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 **54009**
FILED BY **LVVWD / SNWA**
ON **October 17, 1989** TO APPROPRIATE THE
WATERS OF **UNDERGROUND**.

PROTEST

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 **54009**, 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:

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Please see Attachment B for Reasons and 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 Susan B. Lynn

Susan B. Lynn
Print Name

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

LORI WRAY
Notary Public-State of Nevada
APPT. NO. 9803322
My App. Expires February 14, 2014

State of **NEVADA**

County of **WASHOE**

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

ATTACHMENT A. List of Protestants Joining with the Great Basin Water Network Against Application Numbers 53987 – 53992 and 54003 – 54021 inclusive.

Pioche Public Utilities
Nathan Adams
PO Box 35
Pioche NV 89043

Bill Alder
HC 61 Box 360
Callao UT 84083

Meshell Alder
HC 61 Box 360
Callao UT 84083

Alder Ranches
Ed Alder
PO Box 430
Trout Creek UT 84083

Deana Alder
430 Pony Express Rd
Trout Creek UT 84083

Diane Alder
430 Pony Express Rd
Trout Creek UT 84083

Renee Alder
4821 Mandon
West Valley City UT 84120

Ed Alder
PO Box 430
Trout Creek UT 84083

Annette Alexander
2732 Desert Crystal Dr
Las Vegas NV 89134

Willow Springs Ranch
Beth Anderson
290 Pony Express Rd
Callao UT 84083

Willow Springs Ranch
Don Anderson
290 Pony Express Rd
Callao UT 84083

Wendy Anderson
19 Maison Ave
E Ely NV 89315

Mark Andreasen
PO Box 183
Baker NV 89311

2nd Big Springs Irrigation
Dean Baker
PO Box 170
Baker NV 89311

Baker Ranches Inc.
Dean Baker
PO Box 170
Baker NV 89311

Dean Baker
P.O. Box 10
Baker NV 89311

ATTACHMENT A. List of Protestants Joining with the Great Basin Water Network Against Application Numbers 53987 – 53992 and 54003 – 54021 inclusive.

Sylvia Baker
221 W. 650 N.
Clearfield UT 84015

G.L. Bassett
925 Donner Way # 2300
Salt Lake City UT 84108

Marlene Bates
HC 78 Box 340
Garrison UT 84728

Jerald Bates
HC 78 Box 340
Garrison UT 84728

John Bates
455 Parleys Way #220
Salt Lake City UT 84109

Tom Bath
600 Mill Street
Ely NV 89301-1941

Cynthia Lee Bell
2520 Opal Drive
Ely NV 89301-3128

Edward John Bell III
2520 Opal Drive
Ely NV 89301-3128

Louis Benezet
HC 74 Box 150
Pioche NV 89043

Unitarian Universalist Social Justice Council
Roger Best, Co-chair
P.O. Box 20426
Reno NV 89515

Nancy Bilbao
P.O. Box 150581
Ely NV 89301

Marjorie Blackett
564 N. 200 E
Nephi UT 84648

Marlow Blackett
564 N. 200 E
Nephi UT 84648

Bruce Bledsoe
1600 Greenburg Circle
Reno NV 89509

D. Dane Bradfield
P.O. Box 561
Panaca NV 89042

Ann Brauer
PO Box 269
Indian Springs NV 89018

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Jim Brauer
PO Box 269
Indian Springs NV 89018

Marie A. Brean
21 Vista Rafael Pkwy
Reno NV 89503

Dariana Burbano
2748 Council Crest Court
Las Vegas NV 89142

Ella Carling
615 E. 16th St. #44
Ely NV 89301

Louise M. Carlson
P.O. Box 613
Pioche NV 89043

Unitarian Universalist Green Sanctuary Com.
Jeff Carlton, Chair
3365 Pierremont Road
Reno NV 89503

Charles Carson
2250 Crawford St
Ely NV 89301

Keith Carson
3 Marietta Way
Ely NV 89301

Paula Carson
3 Marietta Way
Ely NV 89301

Doug Carson
HC 34 34153
Ely NV 89301

Frank Cheeney
P.O. Box 702
Pioche NV 89043

Diane Chipman
951 Finchwood
Las Vegas NV 89110

Max Chipman
951 Finchwood
Las Vegas NV 89110

George Christanson
PO Box 150355
Ely NV 89315

Linda Christanson
PO Box 150355
Ely NV 89315

F Martin Clayton
11 Lincoln Way
Sparks NV 89431

Robert Coetze
150 Home Farm Rd
Baker NV 89311

Marjorie Coffman
PO Box 9
Baker NV 89311

William R Coffman
PO Box 9
Baker NV 89311

John S. Cole
Box 385 142 Comstock St.
Pioche NV 89043

Gary Austin Cole
P.O. Box 238
Pioche NV 89043

Lardon Cole
P.O. Box 238
Pioche NV 89043

James Deacon
968 Camilia Dr
Henderson NV 89011

Pete T. Delmue
HC 74 Box 400
Pioche NV 89043

Blake Delucia
#4 Pine
Ruth NV 89319

Rom DiCianno
824 Ave H East
Ely NV 89301-2604

Veronica Douglass
Callao Rt Box 380
Wendover UT 84083

George Douglass
HC 61 Box 380
Wendover UT 84083

Great Basin Chapter of Trout Utd
Don Duff
PO Box 32
Baker NV 89311

Don Duff
PO Box 32
Baker NV 84103

Gerald Dunbar
PO Box 430
Chino Valley AZ 86323

Norton Egge
PO Box 435
Ruth NV 89319

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Erma Egge
PO Box 435
Ruth NV 89319

Gary Q. Elmer
P.O. Box 281
Panaca NV 89042-0281

Utah Audubon Council
Stephen Erickson
444 Northmont Way
Salt Lake City UT 84103

Shelby K. Farnsworth
P.O. Box 14
Lund NV 89317

Genevieve Fields
HC 61 Box 6078
Ibapah UT 84034

James Fisher
P.O. Box 445
Indian Springs NV 89108

New Age Gardeners
Peter Ford
P.O. Box 140
Baker NV 89311

Shari Frilot
904 Sanborn Ave
Los Angeles CA 90029

Bruce Eldridge
PO Box 150511
Ely NV 89315

Citizens Education Project
Stephen Erickson
444 Northmont Way
Salt Lake City UT 84103

Vernon Fairchild Jr
1402A East 4300 N.
Buhl ID 83316

Mary Feldman
5901 Martita Ave
Las Vegas NV 89108

Pat Fillman
HC 64 Box 64500
Ely NV 89301

Native Community Action Council
Peter B. Ford
P.O. Box 140
Baker NV 89311

Albert M. Free
14288 SR-322
Pioche NV 89043

Robert Furtek
2621 Bello Dr
N Las Vegas NV 89030

Brent Gardner
PO Box 220
Lund NV 89617

Garland Family Trust
Cecil and Annette Garland
Callao Rt Box 225
Wendover UT 84083

Rafter Lazy C Ranch
Annette Garland
Callao Rt Box 225
Wendover UT 84083

Annette Garland
Callao Rt Box 225
Wendover NV 84083

Cecil Garland
Callao Rt Box 225
Wendover NV 84083

Nate Garrett
564 N. 200 E
Nephi UT 84648

Strawberry Creek Ranch
Patricia Gladman
PO Box 145
Baker NV 89311

Patricia Gladman
PO Box 145
Baker NV 89311

Kena Gloeckner
HC-74 Box 237
Pioche NV 89043

Patrick J. Gloeckner
HC-74 Box 237
Pioche NV 89043

Sally Gust
711 South 1st
Ely NV 89301

John Hadder
85 Keystone, Suite K
Reno NV 89503

Shawn Hamilton
P.O. Box 296
Lund NV 89317

Anita Hansen
PO Box 67
Garrison UT 84728

Lisa Hardy
PO Box 431
Indian Springs NV 89018

Tonia Harvey
PO Box 140
Baker NV 89311

ATTACHMENT A. List of Protestants Joining with the Great Basin Water Network Against Application Numbers 53987 – 53992 and 54003 – 54021 inclusive.

Varlin S. Higbee
P.O. Box 354
Alamo NV 89001

Kathy Hill
HC 61 Box 550
Partoun UT 84083

Ken Hill
HC 61 Box 550
Partoun UT 84083

Lill Hillhouse
6344 Churchfield Blvd
Las Vegas NV 89103

Amanda Hilton
PO Box 150511
Ely NV 89315

Erik Holland
17 S Virginia St APT 506
Reno NV 89501-2911

Corenzo Hooper
736 Tempi Poi Rd
Ibapah UT 84034

Milton Hooper
PO Box 6037
Ibapah UT 84034

Jeanine Hooper
PO Box 6053
Ibapah Ut 86034

Rhonda Hornbeck
HC 74 Box 200
Pioche NV 89043

Margaret Horner
PO Box 143
Baker NV 89311

Jesse J. Howard
P.O. Box 752
Pioche NV 89043

James Hubbard
79 Pine St. #132
New York NY 10005

James W. Hulse
940 Grand View Ave.
Reno NV 89503

Carol J. Hunt
HC 32 Box 32324
Ely NV 89301

M Jenkins
1430 E 2500 S
Delta UT 84624

ATTACHMENT A. List of Protestants Joining with the Great Basin Water Network Against Application Numbers 53987 – 53992 and 54003 – 54021 inclusive.

Glenn A. Jewett
P.O. Box 422
Pioche NV 89043

Brent Johnson
P.O. Box 151484
Ely NV 89315

Linda Johnson
1356 E 4500 S
Salt Lake City NV 84117

Donna K. Jones
2054 North St.
Ely NV 89301

Susan Juetten
4420 S Jumbo Way
Washoe Valley NV 89704

Georgia Keeran
19360 Black Oak Dr.
Fiddletown CA 95629-9709

Bill Keeran
19360 Black Oak Dr.
Fiddletown CA 95629-9709

Steve Klukkert
P.O. Box 6312
Reno NV 89513

Norman Kolstad
195 Tribal Center Rd
Ibapah UT 84034

Ryan Latimer
HC 61 Box 445
Trout Creek UT 84083

Jeri Lee
4500 Lilliput Ln
Las Vegas NV 89102

Nancyann Leeder
335 Lancaster Dr.
Reno NV 89506

Rowena Leonard
P.O. Box 5
Baker NV 89311

Anthony Lesperance
PO Box 210
Paradise Valley NV 89426

Claire Lewis
530 Partoun RT
Partoun UT 84083

Elaine Lewis
530 Partoun RT
Partoun UT 84083

Wes Lewis
530 Partoun RT
Partoun UT 84083

April Lewis
532 Partoun Rt
Partoun UT 84083

Earl Lewis
532 Partoun Rt
Partoun NV 84083

Indian Springs Civic Assoc.
Marion Lewis, Acting Pres.
P.O. Box 1
Indian Springs NV 89108

Montie and Norman Liebsack
HC 32 Box 32302
Ely NV 89301

Mick Lloyd
HC 74 Box 190
Pioche NV 89043

Lynne Lloyd
HC 74 Box 190
Pioche NV 89043

Susan Lynn
1599 Wheatgrass Dr
Reno NV 89509

Cory Lytle
1315 Mule Deer Road; HC 74 Box 243
Pioche NV 89043

Toni Lytle
HC 74 Box 180 3678 Eagle Valley Rd
Pioche NV 89043

Farrel and Manetta Lytle
HC 74 Box 236
Pioche NV 89043

Donna Lytle
HC 74 Box 245
Pioche NV 89043

Ken Lytle
HC 74 Box 245
Pioche NV 89043

Ginger Magner
HC 61 Box 380
Wendover UT 84083

Dwala G. Mandas
1605 Wheatgrass Dr
Reno NV 89509

James Mandas
1605 Wheatgrass Dr
Reno NV 89509

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Terry Marasco
PO Box 69
Baker NV 89311

Jay Mashborn
984 24 Rd
Grand Junction CO 81505

Thelma Matlin
4755 Bradford Lane
Reno NV 89519

Maynard Well Drilling
Orvan Maynard
439 N 100 St Box 64
Lund NV 89317

Orvan Maynard
P.O. Box 64
Lund NV 89317

Ryon McDermott
2253 E Roosevelt Ave
Salt Lake City UT 84108

Lund Irrigation and Water Co.
Rod McKenzie
PO Box 236
Lund NV 89317

Carol J. McKenzie
PO Box 236
Lund NV 89317

Rod McKenzie
PO Box 236
Lund NV 89317

Skyler McRaney
P.O. Box 472
Pioche NV 89043

Joe Messovia
PO Box 150524
Ely NV 89315

Lorie Messovia
PO Box 151524
Ely NV 89301

Coalition of Nat'l Park Service Retirees
Rebecca Mills
994 Wildcat Canyon Rd
Berkeley CA 94708

Rebecca Mills
994 Wildcat Canyon Rd
Berkeley CA 94708

Larry Moon
PO Box 6132
Ibapah UT 84034

Brian Morrison
PO Box 273
Baker NV 89311

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Center for Biological Diversity
Rob Mrowka
4261 Lily Glen CT
Las Vegas NV 89032

Rob Mrowka
4261 Lily Glen CT
Las Vegas NV 89032

Chrissandra Murphy
PO Box 6074
Ibapah UT 84034

Patrick J. Murray
PO Box 150
Baker NV 89311

Leontine Nappe
615 Robinson Ct.
Reno NV 89503

Betty Nichols
1050 E 15th St.
Ely NV 89301

Robert Nichols
1293 E 16th St
Ely NV 89301

Robert and Joyce Nickerson
1915 Joy Ln
Fort Mohave AZ 86426

Round River Conservation Studies
Gavin Noyes
284 West 400 N. Ste 105
Salt Lake City UT 84103

Mitzi Nyborg
HC 61 Box 6057
Ibapah UT 84034

Gene Ockert
PO Box 256
Ruth NV 89319

Michael Okelberry
540 Partoun Rd.
Partoun UT 84083

Gary Olsen
1227 N 200 East
Bountiful UT 84010

Georgie Oppenhein
HC 61 Box 6081
Ibapah UT 84034

Sherrill Pattee
6868 Sky Pointe Dr #1142
Las Vegas NV 89131

Margaret Pense
PO Box 41
Baker NV 89311

Gary and JoAnn Perea
P.O. Box 184
Baker NV 89311

Charlene Pete
HC 61/P.O. Box 6047
Ibapah UT 84034

Clell Pete
HC 61/P.O. Box 6047
Ibapah UT 84034

Mary Lillie Pete
HC 61 Box 6052
Ibapah UT 84034

Tommy Pete
PO Box 6044
Ibapah UT 84034

Mary Peterson
HC 32 Box 32401
Ely NV 89301

Cecelia D. Phillips
100 Circle Dr.
EskDale UT 84728

Grace Potorti- Thornton
6670 Peppermint Dr
Reno NV 89506

Nita Purdy
15 Valley View
Ely NV 89301

Launce Rake
732 S 6th St
Las Vegas NV

Laura Rankin
PO Box 150511
Baker NV 89311

Roya Rastegar
904 Sanborn Ave
Los Angeles CA 90029

Merle Rawlings
HC 61 Box 535
Wendover UT 84083

John Reil
HC 61 Box 345
Callao UT 84083

Molly Reil
HC 61 Box 345
Callao UT 84083

Melissa Renfro
P.O. Box 110
Baker NV 89311

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Deanna Rigney
716 Murry St
Ely NV 89301

Ben Roberts
P.O. Box 3
Baker NV 89311

Mark E. Rogers
P.O. Box 58
Baker NV 89311

Ed Rothfuss
8014 Dorinda Ave.
Las Vegas NV 89147

LaVon Rowleg
PO Box 53
Garrison UT 84728

Tom Sanders
PO Box 150456
Ely NV 89315

Ellen Sargent
PO Box 226
Indian Springs NV 89018

Bounthay Saysavanh
2748 Council Crest Court
Las Vegas NV 89142

Rob Scanland
1300 Pinion Hills Dr
Carson City NV 89701

Kristen Schaffer
780 Farnam St
Los Angeles CA 90042

David Sharp
994 Wildcat Canyon Rd
Berkeley CA 94708

Nomi Sheppard
PO Box 150
Baker UT 89311

Angela Skoubye
450 Snake Valley Rd
Trout Creek UT 84083

Nathan Skoubye
450 Snake Valley Rd
Trout Creek UT 84083

Shannon Spendlove
P.O. Box 323
Pioche NV 89043

Delaine Spilsbury
P.O. Box 1055
McGill NV 89318

Richard A. Spilsbury
P.O. Box 1055
McGill NV 89318

Carl Spotleson
6482 Stone Dry Ave, Unit 101
Henderson NV 89011

Great Basin Business & Tourism Council
Terry Steadman
PO Box 117
Baker NV 89311

Dellice Steadman
800 Redfield Pkwy Apt 173
Reno NV 89509

Debra Steadman
PO Box 117
Baker NV 89311

Terry P Steadman
PO Box 117
Baker NV 89311

Betty Steadman
PO BOX 87
Baker NV 89311

Melvin Steele
PO Box 6614
Ibapah UT 84034

Larry Stever
P.O. Box 202
Pioche NV 89043

L. Ryan Stever
P.O. Box 575
Pioche NV 89043

Ross Stirling
P.O. Box 485
Alamo NV 89001

Tino Tadena
6840 Kettering Cr
Fair Oaks CA 95628

Valeria Taylor
PO Box 150
Baker NV 89311

Beverly Terhune
PO Box 150592
Ely NV 89301

Jennifer Thompson
4841 Lakeridge Terrace W
Reno NV 89509

Vicki Toy-Smith
4908 Fall Creek Ct.
Reno NV 89519

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Randy Upton
2805 Merritt Ave
Las Vegas NV 89102

John Wadsworth
PO Box 256
Panaca NV 89042

Christopher Wheeler
PO Box 40
Garrison UT 84728

Darwin Wheeler
PO Box 40
Garrison UT 84728

John Whipple
PO Box 164
Lund NV 89317

Sharon Wilcox
13225 Fellowship Way
Reno NV 89500

Lee Williamson
429 Ash St
Boulder City NV 89005

Glee Willis
706 Diogenes Dr
Reno NV 89512

William R and Holly Wilson
P.O. Box 150665
Ely NV 89315

Mary E. Winston
760 Brookfield Dr.
Reno NV 89503

Stephen Winter
416 St Johns Place
Brooklyn NY 11238

Mark Wray
2802 Outlook Dr
Reno NV 89509

Glennon Zelch
188 Blue Spruce St.
Pioche NV 89043

ADDITION TO ATTACHMENT A. List of Protestants Joining with the Great Basin Water Network Against Application Numbers 53987 – 53992 and 54003 – 54021 inclusive.

Raymond Timm
Highway 488, North Joe's Way
Baker NV 89311

Carolyn Garrett
Highway 488, North Joe's Way
Baker NV 89311

Susan Geary
164 S. Rock House Dr.
Baker NV 89311

Don Geary
164 S. Rock House Dr.
Baker NV 89311

Ilene C. Ferris
2081 Wilmington Ave.
Salt Lake City UT 84109

Bryan Hamilton
Box 55
Baker NV 89311

Chris Dailey
P.O. Box 1060
McGill NV 89318

Carl Marsh
P.O. Box 51926
Sparks NV 89435

Dora Walker
P.O. Box 722
Milford UT 84751

John Walker
P.O. Box 722
Milford UT 84751

Sandra Walker
P.O. Box 722
Milford UT 84751

Angela Childs
HC 78 Box 125
Garrison UT 84728

Glen Childs
HC 78 Box 125
Garrison UT 84728

ATTACHMENT B To Protest of GREAT BASIN WATER NETWORK Against Application No. 54009, 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 **54009.** 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. <u>There Is Insufficient Water Available In The Proposed Source of Supply</u>:

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. <u>The Application and Proposed Use Would Conflict With Existing Water Rights And Protectable Interests In Domestic Wells</u>:

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, Pahranagat 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, Pahranagat 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.