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

IN THE MATTER OF APPLICATION NUMBER 79276
FILED BY Southern Nevada Water Authority
ON January 28, 20 10, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

FILED
APR 19 2010
STATE ENGINEER'S OFFICE

Comes now U.S. Bureau of Indian Affairs (on behalf of Ely Shoshone Tribe)
Printed or typed name of protestant

whose post office address is 2600 N. Central Ave., 4th Floor, Phoenix, AZ 85004
Street No. or PO Box, City, State and ZIP Code

whose occupation is Federal Government Agency and protests the granting

of Application Number 79276, filed on January 28, 20 10

by Southern Nevada Water Authority to appropriate the

waters of Underground situated in Lincoln
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"

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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 Catherine Wilson
Agent or protestant

Catherine Wilson Deputy Regional Director for Trust Services
Printed or typed name, if agent

Address 2600 N. Central Ave., 4th Floor
Street No. or PO Box

Phoenix, Arizona 85004
City, State and ZIP Code

602-379-6600
Phone Number

Subscribed and sworn to before me this 16th day of April, 20 10

Notary Public State of Arizona
Maricopa County
Velda M Garcia
My Commission Expires
05/24/2011

Velda M. Garcia
Notary Public

State of Arizona
County of Maricopa

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

ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

Exhibit A
(On Behalf of Ely Shoshone Tribe)

Information In Support of the Protests of the U.S. Bureau of Indian Affairs
In the Matter of Nevada Water Right Application for Permit Nos. 79276 and 79277

On January 28, 2010, Southern Nevada Water Authority (Applicant) filed the above referenced groundwater *Applications for Permits to Appropriate the Public Waters of the State of Nevada* in Cave Valley (No. 180) hydrographic area. The applications requests groundwater in the amount of 16 cubic feet per second (cfs) for Cave Valley. The Ely Shoshone Reservation (Reservation) is located in the Steptoe Valley (No. 179) and White River Valley (No. 207) hydrographic areas.

The U.S. Bureau of Indian Affairs (BIA) is the legal owner of over 3,600 acres of Indian trust land and associated water rights on the Reservation in east central Nevada. The Reservation was first established by an Act of Congress in 1930 (46 Stat. 820). Subsequent Acts added lands in 1931, 1977, and most recently in 2006. All of these lands are held in trust by the United States on behalf of the Ely Shoshone Indian Tribe (Tribe). Currently, the Tribe receives much of its water from the Town of Ely. However, with the recent 2006 land acquisitions, the Tribe has increased its land base to where development and management of its own water resources is planned.

The applications are for the withdrawal of groundwater from the Colorado regional groundwater flow system (Harrill and others, 1988). This regional carbonate-rock aquifer groundwater system is comprised primarily of a thick carbonate bedrock sequence which underlies shallow basin-fill material and can extend across topographic divides depending upon the hydrologic and geologic conditions of the various basins and mountain ranges. The determination of these flow systems are based on scarce and limited data, if at all, therefore the actual flow boundaries and characteristics are not accurately known, which in many cases, results in several interpretations in the same region. For example, Welch and others (2007) delineated the northern part of Steptoe Valley as being a part of the Goshute Valley system; the central section as part of the Colorado system; and the southern part belonging to the Great Salt Lake Desert flow system. Whereas Harrill (1988) originally determined the whole Steptoe Valley to be part of the Goshute groundwater flow system. Due to this uncertainty of subsurface conditions and groundwater flow it is very difficult to forecast with certainty which basin may be impacted due to pumping in another basin in the region.

Although the Tribe's water rights have never been adjudicated, the Tribe has reserved water rights that were reserved and secured by the United States at the time of the creation of the reservation, with a priority date no later than the creation of the reservation, in a quantity sufficient (both surface and groundwater) 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*); and *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). Federal reserved rights

extend to groundwater to the extent groundwater is necessary to accomplish the purpose of a reservation. Holders of federal reserved rights enjoy greater protection from groundwater pumping then do holders of state law rights to the extent that greater protection may be necessary to maintain sufficient water to accomplish the purpose of a reservation. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source,* 195 Ariz. 411, 989 P.2d 739 (Ariz. Sup. Ct.1999) (*en banc*). Federal reserved water rights may be protected against off-reservation groundwater diversions, which are hydrologically interrelated with the reserved waters. *Cappaert v. United States,* 426 U.S. 128 (1976). The essential purpose of Indian reservations is to provide Native American people with a permanent home, an abiding place, and a livable environment. *In Re The General Adjudication of All Rights to Use Water in the Gila River System and Source,* 35 P.3d 68 (Ariz. Sup. Ct. 2001) (*en banc*), citing *Winters* and *Arizona I.*

The total combined pending applications and existing permits for groundwater in Cave Valley is over 17,700 acre-feet/year (afy). The proposed applications add an additional 11,584 afy (16 cfs). The State Engineer has ruled (Ruling No. 5875) the perennial yield of the Cave Valley is 5,000 afy.

While the proposed applications are not located within the same basin as where the Ely Shoshone Indian Reservation is located, there is enough uncertainty of potential impacts that the BIA on behalf of the Ely Shoshone Tribe protests the granting of Application Nos. 79276, and 79277 for the following reasons:

1. The combined proposed discharge rate for the two applications exceeds the perennial yield of the Basin, as currently determined by the State Engineer.

2. The applications for municipal use do not clearly describe the place of use, the proposed works, the estimated cost of the works, the number and types of units to be served, or the annual consumptive use. Nor is it clear that the diversions sought are necessary and in an amount reasonably required for the beneficial uses applied for.

3. The applications could jeopardize the habitat and likely cause adverse impacts to endangered and threatened species recognized under the Endangered Species Act and related state statutes.

4. The cumulative effects of the diversions proposed by the applications could potentially lower the groundwater levels within the Ely Indian Reservation, thereby increasing the costs of supplying and developing water within the Reservation.

5. The economic development of the Ely Indian Reservation could be harmed if water and water-related resources of the Reservation are diminished or impaired as a result of the diversions proposed by these applications.

6. The Cave Valley hydrographic basin appears to be fully appropriated and there is no water available for further water withdrawal in the basin.

7. The withdrawals of groundwater proposed in the applications could likely result in reductions in flows in the carbonate aquifer and related discharge. If permitted, the proposed withdrawals could eventually interfere with the senior federal reserved rights held by the United States in trust for the Tribe.

8. Available scientific literature is not adequate to reasonably assure that the groundwater appropriation and diversions proposed by these applications will not impact the senior water rights of the Ely Shoshone Tribe. The State Engineer will, therefore, be unable to make a determination that injury will not occur to other water users, including that of the Tribe.

The BIA reserves the right to amend and supplement its exhibit and protests of Application for Permit Nos. 79276 and 79277.

Literature Cited

Nevada State Engineer's Water Rights Database/Website, March 2010.

Harrill, J.R., Gates, J.S., and Thomas, J.M., 1988, Major ground-water flow systems in the Great Basin region of Nevada, Utah, and adjacent States. U.S. Geological Survey Hydrologic Investigations Atlas HA-694-C, 2 sheets.

Prudic, D.E., Harrill, J.R., and Burby, T.J., 1995. Conceptual evaluation of regional groundwater flow in the carbonate-rock province of the Great Basin, Nevada, Utah, and adjacent states. U.S. Geological Survey Professional Paper 1409-D.

Welch, A.H., Bright, D.J., and Knochenmus, L.A., 2007. Water Resources of the Basin and Range Carbonate-Rock Aquifer System, White Pine County, Nevada and Adjacent Areas in Nevada and Utah.