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

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STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 79331
FILED BY Southern Nevada Water Authority
ON January 28, 20 10, TO APPROPRIATE THE
WATERS OF Underground

PROTEST

FILED
APR 15 2010
STATE ENGINEER'S OFFICE

Comes now U.S. Bureau of Indian Affairs
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 79331, filed on January 28, 20 10

by Southern Nevada Water Authority to appropriate the

waters of Underground situated in Nye
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"

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 Rodney M. McVey
Agent or protestant

Rodney McVey 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 14th 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

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. 79325 Through 79345

On January 28, 2010, Southern Nevada Water Authority (Applicant) filed a total of twenty-one *Applications for Permits to Appropriate the Public Waters of the State of Nevada* in Railroad Valley-North (No. 173B) and Railroad Valley-South (173A) hydrographic areas. The Application for Permit Nos. 79325 through 79345, inclusive, requests to withdraw a combined diversion rate of 154 cubic feet per second (cfs) for municipal purposes. The Duckwater Indian Reservation (Reservation) is located in the Railroad Valley-North hydrographic basin.

The U.S. Bureau of Indian Affairs (BIA) is the legal owner of over 3,800 acres of Indian trust land and associated water rights on the Reservation in east central Nevada. The Reservation was established under the Proclamation of November 13, 1940. The United States purchased approximately 3,240 acres to be held in trust for the Duckwater Shoshone Tribe (Tribe). Subsequent purchases of ranch lands have increased the Reservation's current size to approximately 3,855 acres. The Reservation is located in a north-trending alluvial basin bounded on the west by the Pancake Range and on the east by the White Pine Mountains. The Tribe also utilizes rangeland located on Bureau of Land Management land in the Pancake Range Use Area which borders the Reservation to the west.

Water resources on the Reservation consist primarily of Duckwater Creek, numerous springs, and domestic and irrigation wells. Two thermal springs, Big Warm Spring and Little Warm Spring, discharges approximately 11,000 acre-feet per year and is the primary source of Duckwater Creek with other smaller springs contributing to the flow (Prudic and others, 1993). The Reservation is underlain by unconsolidated and consolidated alluvial material which yields groundwater to most wells on the Reservation. Carbonate rocks occur at depth and are likely the source for the thermal springs. The Reservation is considered to be within the Railroad Valley flow system of the regional carbonate-rock aquifer system, as described by Harrill and others (1988). The flow system terminates at the Railroad Valley's playa, which is located within a deep structural depression that hosts a shallow geothermal system associated with productive oil fields (Rose and Davisson, 2003).

Through the purchases of ranches for the creation of the Reservation, the Tribe has acquired both decreed and state-permitted water rights. Water rights of Duckwater Creek were adjudicated by the Averill Decrees of December 1, 1909 and June 20, 1910, and by stipulation of the water users of March 27, 1930, which was made part of the Averill Decree. The Tribe has approximately 7,000 acre-feet per year (afy) of decreed water rights from Duckwater Creek with priority dates as early as 1867. In addition to decreed surface water rights, the former owners of the purchased lands deeded to the U.S. in trust for the Duckwater Shoshone Tribe, water rights pertaining to springs on the public domain west of the Duckwater Reservation. As a result the Tribe has acquired several state certificated and vested water rights for springs located in the Pancake Range Use Area for

livestock purposes. A listing of these certificated and vested rights is shown below.

| Water Source | Application No. | Certificate No. | Diversion Rate (CFS) | Priority Date |
|---|---|---|---|---|
| Young Florio Spring | 6769 | 1220 | 0.025 | 9/22/1922 |
| Nevada Governor Spring | 7577 | 1236 | 0.02 | 11/27/1925 |
| Pogue Wells | 7578 | 1237 | 0.02 | 11/27/1925 |
| Rye Grass Spring | 7579 | 1238 | 0.02 | 11/27/1925 |
| Little Nevada Spring | 7580 | 1239 | 0.02 | 11/27/1925 |
| Butte Station Spring | 9420 | 1992 | 0.0045 | 3/4/1931 |
| Moody Spring | 9421 | 1993 | 0.011 | 3/4/1931 |
| Mahogany Spring | 9422 | 1994 | 0.0016 | 3/4/1931 |
| Portuguese Spring | 9423 | 1995 | 0.0067 | 3/4/1931 |
| McClure Spring | 9424 | 1996 | 0.011 | 3/4/1931 |
| Sand Spring | 9425 | 1997 | 0.0156 | 3/4/1931 |
| Big Louis Spring | 9426 | 1998 | 0.009 | 3/4/1931 |
| Cook Tank Spring | 9427 | 1999 | 0.004 | 3/4/1931 |
| Mendes Springs | V01339 | | | 9/1/1869 |
| Duckwater Creek | V01763 | | | 3/1/1868 |

In addition, 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*.

As of March 2010, the total combined pending applications and existing permits for groundwater in Railroad Valley-North is over 145,000 acre-feet/year (afy) (NV St. Engineer, 2010). Application Nos. 79328 through 79345 adds an additional 95,570 afy (132 cfs). The State Engineer has suggested the perennial yield of Basin No. 173B is 75,000 afy.

For the Railroad Valley-South (No. 173A) hydrographic area, the existing permits for groundwater is 3,886 afy as of March 2010 (NV St. Engineer, 2010). Application Nos. 79325 through 79327 adds an additional 15,928 afy (22 cfs). The Nevada State Engineer currently estimates the perennial yield of Basin No. 173A to be 2,800 afy.

The BIA on behalf of the Duckwater Shoshone Tribe, protests the granting of Application Nos. 79325 through 79345, inclusive, for the following reasons:

1. The combined proposed discharge rate for the eighteen applications in Railroad Valley-North (No. 173B) hydrographic area exceeds the perennial yield of the Basin, as currently determined by the State Engineer. A substantial overdraft of groundwater resources is expected to occur. The overdraft will cause groundwater levels to decline, reduce or eliminate spring flows, including Big and Little Warm Springs, reduce flow in Duckwater Creek, reduce well yields or increase pumping costs, and likely cause land subsidence and fissuring. The cumulative effect of these diversions in this basin are expected to cause impacts at the Duckwater Indian Reservation and the public domain grazing lands where the Duckwater Shoshone Tribe has certificated water rights and thereby impair senior federal reserved rights held by the United States in trust for the Tribe, as well as other state-based senior water rights.

2. The combined proposed discharge rate for the three applications in Railroad Valley-South (No. 173A) exceeds the perennial yield of the Basin as currently determined by the State Engineer. In addition, the perennial yield as stated by the State Engineer appears to be exceeded by the existing permits in the Basin and therefore it's likely there is no available water for appropriation in Basin 173A.

3. The applications 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.

4. The proposed diversions may damage habitat for the threatened Railroad Valley Spring Fish which occurs in Big Warm Spring.

5. The economic development of the Duckwater Indian Reservation will 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. In these applications, the points of discharge for return flow (treated effluent) have not been specified. The possibility exists that the return flow may be discharged into a hydrologic basin other than the basin of origin. This being the case, depletions to springs, rivers, and wells in the areas where the Duckwater Shoshone Tribe has senior water rights

would occur more quickly and in greater magnitude than if treated effluent were returned to the basin of origin.

The BIA reserves the right to amend and supplement its exhibit and protests of Application for Permit Nos. 79325 through 79345 to the extent that more information relevant to the protest becomes available.

## Literature Cited


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

Eakin, T.E., 1966, A regional interbasin ground-water system in the White River area, southeastern Nevada. Nevada Department of Conservation and Natural Resources Water Resources Bulletin No. 33.

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.

Rose, T.P. and Davisson, M.L., 2003, Isotopic and geochemical evidence for Holocene-age groundwater in regional flow systems. Geological Society of America Special Paper 368.