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

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IN THE MATTER OF APPLICATION NO. 77912

FILED BY **U.S. DEPARTMENT OF ENERGY** **PROTEST**

ON **January 20, 2009**, TO APPROPRIATE THE PUBLIC WATERS OF **Fortymile Canyon**

COMES NOW **Nye County**, whose Post Office address is P.O. Box 153, Tonopah, Nevada 89049, whose occupation is a political subdivision of the State of Nevada, and protests the granting of Application No. 77912, filed on January 20, 2009 by **U.S. Department of Energy**, to appropriate the public waters of the State of Nevada, Fortymile Canyon, situated in Nye County, State of Nevada, for the following reasons and on the following grounds, to wit:

See Attached Exhibit "A"

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: _____

GEORGE N. BENESCH
Agent for Protestant
190 W. Huffaker Lane, Suite 408
Reno, Nevada 89511
(775) 827-3100

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

SUBSCRIBED and SWORN to before me this 6th day of April, 2009.

BETTY MELARKEY
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 89-0049-2 - Expires March 10, 2010

_____
NOTARY PUBLIC

Exhibit "A"

1. This Application is one of 116 applications filed by U.S. Department of Energy seeking to appropriate some 6,000 acre feet in Nye County and extensive amounts in Lincoln and Esmeralda Counties. Because the places of use under applications in one basin overlap with the place of use under applications in adjoining basins these are applications for inter-basin transfers. Diversion (and export) of such a quantity of water will, upon information and belief, unreasonably lower the static water level in the basin of diversion, adversely effecting the quality of remaining groundwater and threatening the continued existence of springs, seeps and phreatophytes which provide water and habitat critical to the survival of wildlife, grazing livestock and other surface area existing uses.

2. The granting of the subject application will conflict with and adversely impact existing rights.

3. There is no unappropriated water available in the proposed source.

4. The granting of the subject Application, particularly when considered with other applications filed concurrently by this Applicant, will deprive the area of origin of water resources needed for its environmental and economic well being.

5. The proposed diversion and export of water from the proposed basin is not environmentally sound.

6. The subject Application should be denied because individually and cumulatively with other applications of this proposed project will exceed the safe yield of the source basin.

7. Granting of the subject Application would be detrimental to the public interest given the position and policy of the State of Nevada as they relate to the proposed transportation and storage of nuclear waste in this state.