or even 100 years. The legislative intent of NRS 533.370(6) is to require a sufficient and highest practicable level of water conservation for the basin into which the water is imported so as to make an interbasin transfer a last resort. SNWA's current water conservation plan and goals are insufficient because substantial water conservation gains still can be obtained in Clark County and the Las Vegas Valley, at a fraction of the cost of the SNWA's GWD Project and without detriment to the public interest and welfare. As such, the State Engineer must require SNWA and its client water districts to achieve the highest practicable level of water conservation – as measured by reference to presently available technologies and methods and to the highest conservation levels achieved by conservation-minded water-scarce municipalities – before being permitted to transfer groundwater from the subject basin and other GWD Project basins. The State Engineer must require SNWA to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals that are at least as aggressive as those of the most conservation-minded other western cities. The State Engineer must also require SNWA to submit a conservation plan that compares those conservations measures to the GWD Project in terms of cost and timelines for export and import basins. Unless SNWA submits such a plan, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b).

VIII. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section III above, the Application and the GWD Project as a whole are environmentally unsound, unsustainable, and will have long-term environmental impacts within the subject basin and hydrologically connected basins within the same flow system. While biological and hydrological monitoring plans have been developed by SNWA, these plans are insufficient on numerous counts, including but not limited to being scientifically flawed and generally insufficient.

Second, NRS § 533.370(6)(d) provides that an application for interbasin transfer of water must not unduly limit future growth and development. The subject basin's future growth and development is already under way with the construction and operation of alternative energy projects and transmission lines, among other things. Predicting the amount of groundwater needed for future growth and development in the subject basin may be difficult, but the State Engineer should require SNWA to do so as part of a monitoring and mitigation plan for the export basin and/or as part of the water conservation plan for the import basin. SNWA has failed to provide reasonable and sufficient projections of future growth and development for the export basin. Just as SNWA's population and water demand projections did not predict that the Las Vegas Valley would experience an economic bust and substantial loss of population (and therefore much reduced water demand), SNWA's attempts to forecast future growth and economic development in the subject basin are also highly flawed.

Third, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone of depression and impact water from

seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or rely on such water sources. The biological and hydrological monitoring plans do not provide safeguards from these potential impacts because: (1) monitoring plan and early detections in the plans are highly flawed; (2) monitoring and early detection for such purposes have proven to be insufficient in the past; (3) cones of depression are very likely to impact springs, seeps, and associated wildlife resources in the initial area of the cone of depression; and (4) cones of depression are likely to move downgradient and adversely impact downgradient springs, seeps, and associated wildlife.

Fourth, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone of depression and lowering of the water level that would result from the approval of this Application, and others associated with the GWD Project, is very likely to negatively affect water quality by drawing in low quality water and cause areas to coalesce. Such impacts will occur within the subject basin and in downgradient basins within the same flow system. SNWA has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor do the monitoring plans ensure that early detection will offset those impacts because once the groundwater impacts have been realized the impacts will persist over the long-term.

IX. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant,

respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that natural resources, which by definition includes historic and cultural resources, endangered species, water quality, among other resources, are of public interest. By establishing the State Historic Preservation Office under NRS §383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes “that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin”¹ The State Engineer also has found that while “NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues.” Moreover, the “State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources.” Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The Application and proposed use from the subject basin will result in groundwater drawdown in the subject basin and in hydrologically connected basins and will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

X. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL

¹ State Engineer's Ruling #5726 dated April 16, 2007, in the matter of applications 54003 through 54021.

AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate the following, but not limited to: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863 in Ruby Valley. Nevada Legislature's intent of giving the State Engineer authority to approve water applications has never been to do so in a manner that would violate state and federal mandates, or state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the export of water will violate some or all of the above-listed laws due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot violate federal and state laws. As such, the State Engineer's purview is to make decisions that are not in violation of law. To do otherwise is against the public interest and welfare. Therefore, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

XI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATY OF 1863 IN RUBY VALLEY

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are

the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress, which the Supreme Court has determined has “plenary authority” of Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaty of 1863 in Ruby Valley designates and recognizes certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally recognized treaty lands are clearly within the public interest. . As discussed above, Western Shoshone tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized. Such water rights, to some extent, are predicated on the fact that the Treaty of 1863 in Ruby Valley designates a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaty. Those rights remain regardless of non-use or being unquantified. *Hackford v. Babbit*, 14 F.3d 1457, 1461 (10th Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful groundwater pumping that will infringe upon or diminish water necessary to satisfy the Tribe’s reserved water right. It is important to emphasize that the Tribe’s water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe’s reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaty of 1863 in Ruby Valley

are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems and laws, as in Nevada, do not affect the rights of the Tribe's treaty lands and Reservation. *Power Commin v. Oregon*, 349 U.S. 435 (1955).

Because the subject Application, among other applications that are part of SNWA's GWD Project, if approved, would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject the application and refuse to issue the requested permit."

Furthermore, the SNWA GWD Project, of which this Application is a part, if approved and operational, is predicted to cause widespread groundwater drawdown even in separate basins that are hydrologically connected. If the State Engineer were to approve this Application, among others that are part of the GWD Project, it would violate the Tribe's rights reserved and guaranteed under the Treaty of 1863 in Ruby Valley. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

XII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust or fiduciary relationship with Indian tribes.

This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government to government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands. Under 20 USC § 7401 Congress declared: it is “the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people.” The Secretary of Interior in 25 CFR § 225.1 states that the Secretary “continues to have a trust obligation to ensure that the rights of a tribe or individual Indians are protected in the event of a violation.” The Department of Justice's Policy on Indian Sovereignty and Government-to-Government Relations with the Indian Tribes states that “the Department shall be guided . . . by the United States' trust responsibility in the many ways in which the Department takes action on matters affecting Indian tribes.” The federal-tribal relationship and the federal government's responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government's “trust responsibilities to protect Indian water rights.” See 43 USC § 371. There is a large list of federal mandates, policies, and federal court decisions regarding the federal government's trust responsibilities to protect the Tribe's interests, resources, and rights.² Thus, the federal government's trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

² See, e.g., *Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Seminole Nation v. US*, 316 US 297 (1942); *Worcester v. Georgia*, 31 US 515; *Manchester Band of Pomo Indians v. US*, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir 1981); *Menominee Tribe v. US*, 101 Ct Cl 10, 19-20 (1944); *Pardvano v. Babbitt*, 70 F.3d 539, 545 (9th Cir 1995).

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe's water rights and resources within the Tribe's aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

XIII. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE'S SOVEREIGNTY AND ABILITY TO REGULATE ITS TERRITORY

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority, the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's ability to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public interest. As such, the Application, and others that are part of the GWD Project, if approved, falls strictly counter to the public interest on this element. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and conducting an interbasin transfer of water in ways that will unduly injure the Tribe's water resources and rights will concomitantly injure the Tribe's ability for tribal self-

governance, its ability to regulate its territory, and its ability to provide necessary benefits and services to its members on or off reservation lands. This is a highly relevant factor that the State Engineer should consider with the interbasin transfer decision. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

XIV. THE APPLICANT HAS NOT DEMONSTRATED THE GOOD FAITH INTENT OR FINANCIAL ABILITY AND REASONABLE EXPECTATION TO CONSTRUCT THE WORK AND APPLY THE WATER TO THE INTENDED BENEFICIAL USE WITH REASONABLE DILIGENCE

The current economic recession has severely altered the economic boom trajectory that Las Vegas had been undergoing for many years. As a result of the recession, Las Vegas Valley population base has decreased, a large number of homes are now vacant, and demand for water has been truncated. It is highly uncertain at this point in time as to whether the Las Vegas economy will rebound. It is also highly uncertain as to when the economy will rebound, and to what extent that economic rebound will affect the Las Vegas Valley. In contrast, the trajectory for eastern Nevada is moving in a positive direction. For example, the Spring Valley Wind Energy Facility was approved by the BLM recently and will bring over 225 construction and operation jobs to the county and approximately \$1.6 million dollars to the local tax base in the next year, part of which will go towards money for schools and other programs. This is just one of about 16 other wind projects that are planned for eastern Nevada that will bring jobs and economic gains to the eastern Nevada. These projects are all in the public interest as Congress, the federal government, and the Nevada Legislature all have similar initiatives to establish Nevada as leader in alternative energy developments and provide such clean energy to the public.

To date, the Applicant has not provided the State Engineer or the public with a cost projection

for the pipeline project. Estimates for such a project, however, are in the billions of dollars. As SNWA's top management has stated, SNWA does not plan to build this Project in the near future and may never build it, saying they simply want to ensure that they have the option of doing so should they decide to in the future. *See* Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits in Hand*, Las Vegas Review Journal, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Further, General Manager Patricia Mulroy has publicly conceded that with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted, calling into question its ability to construct the GWD Project. *See* I-Team, *Dire Predictions Made on Las Vegas Water Supply*, Channel 8 Eyewitness News, Feb. 11, 2009, available at <http://www.lasvegasnow.com/Global/story.asp?s=9829711>. Because it appears that SNWA may never construct the project, or at least not within a reasonable time frame, and that SNWA's ability to obtain financing for the project is highly doubtful, the State Engineer should deny the Application pursuant to NRS § 533.370(1)(c) as a speculative request to tie up Nevada's water resources indefinitely.

The Applicant has not conducted reasonable diligence to construct the GWD Project. Partial completion of ROW grants/NEPA process does not constitute reasonable diligence on SNWA's part to ensure that Nevada's water will be put to beneficial use. The only thing that the partial progress in the NEPA process and BLM ROW ensures is that SNWA intends to have the necessary grants and permits in place if such a need arises in the future. Even if BLM rights-of-way are granted by the BLM, there is no assurance that the water will be put to beneficial use within a reasonable amount of time. Moreover, the highly uncertain economic future in Las Vegas area provides rationale to deny this Application. Because of these reasons, the State Engineer should deny the Application under NRS § 533.370(1)(c).

Moreover, the Application does not clearly describe the place of use, the proposed works, the

estimated projects costs of the works, the number and types of units to be served, or the annual consumptive use. It is also not clear as to whether the diversions sought by the Application, and others that are part of the SNWA GWD Project, are necessary and/or in an amount reasonably required for the beneficial uses that have been applied for.

XV. FAILURE TO DEMONSTRATE ABILITY TO ACCESS LAND CONTAINING POINT OF DIVERSION

The Applicant has not demonstrated a reasonable expectation or ability to put the water to beneficial use because it does not have access to the lands on which the potential point of diversion is located. In some instances, the Applicant has not even begun the process to establish access, showing that Applicant does not have the intention to and is not likely to develop the water in a reasonable time with due diligence. Thus, the State Engineer should deny the Application under NRS § 533.370(1)(c).

XVI. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION

SNWA's proposed GWD Project is a massive project and adverse impacts from the Project are certain and they are likely to be both intensive and extensive over various spatial and temporal scales. New scientific or other data, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

XVII. INCORPORATION OF OTHER PROTESTS TO SNWA'S APPLICATIONS BY

REFERENCE

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in SNWA's GWD Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.

IN THE MATTER OF APPLICATION NUMBER 54021

FILED BY LVVWD / SNWA
ON October 17, 1989 TO APPROPRIATE THE
WATERS OF UNDERGROUND

} **PROTEST**
MARCH 2011 *AK*

Comes now Las Vegas Fly Fishing Club

whose post office address is PO Box 27958 Las Vegas NV 89102

whose occupation is a NON PROFIT CONSERVATION CORPORATION and protests the granting

of Application Number 54021, filed on October 17, 1989 by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in White Pine County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: Undue limitation of future economic activity and growth in the basin of origin, undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins, loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin:
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrnagat and Moapa NWRs and Pahrnagat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be **DENIED** and that an order be entered for such relief as the State Engineer deems just and proper.

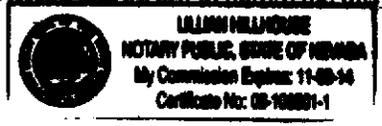
Signed *Randy Upton*

RANDALL UPTON, PRESIDENT
Printed or Typed name, if agent

Address LAS VEGAS FLY FISHING CLUB
PO BOX 27958
LAS VEGAS NV 89102
Address, City, State, Zip

Phone Number 702 876 2005

Subscribed and sworn to before me this 3 day of March
Lee Hillhouse



Notary Public
State of Nevada
County of Clark

RECEIVED
STATE ENGINEER
2011 MAR 25 10:52 AM '11

DCNR/SNWA RECEIVED
FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE

MAR 22 2011

LAS VEGAS OFFICE

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY LVVWD / SNWA
ON October 17, 1989 TO APPROPRIATE THE
WATERS OF UNDERGROUND

FILED
MAR 22 2011
PROTEST OFFICE

Comes now CENTRAL NEVADA REGIONAL WATER AUTHORITY

whose post office address is P.O. BOX 1510, RENO, NV 89505

whose occupation is a UNIT OF LOCAL GOVERNMENT and protests the granting

of Application Number 54021, filed on October 17, 1989 by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in WHITE PINE County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY) X

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin.
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrnagat and Moapa NWRs, 3 State WMAs, and Pahrnagat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be DENIED and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Stephen T. Bradhurst

STEPHEN T. BRADHURST
Printed or Typed Name, if Agent

P.O. BOX 1510
RENO, NV 89505

Address, City, State, Zip

Phone Number

775.747.2038

Martin Lim
Notary Public - Nevada
Washoe County
Comm. No # 10-2312-2
My Comm. Expires April 8, 2014

Address

Subscribed and sworn to before me this 22 day of MARCH, 2011

Notary Public

State of Nevada

County of Washoe

RECEIVED
11 MAR 22 PM 3:31
STATE ENGINEER'S OFFICE

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER **54021**
FILED BY **LVVWD / SNWA**
ON **October 17, 1989** TO APPROPRIATE THE
WATERS OF **UNDERGROUND**

PROTEST

Comes now **Elko Band Council**

whose post office address is **1745 Silver Eagle Drive Elko Nv. 89801**

whose occupation is a **Tribal Government** and protests the granting

of Application Number **54021**, filed on **October 17, 1989** by **LVVWD / SNWA** to appropriate the

waters of **UNDERGROUND** situated in **White Pine** County, State of Nevada, for the following and on the following grounds, to wit: (CHECK ALL THAT APPLY)

- 1. There is insufficient water available in the proposed source of supply.
- 2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
- 3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
- 4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
- 5. The proposed action is not an appropriate long-term use of Nevada's water.
- 6. The Applicant has not justified the need to import water from another basin.
- 7. The Applicant has not implemented a sufficient conservation plan.
- 8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
- 9. The Applicant has a duplicative application filed in 2010 which may require a duplicative hearing for the same groundwater.
- 10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin NP.
- 11. The appropriation and export of groundwater from Cave, Dry Lake, and Delamar Valleys will harm hydrologically connected areas including but not limited to Pahrnagat and Moapa NWRs, 3 State WMAs, and Pahrnagat and White River Valleys and Lake Mead NRA.
- 12. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

THEREFORE the Protestant requests that the application be **DENIED** and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Gerald Temoke

Printed or Typed name, if agent

**1745 Silver Eagle Drive
Elko Nv. 89801**

Address

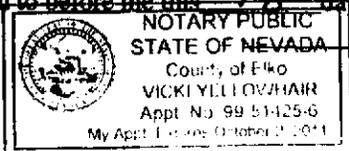
Address, City, State, Zip

Phone Number

(775) 738-8889

RECEIVED
STATE ENGINEER'S OFFICE
11 MAR 21 PM 2:25

Subscribed and sworn to before me this 18 day of March, 2011



Notary Public

State of Nevada
County of Elko

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER
FILED BY Richard W. and Lesley Ann Sears
ON March 18, 2011, 20

FILED
MAR 21 2011
STATE ENGINEER'S OFFICE

PROTEST

Comes now Richard W. Sears and Lesley Ann Sears
Printed or typed name of protestant
whose post office address is 1963 South 17th East HC10, Ely, Nevada 89301
Street No. or PO Box, City, State and ZIP Code
whose occupation is Attorney at Law and protests the granting
of Application Number 54019, 54020, 54021, filed on October 17, 1989, 20
by Southern Nevada Water Authority fka Las Vegas Valley Water District for the
waters of underground waters of Basin 184 situated in White Pine
an underground source or name of stream, lake, spring or other source
County, State of Nevada, for the following reasons and on the following grounds, to wit:

*See Attached Argument
and Brief*

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STATE ENGINEER'S OFFICE

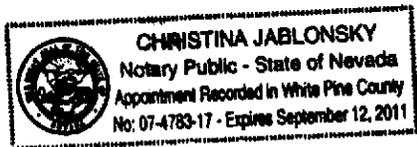
THEREFORE the Protestant requests that the application be denied
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed *[Signature]*
Agent or protestant

Printed or typed name, if agent
Address 1963 South 17th East HC10
Street No. or PO Box
Ely, Nevada 89301
City, State and ZIP Code
775 289-3804
Phone Number
rwsears@me.com
E-mail

Subscribed and sworn to before me this 18th day of March, 2011



[Signature]
Notary Public
State of Nevada
County of White Pine

† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Richard and Lesley Ann Sears
Protestants

Vs.

Southern Nevada Water Authority, and
its predecessor in interest: Las Vegas
Valley Water District
Applicants.

Case Number: _____

Protest of Basin 184
Underground Water
Applications

**Protest of Southern Nevada Water Authority (Las Vegas Valley Water District)
Applications for Underground Water in Spring Valley Nevada, Basin 184.**

Applications:

Number	Filing Date	Source	Use
54019	10/17/1989*	Underground	Municipal
54020	10/17/1989*	Underground	Municipal
54021	10/17/1989*	Underground	Municipal

Introduction and Factual Assertions

In January 2010, the Nevada Supreme Court determined that the protest period on the foregoing applications, plus other applications in Basin 184 and other basins not subject to this protest, were improperly foreshortened by the State Water Engineer due to the Engineers failure to act upon these applications as required by law generated, in part, by SNWA's failure to timely set and proceed with hearings. The State Engineer's ruling is memorialized in State Engineer Ruling No. 5726 (April 16, 2007) now apparently rescinded. Shortly after the Supreme Court ruling, the Southern Nevada Water Authority refiled the same applications within the same basins subject to Ruling 5726 as well as other basins affected by the Supreme Court ruling.

The Protestants are residents of White Pine County, Nevada; property owners in Basin 184; and future residents of Basin 184. Protestants have a part time living quarter in Spring Valley and have house plans for a 3,000 square foot custom built home in the basin upon the property which now consists of 560 acres. The property is just south of Highway 50 on White Pine County Road 39. The property is about 8 miles north of property currently owned by SNWA commonly called the Harbecke Ranch. The Harbecke Ranch is the closest agricultural property to Protestants ranch. There are no ranches within thirty miles east or west of the parcel. The closest agricultural property is the Harbecke Ranch since no ranch is closer than about 15 miles in a northerly direction and even then those northern ranches are on the west side of the basin whereas Protestants ranch sits up against the eastern mountains.

Protestants are unable to make use of their land and the underground water due to the applications listed above. Protestants are currently suffering direct economic harm and the loss of productive use of their property as a direct result of the foregoing applications and the State Engineers historic and current treatment of SNWA Applications in Basin 184. SNWA filed the precursors to the listed applications in the 1980s in order to obtain a priority right to the water. It is clear due to the passage of time and SNWA's failure properly to pursue setting hearings on the applications that their intent at the time of filing the application was not to seek an immediate use of the water, rather, they intended to obtain a priority right by filing before other potential users could file. No real action to obtain permits occurred on the Basin 184 applications until after 2005. This led to an unfair denial of water to other potential in-basin users because the

State Engineer did not permit the SMWA applications, or any other applications, and SNWA did not seek to have the State Engineer act on the applications.

Protestants currently have a pending application before the State Engineer for water for aquaculture. The application only seeks approximately 14 acre feet of underground water to be diverted from an existing well, for fish ponds on the property (Fish Farm Water). Protestants have already constructed a small pond and have begun raising brood stock in the pond consisting of largemouth bass and bluegill. Protestants lack sufficient water to do more than keep brood stock alive. Protestants plan on building a larger pond but cannot do so without a water permit from the State Engineer.

The Fish Farm Water was sought January 22, 2008 without protest following publication of the application. The Protestants have been awaiting action on that application since that date. Protestants have answered a set of questions from the State Engineers office seeking information on the evaporation and loss of water as well as the approximate size of the pond and associated facilities. The answers to those questions were provided months ago. Protestants have received no other contacts or information. Protestants have paid \$2500 to a water engineer for the work done to date, \$14,000 for electrical power for the well, plus \$15,000 for machinery and equipment to develop the Fish Farm Water plus \$12,000 for the well itself. Protestants cannot raise fish; cannot complete another pond; cannot turn their current investment into cash flow. Protestants are at risk of losing what little tax benefits their start up business generates without action on their applications now pending because of the failure to turn income on their business as required by the IRS.

Protestants have received no communication about the status of their application for Fish Farm Water. Protestants water application for Fish Farm Water is a non-consumptive use, yet, no action has proceeded from the State Engineer.

In addition to the Fish Farm Water, Protestants have applied for 2.5 cfs of agricultural water in order to raise agricultural crops during their retirement years. This Application was filed a few days after the Supreme Court of Nevada ruled in Docket Number 49718, *Great Basin Water Network, et al., vs. State Engineer*, 126 Nev., Advance Opinion 2 (2010). Approximately 320 acres of the 560 acres of the property have been determined to be appropriate for agricultural production. As an agricultural site, the property will also benefit the numerous songbirds, game birds, small game animals and large game animals in the basin and adjacent mountain range, including Mount Wheeler and associated park lands.

SNWA protested Protestants agricultural applications on the grounds there is insufficient water in the basin! This is very silly considering they are seeking to remove almost 100,000 acre feet of water from the basin. The only fair conclusion from the SNWA protest of Sears' application is there is insufficient water to grant either Sears's or SNWA's applications if the basin cannot spare 1,000 feet of water. Either that is the case or SNWA believes that no one should be able to live and farm in Basin 184. This attitude allows SNWA to control Nevada property simply by filing water applications and thus foreclosing all other uses. SNWA has more power than any other governmental entity to control the lifestyle of Nevadans. This is not what the legislature intended and is clearly contrary to law.

SNWA has no current uses for the water they seek to appropriate. The economic downturn means there are thousands of empty homes in Las Vegas and no users for 100,000 acre feet of water from Spring Valley, Nevada.

SNWA has applications for more than 44,724 acre feet of water in Basin 184. The active annual duty irrigation permits consisting of surface and underground water are approximately 16,224 acre feet of water. The total appropriation for the basin in December 2004 was 18,973.42 acre feet. The 2004 estimate for the perennial yield of the basin was 100,000 acre feet annually based upon the Nevada Division of Water Resources estimates.

Protestants have very few full time neighbors in the Basin. The Eldridge family maintains ranches and homes in the Valley many miles to the north of Protestants. Art and Audrey Andrae live in the Valley twenty miles to the north of Protestants and have a small ranching operation on property popularly called the Yelland Ranch. The Mormon Church maintains a stake farm 14.6 miles north of Protestants property, the closes neighbor north west of Protestant. Protestants current neighbors who are users of water within approximately twenty square miles of Protestants are birds, small game animals, large game animals and sagebrush. Much of the water for the non-human neighbors comes from Protestants property and pond.

The largest non-governmental landholder in Spring Valley south of Highway 50 are Protestants. The other two landholders in that area are the U.S. Government and Southern Nevada Water Authority. Only SNWA has developed properties consisting of five or six ranches south of Protestants where they raise cattle, sheep, and agricultural products. Protestant has no complaint about SNWA's current ranching operations. Their

ranching operations --- in contrast to some others in the valley --- are efficient, clean, well run, professional ranching operations and a substantial benefit to the valley, its residents and its wildlife.

Argument

Protestants, as American citizens and Nevada residents, enjoy a fundamental legal right to own property, use their property for all legal uses, and develop the property within the law for the benefit of themselves and their successors. Fundamental rights are guaranteed to Protestants under both federal and state constitutional and statutory laws and are rights of substantial consequence. These rights are fundamental in the legal sense and may not be infringed without a compelling state interest and both procedural and substantive due process are required before these rights can be infringed. Recourse for violations of fundamental rights, specifically violations that result from state action, are available in USC § 1983, et seq.

In addition to federal and state relief for violations of fundamental rights, Protestants have a right to complain to the State Engineer, appear and raise arguments related to their water and property rights so long as the facts and evidence arise out of statutory rights. As an initial observation relevant to this Protest, “any water used in this state (Nevada) for beneficial purposes shall be deemed to remain appurtenant to the place of use” NRS 533.040(1). This statute codifies the common law of the United States that was adopted by the Nevada Constitution. The common law, and the foregoing statute stand for the rule that, the underground water of the state is not just water that is unrelated to a piece of land. Water is appurtenant to land, meaning water is “a legal accessory or accompaniment to a piece of land.” *Webster’s Seventh New Collegiate Dictionary*.

Protestants have underground water appurtenant to the 560 acres of land they own in Basin 184. This appurtenant water source is important because the Nevada Legislature has declared limitations on severing appurtenant water from the land: "If it is impracticable to use water beneficially at the place to which it is appurtenant, the right (to underground water) may be severed from the place of use . . ." NRS 533.040(2). To date, no case has been made supporting any theory before the State Engineer that it is impracticable to use water beneficially in Basin 184, some portion of which is water underneath Protestants property. Protestants have an immediate use for the water; SNWA clearly has no immediate use since they have failed to act on their applications made during the last century: 1989.

PROTESTANTS HAVE A RIGHT TO THE USE OF APPURTENANT WATER ON THEIR LAND WITHIN BASIN 184

The Nevada Legislature has set out two important principles that must be borne in mind when considering SNWA's applications, 1) water is appurtenant to land; and, 2) appurtenant water should not be severed from the land unless it is impracticable to use water at the place to which it is appurtenant. Once a determination has been made that it is impracticable to use water on the appurtenant land, then water can be severed from the place where it exists and sent elsewhere.

SNWA has shown by its actions that a great deal of water can be used appurtenant to the land in Basin 184. They currently own and operate substantial ranches that raise cattle, sheep and agricultural products and provide additional side benefits to the area wildlife. SNWA uses thousands of acre feet of water annually just for such appurtenant uses. Accordingly, SNWA and the State Engineer are estopped from denying that there

are uses of water appurtenant to land in Basin 184, appurtenant uses which SNWA currently makes to the benefit of themselves, local residents, and wildlife.

INTERBASIN EXPORT OF WATER

After the determination that there is no appurtenant use for the water, the State Engineer may authorize water exportation out of basins so long as certain determinations are made: among the determinations critical to this Protest and these applications are “(d) [w]hether 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(6).

At first blush it seems evident that the appropriations by SNWA would benefit vast numbers of people in southern Nevada. Despite recent slowdowns in the development of southern Nevada it is likely that the attractions of the area will again become apparent to U.S. citizens and growth will again swallow up available land in southern Nevada. Such growth cannot occur without water and the water is not currently available to SNWA unless they develop in state resources to supplement water available from the Colorado River. The structure of NRS 533.370(6) indicates a balance of the benefits and burdens must be struck by the State Engineer: appropriate long term use in the benefiting basin (southern Nevada counties) versus stunted growth and stunted development in the burdened basin (Spring Valley, Nevada). The unavoidable corollary to growing southern Nevada will be stunting Spring Valley. Every foot of water leaving Basin 184 means Spring Valley will not have water for local development. It is apparent from the Protest SNWA filed against Sears, they intend to prohibit all growth in Basin 184. By stating there is insufficient water for Sears to raise crops, they mean there is

insufficient water for anyone to raise crops. Their act in protesting Sears's water applications is a clear violation of NRS 533.370(6) because the protest, without more, stops development in Basin 184. This falls squarely within the statutory language which does now allow cessation of development in the Basin at issue.

An injury is now created by SNWA's protest of Sears's application because Sears's applications are for uses within the Basin. Because SNWA clearly wants to improperly stunt the valley's development and growth, Nevada law does not permit the export: export is limited by the circumstances enumerated in 533.370(6).

No one wants to live in a dustbowl absent of all water. No beneficial uses of water appurtenant to land can be made when there is no water to be had. What then is an improper stunt of the valley? Clearly the State Engineer recognized the complete absence of water problem in Ruling 5726 by granting 40,000 acre feet of water (to be followed by an additional 20,000 acre feet in certain circumstances) and retaining the balance (conceivably 40,000 acre feet from perennial yield, by which the current permits of almost 20,000 acre feet currently existing must be further reduced) in the basin for local uses. In legal terms, balancing means the parties (or land) bear burdens and receive benefits in the balancing determination: but despite the imagined fairness of the ruling, fairness is not what happened after Ruling 5726. This is especially true when SNWA itself claims there is insufficient water for an appurtenant user to have 1,000 acre feet of agricultural water.

The implementation of Ruling 5726 did not carry out fairness. Limiting SNWA's exportation to 40,000 acre feet did not actually reserve 40,000 acre feet of underground water for in-basin beneficial use. Instead, from the 1989 applications filings up until and

throughout the implementation of Ruling 5726 all applications and all permitting activities in Basin 184 have substantially ceased. Even after the Supreme Court determination invalidating Ruling 5726 nothing has happened with applications in Spring Valley. Since the 1989 applications by SNWA and the 2007 decision to grant 40,000 acre feet there have been virtually no underground water permits granted to in-basin applicants other than SNWA. Rather than preserving water for local users (a benefit), the State Engineer's ruling and practice halted local users from any water (other than domestic wells in a basin where there are only a handful of residences) to benefit their property (a burden). In other words, in the balancing of interests SNWA received the *benefit* of their applications and purchased permits while the in basin residents got the *burden* of no applications being granted and simultaneously received no benefit from either the use of appurtenant water or benefit from the export of excess water. The State Engineer had a statutory duty to balance the interests of in-basin appurtenant users and export recipients: not place all the burdens on in-basin residents who had a beneficial use for the remaining water and all the benefit to SNWA and their southern Nevada customers.

The State Engineer's rationale for piling all the burdens on the in-basin users was to further study the valley and not allow any new permits until test pumping was completed by SNWA so that the effects of the pumping could be judged. As noted above, this halted all property development in the basin and only burdened the basin users with no concomitant benefit. Assuming the pumping caused no problems and in the future some permits will be issued, what is the timeline for that determination since as of today, no test pumping of 40,000 acre feet of water has occurred. Is ten years of study

a small burden that the in basin users should suffer without complaint? How about twenty years? For a 64 year old man, five years waiting for test pumping plus more years waiting for permits would spell the end of a lifetime: that is the effect of Ruling 5726 on Portestants at this point. If the State Engineer follows the same practice in ruling on the applications a second time a substantial abuse of discretion, and denial of fundamental rights will occur.

The burden on the in basin users is too high when compared to the grant of benefits to SNWA (0 acre feet of water to appurtenant users compared to 60,000 acre feet of water to exporter). A more proper balance would involve providing less initial water to the exporter and some initial water to the appurtenant user. As currently structured, the implementation violates the statutory requirements, violates fundamental rights of appurtenant users and is a clear abuse of the State Engineer's discretion in the balance struck in the earlier decision.

If the proper decision is to **cut back** on SNWA until pumping is completed, how can it be proper to **cut off** the in-basin applicants for the years this will take? This is especially true where there are only a handful of basin applicants. One better procedure is to use a similar ratio with in basin applicants as with out basin applicants: we are cutting **everyone** back by 66%; not cutting SNWA back by 66% and cutting others off completely, until pumping and studies are completed. Ruling 5726 failed to balance the benefits and the burdens in the water allocation and was a clear abuse of discretion by the State Engineer. Abuses of discretion can be relieved by a new Ruling that follows the law as well as by Nevada Courts and Federal Courts.

ANY OTHER RELEVANT FACTORS ARE IN THE MIX

The benefits and burdens to in Basin users are not just financial benefits and burdens. Even though financials quantify easily the Nevada Legislature did not limit the State Engineer's benefit/burden analysis to financial concerns: any other factor the State Engineer determines to be relevant must be thrown into the mix in balancing burdens and benefits.

Unfortunately, not only did the legislature fail to specify all the factors to be considered, the legislature also failed to describe the parties to be benefitted and burdened by a State Engineer's decision. Does the State Engineer analyze the benefits to landowners vs. end users? to water losers vs. water users? to counties vs. counties? to states vs. states? Similarly, the legislature did not specify how the competing interests should be compared: is it numerical: greatest benefit for greatest numbers? is it qualitative: city dwellers vs. rural users or animals vs. people or environment vs. people? What is clear is the State Engineer in past decisions has considered all these interests when making water decisions. What is also clear is the State Engineer failed to consider Nevada common law in the balancing decision made in Spring Valley, Nevada.

In this matter, the city vs. rural balance, the interests are thousands of prospective southern Nevada city residences vs. two or three current rural residences; thousands of prospective southern Nevada city residences vs. some deer and elk and miscellaneous critters eking out wilderness survival. While the comparison is stark and easily understood, the fairness role of the State Engineer is to ensure that minority interests are not trampled by the majority interests. Courts, even State Engineer-type courts, do not exist to protect the rights of the majority: majority rights require no protection from courts. The majority protects its rights by vote at the ballot box and influence in the

legislature; the majority has no need of courts. The State Engineer must protect those who have no other protections, the minority interests at risk to the majority; it must protect the weak interests from the strong interests. This statement is not some law school mumbo jumbo, or the ranting of an angry landowner. This statement is the foundation of both procedural due process and substantive due process in American law. The Nevada Supreme Court voiced this important principle in a water rights case in 1872, stating, in relevant part:

“But that the interests of the public should receive a more favorable consideration than those of any individual, or that the legal rights of the humblest person in the state should be sacrificed to the weal of the many, is a doctrine which it is to be hoped will never receive sanction from the tribunals of this country. The public is in nothing more interested than in scrupulously protecting each individual citizen in every right guaranteed to him by the law, and in sacrificing none, not even the most trivial, to further its own interests. Every individual has the right, equally with the public at large, to claim a fair, impartial consideration of his case; for the rights of the public are no more sacred or entitled to greater protection in the law than those of the individual; . . .

Vansickle v. Haines, et al., 7 Nev. 249 (1872).

The court goes on to note that if the public interest was to overrule the individual interest, it would be proper to immediately lynch people who displeased the mob.

Clearly, Nevada courts do not approve such actions.

In other words, the process used to burden individuals must be fair; the result of the process must also be fair. Government can take rights away from individuals; but Government must do so in a fair and just manner. Government cannot take rights away

from one, and give them to another, simply because in a judges view the “public weal” demands the transfer.

In this case, appurtenant water use is deprived from an appurtenant user without any due process and without paying any price to the loser. Ruling 5726 said 40,000 acre feet goes south, test pumping occurs and then perhaps another 20,000 acre feet goes south. What ruling 5726 effectively did was freeze for an unknown and perhaps unknowable period of time all appurtenant uses without discussion, without balancing interests, without payment to the in-basin appurtenant user. If the State Engineer duplicates Ruling 5726 after new hearings the harm created in the original ruling will be compounded on Sears and his family.

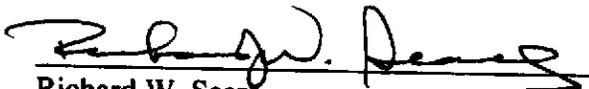
The legislature, by NRS 533.370(6) gave the State Engineer authority to look at the in-basin user, the minority interest in this matter, and factor in their interests in the balancing test. It cannot be gainsaid that SNWA elbowed its way into Spring Valley, used its governmental power and wealth to file applications, sat on the applications for years, objected to later applications and appear at grossly delayed hearings and argue “we need the water, we represent the majority interests of this state, the majority needs this water for growth and for the financial benefit of the entire state of Nevada because we represent the taxes, business interests and quality of life upon which Nevada depends.” These statements are reflected in the text of Ruling 5726 indicating the State Engineer heard this argument, respected this argument, and substantially ruled in favor of this argument. The majority interest was heard and won a substantial victory; the interests of in-basin appurtenant users were ignored just at their applications were ignored. This wrong should not be repeated.

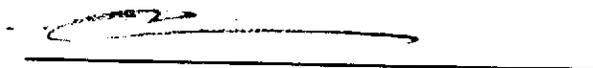
The reason Ruling 5726 was a substantial but not total victory (other than the requirement of rehearing) was because SNWA was not awarded everything it wanted, some water was left pending testing and some water was left for future in-basin needs. Thus, SNWA got a temporary but substantial victory, a few unknown future users (not all future users are unknown because any definition of future users must include SNWA since they maintain a majority of the ranches and applications in the basin) may receive some water, but current non-governmental in-basin users lost everything: their applications were frozen, their future permit chances were lost, no certificates were issued, their interests were never considered, their business interests were ignored, and insufficient water was left in the basin for appurtenant uses. If the State Engineer repeats the results of the prior balance in any new decision, in-basin users Richard and Lesley Sears, will be wronged again.

Some might say, Sears should have protested and appeared and argued in 2007. Sears could not do so, the protest period was long closed and hearings on the 1989 Applications were not heard until 2007 due to procedural delays encouraged and enjoyed by SNWA. Not only was Sears' minority interest never considered in the mix of factors to be considered, it was never presented so it could never be heard. Sears' factors could not be heard, not because of some failure by Sears, but due to procedural due process failures by the State Engineer's office and objections by SNWA to allowing new protesters to present their interests in the proceeding. The Supreme Court found this failure to follow the law sufficient reason to remand this matter to Judge Robison for a second look: commanding Robison to open the protest.

It is now clear that Sears was not at fault for SNWA's failure to set hearings or the State Engineer's failure to follow the law: but Sears is the one who has been paying the price for these failures because Sears cannot develop appurtenant water. This wrong long endured may well be repeated and continue forever into the future unless the State Engineer exercises his discretion in a way that fulfills his statutory, common law and Supreme Court imposed duty: protect the minority in-basin appurtenant user in any rulings issued! This legal duty does not just mean leave a small amount of water for in-basin users (meaning the governmental entity will ultimately wind up with the water), the legal duty means grant permits to non-SNWA users who wish to develop their property: give the individual a fair shake. If granting individual basin users water means cutting SNWA back from 60,000 acre feet to 59,000 acre feet, then SNWA should be cut back, the individual should not be cut off.

Dated: March 18, 2011


Richard W. Sears

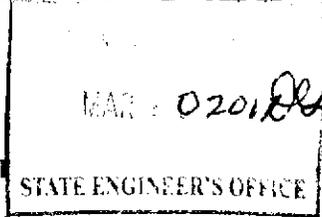

Lesley Anne Sears

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District
ON October 17, 1989, 20, TO APPROPRIATE THE
WATERS OF Underground



PROTEST



Comes now George Eldridge & Son, Inc.
Printed or typed name of protestant

whose post office address is HC 33 Box 33950, Ely, NV 89301
Street No. or PO Box, City, State and ZIP Code

whose occupation is Ranching and protests the granting

of Application Number 54021, filed on October 17, 1989, 20

by Las Vegas Valley Water District to appropriate the

waters of Underground situated in White Pine
Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

This POD would withdraw water from the alluvial fan from which numerous springs rise and flow to serve our certificate # 1325 and to serve the pre-existing rights of others. We believe that large-volume pumping from the alluvial-fan aquifers will adversely impact the flow from those springs. See SE Ruling 5726.

To grant this application for withdrawal from those alluvial-fan aquifers, up-gradient from underground and spring sources previously appropriated pursuant to law, would prove detrimental to the public interest due to the high probability of impacting pre-existing rights on sources which serve domestic, livestock, and irrigation uses.

George Eldridge & Son, Inc. reserves the right to supplement this protest in the event of a hearing on the matter.

THEREFORE the Protestant requests that the application be denied
Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

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2011 MAR 10 PM 12:31
STATE ENGINEER'S OFFICE

Signed Brent Eldridge
Agent or protestant

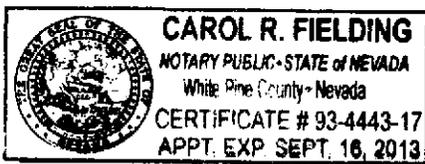
Brent Eldridge, Agent
Printed or typed name, if agent

Address PO Box 151022
Street No. or PO Box

Ely, NV 89315
City, State and ZIP Code

775-296-0635
Phone Number

Subscribed and sworn to before me this 9th day of 7 March, 20 11



Carol R. Fielding
Notary Public

State of Nevada

County of White Pine

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY LVVWD / SNWA
ON October 17, 1989 TO APPROPRIATE THE
WATERS OF UNDERGROUND.

PROTEST

DL

Comes now the Toiyabe Chapter of the Sierra Club

whose post office address is P.O. Box 8096, Reno, NV 89507

whose occupation is a Conservation Organization and protests the granting
of Application Number 54021, filed on October 17, 1989

by LVVWD / SNWA to appropriate the

waters of UNDERGROUND situated in WHITE PINE

County, State of Nevada, for the following reasons and on the following grounds, to wit:

RECEIVED
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STATE ENGINEERS OFFICE

Please see attached one page Statement of Reasons

THEREFORE the Protestant requests that the application be **DENIED**
and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Dennis Ghiglieri
Dennis Ghiglieri

Printed or Typed name, if agent

Address

Toiyabe Chapter of the Sierra Club
P.O. Box 8096, Reno, NV 89507

Address, City, State, Zip

Phone Number

(775) 329-6118

Subscribed and sworn to before me this

7th

day of

MARCH

, 2011

Lori Wray
Notary Public

State of NEVADA

County of WASHOE



Attachment to Protest of Toiyabe Chapter, Sierra Club Against

Application No. 54021, Filed October 17, 1989

by the LVVWD and owned by the SNWA.

This attachment lists and briefly describes the reasons and grounds for this protest of Toiyabe Chapter, Sierra Club ("Protestant") against Application Number **54021**. The LVVWD /SNWA ("Applicant") has filed this Application to appropriate groundwater from **SPRING VALLEY** Basin (*Basin # 184*) as part of its massive proposed network of wells and pipelines stretching across eastern Nevada from Clark County through Lincoln County and into White Pine County.

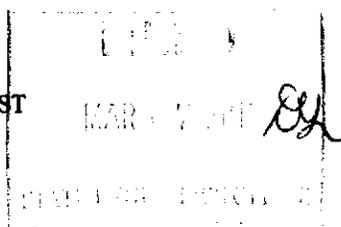
1. There is insufficient water available in the proposed source of supply.
2. The application and proposed use would conflict with existing water rights and protectable interests in domestic and/or ranch production and/or municipal wells.
3. The appropriation and export of water proposed in this application would be detrimental to the public interest on environmental grounds in the basin of origin and in hydrologically connected and/or downwind basins and would be environmentally unsound as it relates to the proposed export basin: Harm to wildlife and wildlife habitat, degradation of air quality, destruction of recreational and aesthetic values, degradation of water quality, degradation of cultural resources, harm to state wildlife management areas and parks and state and federal wildlife refuges and parks.
4. The appropriation and export of water proposed in this application would be detrimental to the public interest on economic grounds and would unduly limit future growth and development in the basin from which the export is proposed: undue limitation of future economic activity and growth in the basin of origin; undue economic harm will extend to the economies and communities of downgradient hydrologically connected and downwind basins; loss of public lands grazing and forage.
5. The proposed action is not an appropriate long-term use of Nevada's water.
6. The Applicant has not justified the need to import water from another basin.
7. The Applicant has not implemented a sufficient conservation plan.
8. The Applicant has not demonstrated the good faith intent or financial ability and reasonable expectation to actually construct the work and apply the water to the intended beneficial use with reasonable diligence.
9. The Applicant has a duplicative application 79294 filed in 2010 which may require a duplicative hearing for the same groundwater.
10. The appropriation and export of groundwater from Spring Valley will harm existing permitted uses in the hydrologically connected areas including but not limited to Snake Valley and Great Basin National Park.
11. Protestant reserves the right to amend this protest to include issues as they develop and incorporates other protests to SNWA's applications by reference.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District, Las Vegas, Nevada
ON October 17, 1989, TO APPROPRIATE THE
WATERS OF the State of Nevada.



PROTEST



Comes now Henry C. Vogler IV

Printed or typed name of protestant

whose post office address is HC 33, Box 33920, Ely, Nevada 89301

Street No. or PO Box, City, State and ZIP Code

whose occupation is Rancher

and protests the granting

of Application Number 54021

, filed on October 17, 1989

, 20

by Las Vegas Valley Water District, Las Vegas, Nevada

to appropriate the

waters of Underground Source

situated in White Pine

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

1. The detrimental effect it will have on existing stock water and irrigation rights previously granted by the State Engineers Office.
2. The detrimental effect it will have on existing domestic water wells within the basin.
3. The detrimental effect it will have on surface water and native vegetation.
4. The detrimental effect it will have on native animal species within the basin.
5. The detrimental effect it will have on domestic animals and the ranching industry within the basin.
6. The detrimental effect it will have on air quality.

THEREFORE the Protestant requests that the application be

Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Henry C. Vogler IV

Agent or protestant

Henry C. Vogler IV

Printed or typed name, if agent

Address

HC33 Box 33920

Street No. or PO Box

Ely, NV 89301

City, State and ZIP Code

775-591-0404

Phone Number

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STATE ENGINEERS OF NEVADA

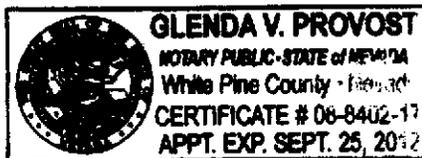
Subscribed and sworn to before me this

3

day of

March
February

, 20 11



Glenda V. Provost

Notary Public

State of Nevada

County of White Pine

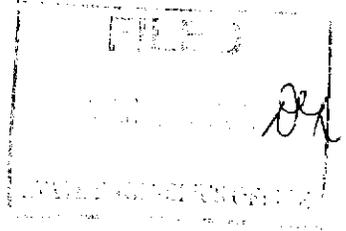
† \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 54021
FILED BY Las Vegas Valley Water District (assigned to SNWA)
ON October 17, 1989, ~~20~~, TO APPROPRIATE THE
WATERS OF Underground, Spring Valley

PROTEST



Comes now EskDale Center

Printed or typed name of protestant

whose post office address is 1100 Circle Drive, EskDale, UT 84728

Street No. or PO Box, City, State and ZIP Code

whose occupation is Agricultural Community

and protests the granting

of Application Number 54021, filed on October 17, 1989

by Las Vegas Valley Water District (assigned to Southern Nevada Water Authority)

to appropriate the

waters of Underground

situated in Spring Valley (Lincoln and White Pine)

Underground or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attachment on reverse.

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2011 MAR -4 AM 11:52
STATE ENGINEERS OFFICE

THEREFORE the Protestant requests that the application be

Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper.

Signed

Jerald Anderson
Agent or protestant

Jerald Anderson

Printed or typed name, if agent

Address

1100 Circle Drive

Street No. or PO Box

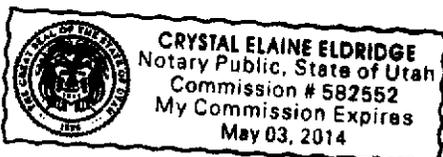
EskDale, UT 84728

City, State and ZIP Code

435-855-2189

Phone Number

Subscribed and sworn to before me this 1st day of March, 20 11



Crystal Elaine Eldridge
Notary Public

State of Utah

County of Millard

+ \$25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

ATTACHMENT FOR **ESKDALE CENTER** PROTEST OF SNWA APPLICATIONS
54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014,
54015, 54016, 54017, 54018, 54019, 54020, 54021
TO APPROPRIATE WATER FROM SPRING VALLEY (BASIN 184)

FILED ON OCTOBER 17, 1989.

1. This application is one of nineteen originally filed by Las Vegas Valley Water District assigned to Southern Nevada Water Authority (SNWA) for in excess of 91,200 acre feet to be appropriated from Spring Valley. Diversion and export of such a quantity of water will deprive both Spring and Snake Valleys of the water needed for its environmental and economic well being, and will unnecessarily destroy environmental, scenic and recreational values that the State and the Nation holds in trust for all its citizens.
2. The granting or approval of said application would be detrimental to the welfare of the general public in that:
 - (i) water rights in adjoining Utah communities would be affected, insomuch as a lowering of the water table affects the aforementioned communities access to their own water supply,
 - (ii) possible contamination of deeper aquifers with upper level ground water due to lowering of the water table,
 - (iii) infringement upon the rights, health, and economic well being of citizens of the State of Utah without formal agreement or approval according to accepted legal procedures.
3. Spring Valley contributes a significant portion of the groundwater resources in Snake Valley as part of a connected flow system. The withdrawal of large quantities of groundwater from Spring Valley threatens the existing groundwater levels in Snake Valley. The protestant being a nearby community with an agricultural support base will be severely affected economically in the event of lowering of current groundwater levels:
 - (i) current wells have produced consistently for over 50 years,
 - (ii) the cost of drilling deeper wells has increased many fold over that 50 year period,
 - (iii) the state-regulated community potable water supply quality would be jeopardized and domestic wells will be threatened,
 - (iv) it would place unnecessary hardship on, and thereby threaten the economic survival of the protesting community if the Application mentioned above is approved,
 - (v) it would threaten the groundwater supply in other areas of Snake Valley where the community has interests in water rights and economic and social relationships with other communities and individuals.
4. Groundwater dependent vegetation will be affected, changing the general ecology and providing opportunity for invasive or non-native species to compete with both wildlife habitat and agricultural cropping, threatening the agricultural basis of the community and future economic development opportunities.
5. Inasmuch as a water extraction and transbasin conveyance project of this magnitude has never been considered by the State Engineer, it is therefore impossible to anticipate all potential adverse effects without further information and study. Accordingly, the protestant reserves the right to amend the subject protest to include such issues as they may develop as a result of further information and study.
6. **Eskdale Center** additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to the subject application filed pursuant to NRS 533.365.