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

In the matter of Application No.: 77788 Filed By: Belli Ranch Estates Association On January 13, 2009, to appropriate the waters of Truckee River Decree Claims #97 & #97a	> > > > > > >	**PROTEST**

FILED
FEB 26 2009
STATE ENGINEER'S OFFICE

Comes now **Ross E. de Lipkau, Attorney/Agent for: (1) Stephen & Sally Edney, (2) Kelly & Gretchen Djukarovich, (3) Phillip & Arleen Huddleston, and (4) James R. Smith**
Printed or typed name of protestant

whose address is **50 W. Liberty St., Ste. 750, Reno, NV 89501**
State No. or PO Box, City, State and Zip Code

whose occupation is **Attorney** and protests the granting

of Application Number **77788**, filed on **January 13, 2009**.

by **Belli Ranch Estates Association** to appropriate the

waters of **Truckee River Decree Claims #97 & #97a**
Underground or name of stream, lake, spring or other source

situated in **Washoe** County, State of Nevada, for the following reasons and on the following grounds, to wit:

See attached Exhibit A.

2009 FEB 26 AM 8 01

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 Ross E. de Lipkau

By: **Ross E. de Lipkau**
Printed or typed name, if agent

Address: **501 W. Liberty Street; Suite 750**
Street No. or PO Box No.

Address: **Reno, NV 89501**
City, State and Zip Code

State of Nevada, County of Washoe
Sign and sworn to before me this 25th day of February, 20 09 by **Ross E. de Lipkau**.

KATHRYN SOUVIRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 03-7089-2 - Expires July 30, 2012

Kathryn Souviron
Notary Public

County of **Washoe**

State of **Nevada**

$25 Filing Fee Must Accompany Protest.
Protest Must Be Filed In Duplicate. All Copies Must Contain Original Signature.

EXHIBIT A
to
Protest of Application 77788

1. Application 77788 should be denied as the Applicant did not have the authority to file such application. The procedure, meaning the decision to file Application 77788, which took place at a Belli Ranch Estates Association Board of Director's meeting in January 2009, consisted of four individuals being the Board of Directors. Three of the individuals had conflicts of interest, so abstained from voting. Hence, the authority to file Application 77788 was given by one individual. As set forth in the Declaration of Covenants, Conditions and Restrictions for Belli Ranch Estates, dated August 13, 1983, filed for record in the Washoe County Recorder as Book 1919, page 0673 and assigned official Document Number 883299 ("Declaration"), one individual does not have authority to make a decision of this type. Thus, the decision by the Board of Directors to file Application 77788 is in direct violation of the Declaration and is, therefore, void.

2. The sought after effect of Application 77788 is a direct attempt to take, without compensation, the perpetual right to use water from four lot owners and simply "give it" to other lot owners. An attempt is being made to transfer water from what is known as the lower bench to what is known as the upper bench. Those property owners within the proposed place of use have a conventional means of getting water, meaning Truckee River water, to their properties. Further, a due diligence search prior to acquisition of the upper bench lots apparently has not been made.

3. On July 13, 1982, under Review No. 2032F, on file in Permit 15227, entitled "Subdivision Review," page 2 reads as follows: "We will also put in the deeds of the lots that we sell, that the water is to remain appurtenant to the land and cannot be transferred." This language, prepared by the Developer, is perpetually binding.

4. Further, Gerald Brownfield, Hydraulic Engineer, then employed by the Nevada State Engineer, stated in the July 13, 1982, letter as follows: "A copy of this Certificate shall be furnished to the subdivider who in turn shall provide a copy of such Certificate to each purchaser of land prior to the time the sale is complete. . .." Thus, the above quoted language becomes a part of the formal State Engineer's subdivision approval. No provision exists for changing of this condition.

5. Parcel Map 3266, recorded with the Washoe County Recorder on November 7, 1977, Official No. 2151830, reads in part as follows: "Surface water rights that are appurtenant to each lot are to remain on that lot and cannot be transferred. (See records in the office of the Nevada State Engineer)." Hence, the Parcel Map refers to the State Engineer letter of July 13, 1982.

6. Page 6 of the Declaration reads in part as follows: "Notwithstanding the transfer of title to the Water Rights to the Association, The Water rights shall remain appurtenant to the Subject Property. The Association shall not sell, convey, encumber or otherwise transfer the water rights, or any portion thereof, or interest therein, unless this Declaration is terminated pursuant to the provisions of Paragraph 11.3 below." The provision has not been terminated, so

therefore is fully binding. Quite simply, water cannot be transferred from a "water-righted" lot to a dry lot.

7. Article XI, page 40, of the Declaration reads in part as follows: "Each and every Owner shall have the right to commence an action against the Association for failure to perform its duties under this Declaration." Accordingly, it is readily apparent that the single Board of Director member, who voted in favor of filing Application 77788, is liable for all costs, as set forth in Article XI of the Declaration.

8. The granting of Application 77788 is clearly detrimental to the public interest as set forth in NRS 533.370(5). As described above, it is simply taking water from four lots and transferring it to other lots within the Belli Ranch Subdivision. Such attempt is clearly contrary to the State Engineer's Subdivision approval, the bylaws of Belli Ranch Estate Association, and public opinion.

It is therefore respectfully requested the State Engineer deny Application 77788.