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

IN THE MATTER OF APPLICATION NUMBER 54059,
FILED BY Las Vegas Valley Water District
ON October 17 1989, TO APPROPRIATE THE
WATERS OF Underground

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 P.O. Box, City, State and Zip Code
whose occupation is Federally-recognized Tribe of Indians, and protests the granting
of Application Number 54059, filed on October 17, 1989
by Las Vegas Valley Water District to appropriate the
Printed or typed name of applicant
waters of Underground situated in Clark
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:

Please see "Ely Shoshone Protest Statement", attached.

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 Sally Marques
Agent or protestant
Ms. Sally Marques, Sec. to the Ely Shoshone Trib
Printed or typed name, if agent
Address 16 Shoshone Circle, Ely, NV 89301
Street No. or P.O. Box No.

City, State and Zip Code No.

Subscribed and sworn to before me this 6th day of July 1990.

Carol Norcross Vlahos
Notary Public

CAROL NORCROSS VLAHOS
Notary Public • State of Nevada
White Pine County • Nevada
Appt. Exp. Jan. 9, 1994

State of Nevada

County of White Pine

$10 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE. ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

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RECEIVED
STATE ENGINEERS OFFICE

Protest Statement of the Ely Shoshone Tribe
Ely, Nevada

1. The Ely Shoshone Tribe, as a voting member of the Western Shoshone National Council, is actively engaged in negotiations with the government of the United States seeking a final resolution of treaty rights arising from the Treaty of Ruby Valley (1863), whose boundaries include the Basin in which this Application is sought, and to which this protest is lodged. (See attachment maps.)

The Ely Shoshone Tribe is negotiating not just for land rights, but for all attendant rights to our treaty land: surface and underground water, mineral, grazing, etc.

Until such treaty claim is settled by mutual agreement of the Western Shoshone Tribes and the Congress of the United States, the Ely Shoshone Tribe protests this application on the basis of its premature action.

The Treaty of Ruby Valley exists as a prior right to the claims of the Las Vegas Valley Water District, and to the claims of the State of Nevada as well; until this right is properly adjudicated, this application and all additional appropriation applications which overlap Western Shoshone treaty land are moot.

The Ely Shoshone Tribe also protests this application on the following grounds:

2. This application is one of 145 applications filed by the Las Vegas Valley Water District seeking to appropriate 804,195 acre feet of ground water primarily for municipal use within Clark County. Diversion and export of such a quantity of water will: lower the static water level in this Basin; adversely affect the quality of remaining ground water; and further threaten springs, seeps and phreatophytes which provide water and habitat critical to the survivial of wildlife and grazing livestock.

3. The appropriation of this water when added to the already approved appropriations and existing uses in the Basin will exceed the annual recharge and safe

yield of the Basin. Appropriation and use of this magnitude will: lower the static water level and degrade the quality of water from existing wells and cause negative hydraulic gradient influences as well as other negative impacts.

4. This Application is one of 146 applications filed by the Las Vegas Valley Water District seeking a combined appropriation of some 864,195 acre feet of ground and surfacewater primarily for municipal use in Clark County. Diversion and export of such a quantity of water will deprive the area of origin of the water needed to protect and enhance its environment and economic well being, and the diversion will unnecessarily destroy environmental, ecological, scenic and recreational values that the State holds in trust for all its citizens.

5. The granting or approving of the subject application in the absence of comprehensive planning, including but not limited to environmental impact considerations, cost considerations, socioeconomic impact considerations, and a comprehensive water resource development plan (such as is required by the Public Service Commission of private purveyors of water) for the Las Vegas Valley Water District Service area is detrimental to the public welfare and interest.

6. The granting or approval of the above-referenced Application would be detrimental to the public interest in that it, individally and together with the other applications of the water importation project, would:

(a) Likely jeopardize the continued existence of endangered and threatened species recognized under the federal Endangered Species Act and related state statutes;

(b) Prevent or interfere with the conservation of those threatened or endangered species;

(c) Take or harm those endangered or threatened species; and

(d) Interfere with the purpose for which the federal lands are managed under federal statutes including, but not limited to, the Federal Land Use Policy Act of 1976.

7. The approval of the subject application will sanction and encourage the willful waste of water that has been allowed, if not encouraged, by the Las Vegas Valley Water District.

8. The subject application seeks to develop and transport water resources on and across lands of the United States under the jurisdiction of the United States Department of Interior, Bureau of Land Management. This application should be denied because the Las Vegas Valley Water District has not obtained the necessary legal interest (e.g., right-of-way) in the federal land such that the applicant may extract, develop and transport water resources from the proposed point of diversion to the proposed place of use.

9. The Application should be denied because it individually and cumulatively with other applications of the water importation project will perpetuate and may increase the inefficient use of water in the Las Vegas Valley Water District service area and frustrate efforts at water demand management in the Las Vegas Valley Water District service area.

10. The Las Vegas Valley Water District lacks the financial capability for developing and transporting water under the subject permit which is a prerequisite to putting the water to beneficial use.

11. The above-reference Application should be denied because it fails to include the statutorily required:

(a) Description of the place of use;

(b) Description of the proposed works;

(c) The estimated cost of such works; and

(d) The estimated time required to put the subject water to beneficial use.

12. The subject Application should be denied because it individually and cumulatively with other applications of the proposed project will exceed the safe yield of the above-referenced Basin thereby adversely affecting phreatophytes and creating air contamination and air pollution in violation of State and Federal Statutes, including but not limited to, the Clean Air Act and Chapter 445 of the Nevada

Revised Statutes.

13. The application cannot be granted because the applicant has failed to provide information to enable the State Engineer to safeguard the public interest properly. The adverse effects of this application and related applications associated with the proposed water appropriation and transportation project (largest appropriation of ground water in the history of the State of Nevada) cannot properly be evaluated without an independent, formal and publicly-reviewable assessment of:

a. cumulative impacts of the proposed extraction;

b. mitigation measures that will reduce the impacts of the proposed extraction;

c. alternatives to the proposed extraction, including but not limited to, the alternatives of no extraction and aggressive implementation of all proven and cost-effective water demand management strategies.

14. The subject application should be denied because the population projections upon which the water demand projections are based are unrealistic and ignore numerous constraints to growth, including traffic congestion, increased costs of infrastructure and services, degraded air quality, etc.

15. The subject application should be denied because previous and current conservation programs instituted by the Las Vegas Valley Water District are ineffective public-relations oriented efforts that are unlikely to achieve substantial water savings. Public policy and public interest considerations should preclude the negative environmental and socio-economic consequences of the proposed transfers on areas of origin when the potential water importer has failed to make a good-faith effort to efficiently use currently available supplies.

16. The subject application should be denied because the enormous costs of the project likely will result in water rate increases of such a magnitude that demand will be substantially reduced, thereby rendering the water transfer unnecessary.

17. The granting or approval of the above-referenced

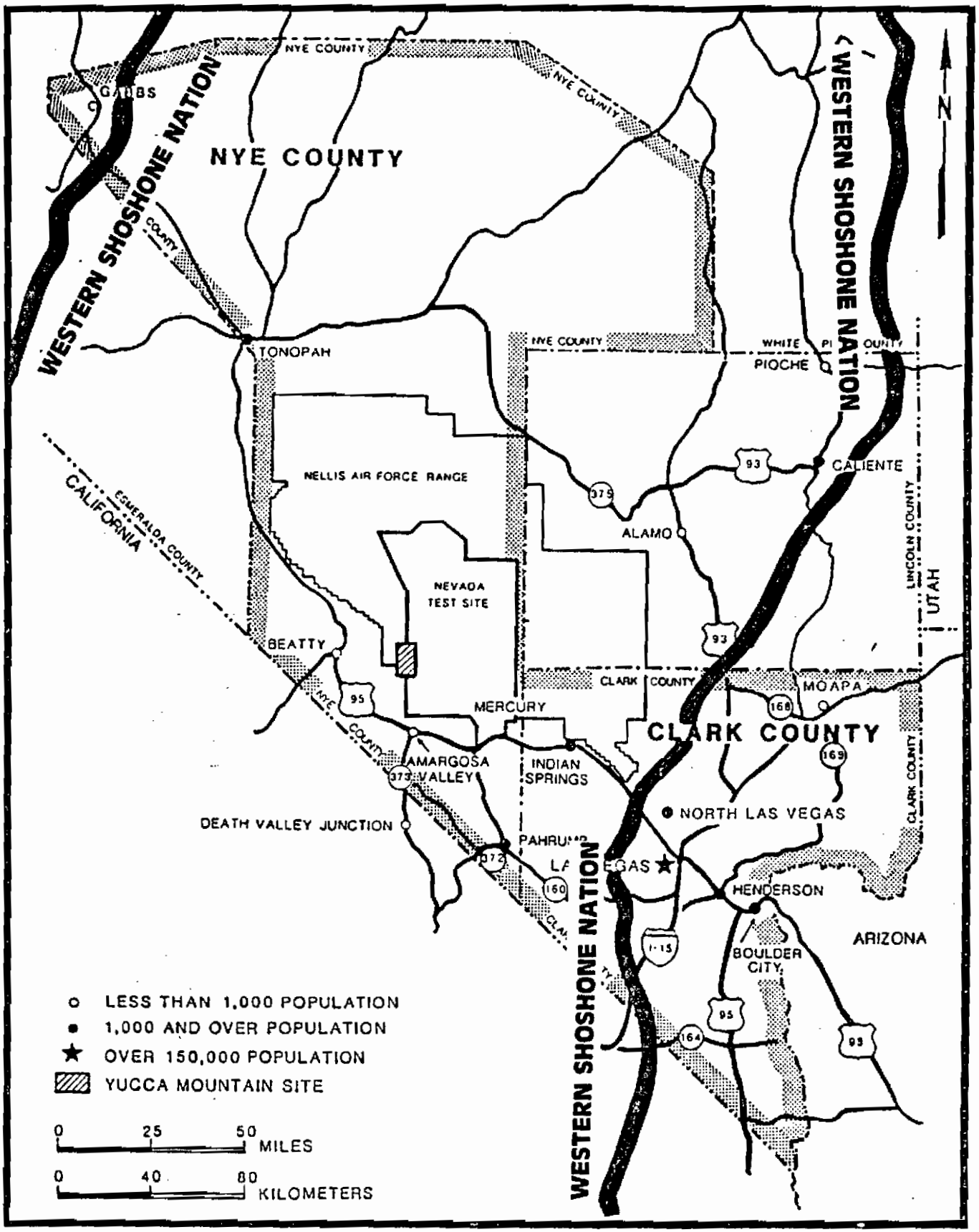
application would be detrimental to the public interest and not made in good faith since it would allow the Las Vegas Valley Water District to lock up vital water resources for possible use sometime in the distant future beyond current planning horizons.

18. The subject application should be denied because current and developing trends in housing, landscaping, national plumbing fixture standards and demographic patterns all suggest that the simplistic water demand forecasts upon which the proposed transfers are based substantially overstate future water demand needs.

19. The subject application should be denied because the current per capita water consumption rate for the Las Vegas Valley Water District is double that of similarly situated southwestern municipalities. This suggests enormous potential for more cost-effective supply alternatives, including demand management and effluent re-use. These alternatives have not been seriously considered by the Las Vegas Valley Water District.

20. 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 affects 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.

21. The undersigned additionally incorporates by reference as though fully set forth herein and adopts as its own, each and every other protest to the subject application filed pursuant to NRS 533.365.


NYE COUNTY
GABBS
WESTERN SHOSHONE NATION
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TONOPAH
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WHITE PINE COUNTY
PIOCHE
NELLIS AIR FORCE RANGE
93
CALIENTE
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ALAMO
CALIFORNIA
ESMERALDA COUNTY
NEVADA TEST SITE
LINCOLN COUNTY
UTAH
BEATTY
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CLARK COUNTY
MOAPA
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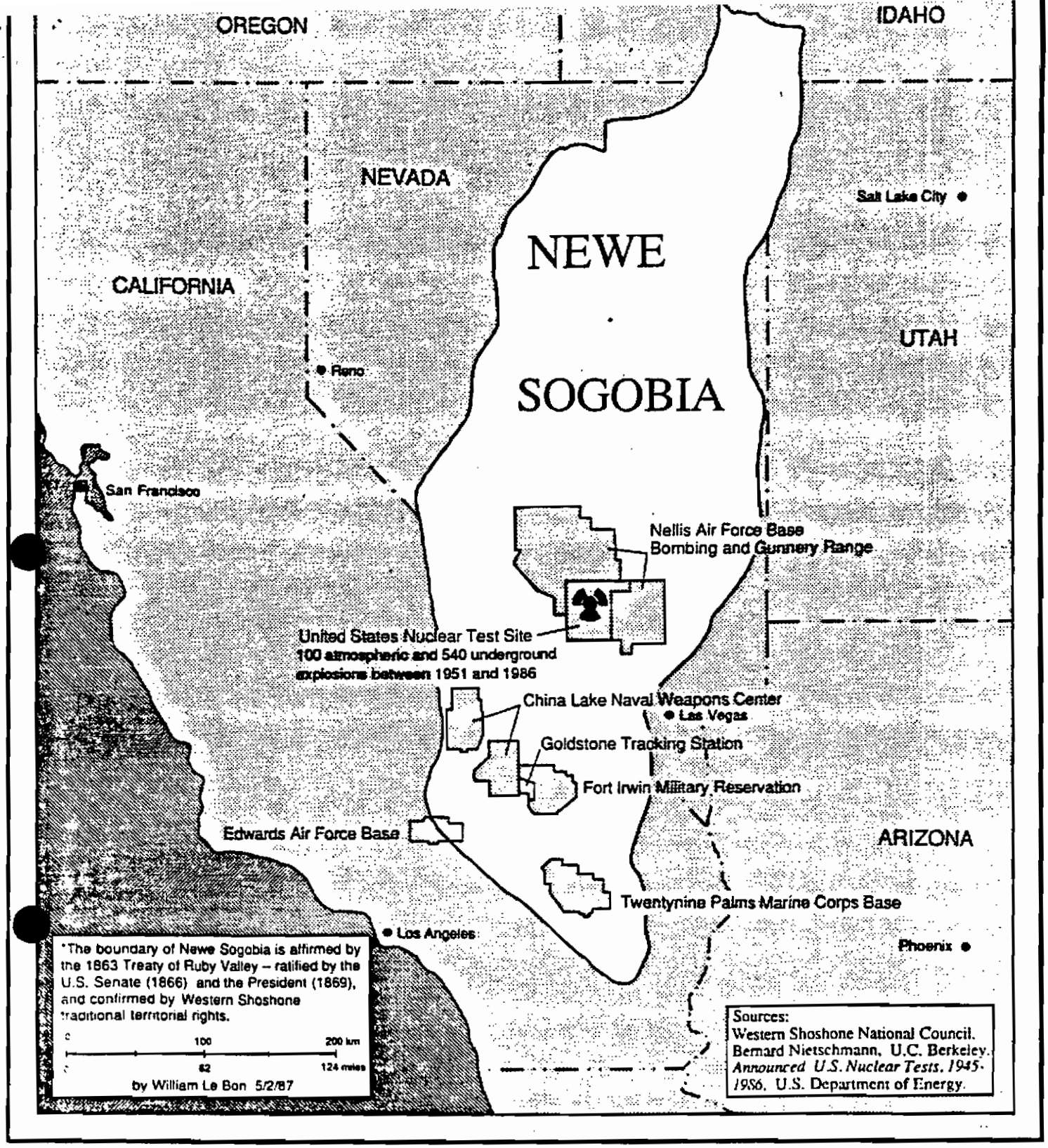
MERCURY
168
CLARK COUNTY
169
AMARGOSA VALLEY
373
INDIAN SPRINGS
CLARK COUNTY
NORTH LAS VEGAS
DEATH VALLEY JUNCTION
PAHRUMP
373
LAS VEGAS
160
HENDERSON
WESTERN SHOSHONE NATION
I-15
ARIZONA
BOULDER CITY
95
164
93
LESS THAN 1,000 POPULATION
1,000 AND OVER POPULATION
OVER 150,000 POPULATION
YUCCA MOUNTAIN SITE
0 25 50 MILES
0 40 80 KILOMETERS


OREGON
IDAHO
NEVADA
Salt Lake City
NEWE
SOGOBIA
CALIFORNIA
UTAH
Reno
San Francisco
Nellis Air Force Base
Bombing and Gunnery Range
United States Nuclear Test Site
100 atmospheric and 540 underground
explosions between 1951 and 1986
China Lake Naval Weapons Center
Las Vegas
Goldstone Tracking Station
Fort Irwin Military Reservation
Edwards Air Force Base
ARIZONA
Twentynine Palms Marine Corps Base
Los Angeles
Phoenix
*The boundary of Newe Sogobia is affirmed by the 1863 Treaty of Ruby Valley – ratified by the U.S. Senate (1866) and the President (1869), and confirmed by Western Shoshone traditional territorial rights.
0
100
200 km
62
124 miles
by William Le Bon 5/2/87
Sources:
Western Shoshone National Council.
Bernard Nietschmann, U.C. Berkeley.
Announced U.S. Nuclear Tests, 1945-1986, U.S. Department of Energy.