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

FILED
MAR 25 2011
STATE ENGINEER'S OFFICE

IN THE MATTER OF APPLICATION NUMBER 80616T
FILED BY Ruby Pipeline LLC
ON February 25, 20 11

} PROTEST

Comes now Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
Printed or typed name of protestant

whose post office address is P.O. Box 219, Owyhee, NV 89832
Street No. or PO Box, City, State and ZIP Code

whose occupation is federally recognized Indian Tribe and protests the granting

of Application Number 80616T, filed on October 17, 20 11

by Ruby Pipeline LLC for the

waters of underground (Basin 042) situated in Elko
an underground source 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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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 _____
Agent or protestant

Monte Sanford
Printed or typed name, if agent

Address P.O. Box 219
Street No. or PO Box

Owyhee, Nevada 89832
City, State and ZIP Code

208.759.3100
Phone Number

E-mail

TIFFANY HOLAN
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 11-13-14
Certificate No: 10-3592-2

Subscribed and sworn to before me this 25 day of March, 20 11

_____
Notary Public

State of Nevada
County of Washoe

+ $25 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.

EXHIBIT A

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

IN THE MATTER OF APPLICATION NO. 80615T-80616T FILED BY RUBY PIPELINE LLC FOR UNDERGROUND WATERS OF HYDROGRAPHIC BASIN 042	)))))	PROTEST BY SHOSHONE-PAIUTE TRIBE S OF THE DUCK VALLEY INDIAN RESERVATION

SUMMARY

Pursuant to Nevada Revised Statute ("NRS") 533.365, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation ("Tribe" or "Protestant") hereby protest Application Nos. 80615T and80616T ("Application" or "Applications"), which were filed by Ruby Pipeline LLC ("Ruby") on February 25, 2011, for groundwater from Hydrographic Basin No. 042 ("subject basin").

Ruby Pipeline Project ("Project") proposes to construct and operate 675.2 miles of 42-inch-diameter pipeline to transmit 1.5 billion cubic feet of natural gas per day from the Rocky Mountain region to customers in Nevada, California, Oregon, and Washington. The Applications submitted to the State Engineer's Office is for the use of 11.17 cfs (just over 8,000 acre-feet) of water. The Applications propose to use 38,869,645 gallons of groundwater for hydrostatic testing. The Applications propose to use 1,680,000 gallons of groundwater for construction purposes and/or alternative hydrostatic testing volume. *Ruby Pipeline Project Final Environmental Impact Statement at 4-49.* The Project's Hydrostatic Test Plan (2009) states that limited sources of water that are in close proximity "would prevent Ruby from being able to discharge its test water within the same . . . [hydrologic unit code] HUC from which it was withdrawn." Thus, the Project's hydrostatic testing will require interbasin

transfer of groundwater as defined in NRS 533.007: "a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use." The water would be discharged in a basin other than the export basin. As such, the State Engineer's authority to deny the Applications is under both NRS §§ 533.370(5) and 533.370(6).

The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The subject basin falls within the Tribe's treaty lands, and as such, a large number of tribal trust resources and interests exist within the subject basin, in hydrologically connected basins, and in all areas potentially impacted by the Project. The Tribe's aboriginal territory includes, but is not limited to, areas defined in the Treaty of 1863 (13 Stat. 681-684) and the Treaty of 1866. These treaties designated lands of the Tribe and all associated rights.

The Duck Valley Reservation ("Reservation") was established by Executive Order on April 16, 1877. The Reservation boundaries were expanded numerous times including but not limited to 1886 and 1910. Currently, the Reservation is composed of 289,819 acres that are held in trust by the United States Government. The Tribe has water rights that date back at least as far as 1863, and the Tribe's reserved and secured rights are for both surface and ground water in an amount sufficient 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); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981). Moreover, 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 water rights for the Tribe extend to water and other resources in other basins or areas to the extent that water is necessary to accomplish any and all purposes of the Reservation. *Id.*

Protestant states as grounds and reasons for this Protest that: (1) the application and proposed use would conflict with existing water rights and protectable interests; (2) the appropriation and proposed use would be environmentally unsound and detrimental to the public interest on environmental grounds; (3) the Applicant has not implemented a sufficient water conservation plan for the basin(s) in which water will be discharged; (4) the Applicant has not developed a sufficient conservation plan to protect the affected basins; (5) the appropriation and proposed use would have unduly negative impacts on cultural, historic, and religious resources which would harm the public interest; (6) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (7) the appropriation and proposed use would violate the Tribe's rights under the Treaties of 1863 and 1866 and rights established for purposes of the Reservation; (8) the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe; (9) the appropriation and proposed use would unduly injure the Tribe's capacity for self-governance. These protest grounds are explained below.

I. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS

The State Engineer should deny the subject Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would conflict impermissibly with and impair existing senior water rights and protectable interests in the subject basin targeted by this Application and hydrologically connected basins. Indian tribes have senior rights to large amounts of water in the subject basin, no matter whether those amounts are quantified or not (see Section VII below). These federal reserved water rights and rights under treaty agreements are senior and take priority over water rights established

later under Nevada state laws. The Application, if approved, would violate well-established federal legal principles that mandate, establish, and set aside water rights for Indian tribes. Moreover, the Application, if approved, would overly diminish the amount of water available to Indian tribes that is already set aside and appropriated under federal law or by treaty, and infringe on Indian water rights. It is well-established that the federal government has a trust responsibility to Indian tribes to preserve and protect tribal resources, including water. Moreover, the Tribe still has rights to large amounts of water within the aboriginal territory under the Treaty of 1863 and the Treaty of 1866. Thus, the State Engineer must deny the Application pursuant to NRS 533.370(5) and 533.370(6)(d).

In addition, NRS § 533.024 provides that it is the policy of the State of Nevada to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells, and to protect their supply of water from unreasonable adverse effects caused by municipal, quasi-municipal, or industrial uses that cannot be reasonably mitigated. Private homes and domestic wells of tribal members within the subject basin and in hydrologically connected basins will have their domestic wells adversely impacted by the Application, if approved, and Ruby has not demonstrated or devised reasonable mitigation. As such, the Applications would conflict with existing rights and be detrimental to the public interest and welfare. The State Engineer must deny the Application on those grounds.

The State Engineer has previously denied applications where the use of water conflicted with a basin designation order or where the use of the water would create a cone-of-depression that would potentially draw nearby poor quality water. Nevada water laws only allow for a reasonable lowering of the water level. This Application, if approved, would cause a cone-of-depression around the well, causing water quality problems for downgradient users. Moreover, the cone-of-depression is likely to

move downgradient and impact existing users. Thus, a cone-of-depression caused by this Application, if approved, would conflict with existing rights and be detrimental to the public welfare.

II. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in Ruby's Project, of which this Application is a part, would threaten to cause serious environmental harms in the basin from which water is proposed to be appropriated and conveyed, and in hydrologically connected basins. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin and to hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), recognized that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment . . . ." Thus, preservation of the environment is a broadly established goal of governmental policy and is clearly in the public interest.

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, so long as other public interests were not unreasonably compromised or could not be mitigated. The State Engineer also has previously determined that to impair endangered or threatened species, or degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of

concern, it is clear that negative environmental impacts would result from the approval of the Applications and discharge of water into another basin as is proposed by the Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The environmental harms that would result from the approval of the Applications would prove to be detrimental to the public interest at state, tribal, and local levels. The State Engineer's analysis of this Application clearly would weigh in favor of protecting the environment from impacts. These grounds, in addition to the other environmental reasons below, weigh in favor of the State Engineer denying this Application.

A. Long-Term Hydrologic and Environmental Impacts

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. The subject basin has been experiencing drought conditions, posing an even greater duty on limited groundwater.

Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins, while providing for responsible use of available water. The Applications are not responsible use of available water and the appropriation(s) would not protect natural resources in the subject basin because a cone-of-depression is likely to move downgradient and cause a multitude of environmental harms. Drought conditions are likely to cause even more lasting effects of the cone-of-depression. Moreover, this appropriation and proposed use would cause unreasonable and irreversible impacts to water resources,

and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. These natural resources in the subject basin and in hydrologically connected basins are vital to the Tribe for multifarious cultural and religious purposes.

B. Harm to Wildlife and Habitat

The State Engineer and courts have previously considered harm to wildlife and habitat in their analysis of the public interest. Accordingly, the State Engineer must consider whether harm to wildlife and habitat would be detrimental to the public interest within both the export basin and basin in which water will be discharged. The proposed appropriation and conveyance to another basin would result in lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins. Those declining groundwater levels will result in drying out springs, seeps, wetlands, and wet meadows, and in killing off groundwater-dependent vegetation in the subject basin and hydrologically connected downgradient basins. This loss of water subsequently will cause significant direct harm to many wildlife species in the subject basin and in hydrologically connected downgradient basins.

In addition to NRS 533.370(6)(c), the appropriation and proposed use from the Applications are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of cultural and religious resources vital to the Tribe. The unique wildlife habitat areas and refugia are likely to be harmed by the appropriation and discharge of water proposed in this Application. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.367.

C. Degradation of Cultural, Traditional, Historic, and Sacred Resources

The environmental harms described above also will lead to the pronounced degradation, and in some instances destruction, of cultural resources, traditions, sacred sites, and various historic and pre-historic resources in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, will cause harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and discharge of water under this Application may include, but are not limited to, ceremonial and sacred sites, various cultural artifacts, prehistoric village or dwelling sites, Native American graves or burial sites, and historic massacre sites of Tribal ancestors. Cultural resources also include spring and seep ecosystems and various plant and animal species that the Tribe holds sacred and utilize for ceremonial purposes. These and other cultural resources that would be damaged or destroyed if this Application is approved. These resources constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

D. Degradation of Water Quality

The State Engineer has the authority to consider whether the degradation of water quality within the subject basin and in downgradient basins within the same groundwater flow system would be detrimental to the public interest. This Application, if approved, is likely to cause a cone-of-depression in the subject basin and in downgradient basins to an extent that brackish groundwater and other pollutants would infiltrate the groundwater supply. The consequence of this infiltration of poor

quality groundwater and other pollutants would be significant degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

III. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN FOR THE BASIN(S) IN WHICH WATER WILL BE DISCHARGED

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. The Project will discharge water from the pipeline as part of the hydrostatic testing procedures. Water will be discharged onto "open ground" in various locations along the pipeline route, with some discharge entering water bodies or dry land. The Applicant has not developed a sufficient conservation plan to protect natural resources that are likely to be impacted from that water discharge, despite provisions in Ruby's Hydrostatic Test Plan. The Applicant's plan and goals do not sufficiently protect natural resources that are in the public interest. Because there are substantial conservation gains that

may be obtained without detriment to the public interest and welfare, the State Engineer must require Ruby to achieve the highest practicable level of conservation of water and of natural resources at discharge locations. These conservation levels should be measured by reference to presently available technologies and methods and to the highest obtainable conservation levels before being permitted to transfer groundwater from the subject basin. The State Engineer must require the Applicant to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals. In addition to the other reasons justifying a denial of the applications, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b) unless the Applicant submits a sufficient plan..

IV. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section II above, the Application and proposed Project are environmentally unsound and will have long-term environmental impacts within the subject basin and hydrologically connected basins.

Second, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone-of-depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or rely on such water sources as the cone-of-depression moves downgradient. Ruby does not provide

sufficient safeguards to prevent adverse impacts on downgradient springs, seeps, and associated wildlife.

Third, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone-of-depression and lowering of the water level that would result from the approval of the Applications is very likely to negatively affect water quality by drawing in low quality water. Such impacts will occur within the subject basin and in downgradient basins. Ruby has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor has Ruby developed plans to offset those impacts.

V. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly demonstrated that protection and preservation of natural resources, which by definition includes historic and cultural resources, water quality, amf other resources, are in the public interest. By establishing the State Historic Preservation Office under NRS § 383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes "that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin . . . ." *See Ruling No. 5726.* The State Engineer also has found that while "NRS §

533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues." Moreover he has stated: "[the] State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources." Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The appropriation, proposed use, and discharge will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

VI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate at least the following: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007, and the Treaty of 1863 and Treaty of 1866. The Nevada Legislature's intent of giving the State Engineer authority to approve water applications must be done in a manner that is consistent with state and federal policies and mandates.

and consistent with state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the discharge of water will violate some or all of the above-listed laws and policies due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot ignore or violate federal and state laws. As such, the State Engineer's is obligated to make decisions that are consistent with applicable laws and policies. To do otherwise is against the public interest and welfare. For the foregoing reasons, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

VII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATIES OF 1863 AND 1866 AND RIGHTS ESTABLISHED FOR PURPOSES OF THE RESERVATION

Just as the State Engineer cannot approve an application that would be in violation of federal or state laws, the State Engineer cannot approve the Application because it would violate the Tribe's treaty rights. It is well-settled by the United States Constitution and Supreme Court precedent that Treaties are the supreme law of the land. Tribal treaty rights may only be abrogated by the United States Congress, which the Supreme Court has determined has "plenary authority" over Indian affairs. State governments do not have the authority to regulate Indian land or resources without the consent of Congress and the affected Tribe. The State Engineer has the authority to deny the Application on those grounds pursuant to either NRS §§ 533.370(5) or 533.370(6).

The Treaties of 1863 and 1866 designate and recognize certain Indian treaty lands. The United States has a legally recognized trust responsibility to protect those treaty lands and Tribal interests associated therewith. Protecting these federally-recognized treaty lands are clearly within the public

interest. As discussed above, Western Shoshone Tribes have federal reserved water rights that extend beyond their reservation lands and various decreed or permitted rights under State law. The Tribe has rights to large amounts of water, no matter if those rights have been adjudicated, decreed, quantified, or utilized. Such water rights, to some extent, are predicated on the fact that the Treaties of 1863 and 1866 designate a large land area, including the subject basin and hydrologically connected basins, with associated water rights to fulfill the purposes the Tribe. Water withdrawal that will impact treaty rights exercised on that land also impermissibly infringes on the Treaties. Those rights remain regardless of quantification or utilization. *See Hackford v. Babbit*, 14 F.3d 1457, 1461 (10th Cir. 1994).

The Tribe holds federal reserved water rights in an amount of water necessary to accomplish the purposes of the Reservation. The Tribe is entitled to protection from harmful appropriations that will infringe upon or diminish water necessary to satisfy the Tribe's reserved water right. It is important to emphasize that the Tribe's water rights may be protected against off-reservation groundwater diversions that are hydrologically connected with the Tribe's reserved water. *Cappaert v. U.S.*, 426 U.S. 128 (1976). The rights bestowed upon the Tribe from the Treaties of 1863 and 1866 are paramount to water rights later perfected under state laws. Moreover, prior appropriation systems and laws, as in Nevada, do not limit or affect the rights of the Tribe's treaty lands and Reservation. *Power Commin v. Oregon*, 349 U.S. 435 (1955).

Because the Applications would violate the Tribe's water rights within treaty lands, the State Engineer must deny the Application pursuant to NRS §§ 533.370(5) and 533.370(6)(e). NRS § 533.370(5) states that "where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells . . . or threatens to prove detrimental to the public interest, the State Engineer shall reject

the application and refuse to issue the requested permit."

Furthermore, the Applications, if approved and operational, are predicted to cause impacts. If the State Engineer were to approve the Applications, he would violate the Tribe's rights reserved and guaranteed under the Treaties of 1863 and 1866. Pursuant to NRS § 533.370(5) and 533.370(6)(e), the State Engineer must consider the Application's infringement on Tribal treaty rights as a basis to deny the Application. For these reasons, the State Engineer must deny this Application.

VIII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust and fiduciary responsibility to Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government-to-government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numererous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of rights to land and water related to Indian lands.

The federal-tribal relationship and the federal government's responsibility to protect Indian resources are in the public interest, not only on a national level but within states, including Nevada. *See, e.g.,Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). Congress has recognized the federal government's "trust responsibilities to protect Indian water rights." *See* 43 USC § 371. A multitude of federal mandates, policies, and federal court decisions recognize and

reaffirm the federal government's trust responsibility to protect the Tribe's interests, resources, and rights.[2] Thus, the federal government's trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including water resources and reserved water rights.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe's water rights and resources within the Tribe's aboriginal territory, treaty lands, or Reservation. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

IX. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE'S CAPACITY FOR SELF-GOVERNANCE

The Tribe is a sovereign nation with exclusive powers of self-governance over its territory, recognized by treaties, the Constitution, legislation, administrative practice, and judicial decisions. The Tribe exercises sovereign power in regulating its own territory. Incumbent in that regulatory authority, the Tribe has a sovereign right to regulate and protect its water resources. The Tribe's water and regulation of that water, now and into the future, is an essential component in the Tribe's ability to regulate its territory and provide services to tribal members. This is consistent with the long-standing federal policy of promoting tribal self-government, self-determination, and economic self-sufficiency. The Tribe and its sovereign governmental powers have been repeatedly affirmed to be in the public

2 *See, e.g.*, Cherokee Nation v. Georgia, 30 US 1, 17 (1831); Seminole Nation v. US, 316 US 297 (1942); Worcester v. Georgia, 31 US 515; Manchester Band of Pomo Indians v. US, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); Nance v. EPA, 645 F.2d 701, 711 (9th Cir 1981); Menominee Tribe v. US, 101 Ct Cl 10, 19-20 (1944); Pardvano v. Babbitt, 70 F.3d 539, 545 (9th Cir 1995).

interest. As such, the Applications, if approved, would fall strictly counter to the public interest. Therefore, the State Engineer should deny the Application under NRS §§ 533.370(5).

Moreover, appropriating and discharging water in ways that will unduly injure the Tribe's water resources, water rights, and associated resources and interests will concomitantly injure the Tribe's ability for tribal self-governance, its ability to regulate its territory, and/or its ability to provide necessary benefits and services to its members that are located both on or off the Reservation. This is a highly relevant factor that the State Engineer should consider in his decision. For these reasons, the State Engineer should deny the Application under NRS §§ 533.370(6)(e).

XI. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION

The Project's adverse impacts are certain. New information, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

XII. INCORPORATION OF OTHER PROTESTS TO RUBY'S APPLICATIONS BY REFERENCE

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in Ruby's Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.

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STATE ENGINEER'S OFFICE

March 31, 2011

Susan Joseph-Taylor, Hearing Officer
Office of the State Engineer
Nevada Department of Water Resources
901 S. Stewart St., Suite 2002
Carson City, NV 89701
(775) 684-2800

Delivered in person to Nevada Division of Water Resources, Suite 2002

RE: WITHDRAW OF PROTEST GROUNDS FROM PROTESTS OF RUBY PIPELINE WATER APPLICATIONS 80615T AND 80616T

Dear Ms. Susan Joseph-Taylor:

The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation ("Tribe") submitted protests against Ruby Pipeline water applications 80615T and 80616T on March 25, 2011. The Tribe respectfully submits this request to withdraw several protest grounds regarding protests that the Tribe submitted against Ruby Pipeline water applications 80615T and 80616T.

The Tribe requests that the following protest grounds be withdrawn/dropped from their protest:

I. THE APPLICATION AND PROPOSED USE WOULD CONFLICT WITH EXISTING WATER RIGHTS AND PROTECTABLE INTERESTS

VII. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE TRIBE'S RIGHTS UNDER THE TREATIES OF 1863 AND 1866 AND RIGHTS ESTABLISHED FOR PURPOSES OF THE RESERVATION

IX. THE APPROPRIATION AND PROPOSED USE WOULD UNDULY INJURE THE TRIBE'S CAPACITY FOR SELF-GOVERNANCE

Furthermore, the Tribe's protest does not constitute an application for or independent assertion of Tribal water rights.

Please see the attached amended protest for your reference.

Sincerely,

Monte Sanford
Agent for Shoshone-Paiute Tribes

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

IN THE MATTER OF APPLICATION NO. 80615T - 80616T FILED BY RUBY PIPELINE LLC FOR UNDERGROUND WATERS OF HYDROGRAPHIC BASIN 042	)))))	(AMENDED) PROTEST BY SHOSHONE-PAIUTE TRIBE S OF THE DUCK VALLEY INDIAN RESERVATION

AMENDED PROTEST

On March 25, 2011, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation ("Tribe" or "Protestant") filed a timely protest to Application Nos. 80615T and 80616T ("Application" or "Applications"), which were filed by Ruby Pipeline LLC ("Ruby") on February 25, 2011, for groundwater from Hydrographic Basin No. 042 ("subject basin"). The Tribe hereby submits this amended protest, which should replace the previously filed protest document.[1]

SUMMARY

Ruby Pipeline Project ("Project") proposes to construct and operate 675.2 miles of 42-inch-diameter pipeline to transmit 1.5 billion cubic feet of natural gas per day from the Rocky Mountain region to customers in Nevada, California, Oregon, and Washington. The Applications submitted to the State Engineer's Office is for the use of 11.17 cfs (over 8,000 acre-feet) of water. The Applications propose to use 38,869,645 gallons of groundwater for hydrostatic testing. The Applications propose to use 1,680,000 gallons of groundwater for construction purposes and/or alternative hydrostatic testing

1 The Tribe will rely on the original protest insofar as necessary to respond to any argument or interpretation that submission of the amended protest is untimely. This protest does not constitute an application for or independent assertion of Tribal water rights.

volume. *Ruby Pipeline Project Final Environmental Impact Statement at 4-49.* The Project's Hydrostatic Test Plan (2009) states that limited sources of water in close proximity "would prevent Ruby from being able to discharge its test water within the same . . . [hydrologic unit code] HUC from which it was withdrawn." Thus, the Project's hydrostatic testing will require interbasin transfer of groundwater as defined in NRS 533.007: "a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use." The water would be discharged in a basin other than the export basin. As such, the State Engineer's authority to deny the Applications is under both NRS §§ 533.370(5) and 533.370(6).

The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The Tribe's aboriginal territory includes, but is not limited to, areas defined in the Treaty of 1863 (13 Stat. 681-684) and the Treaty of 1866. As such, a large number of tribal cultural resources and interests exist within the subject basin, in hydrologically connected basins, and in all areas potentially impacted by the Project.

The Duck Valley Reservation ("Reservation") was established by Executive Order on April 16, 1877. The Reservation boundaries were expanded numerous times including but not limited to 1886 and 1910. Currently, the Reservation is composed of 289,819 acres that are held in trust by the United States Government.

Protestant states as grounds and reasons for this Protest that: (1) the appropriation and proposed use would be environmentally unsound and detrimental to the public interest on environmental grounds; (2) the Applicant has not implemented a sufficient water conservation plan for the basin(s) in which water will be discharged; (3) the Applicant has not developed a sufficient conservation plan to protect the affected basins; (4) the appropriation and proposed use would have unduly negative impacts

on cultural, historic, and religious resources which would harm the public interest; (5) the appropriation and proposed use would violate federal and state laws that protect cultural, religious, and historic resources; (6) and the appropriation and proposed use would violate the federal government's trust responsibility to the Tribe. These protest grounds are explained below.

I. THE APPROPRIATION AND PROPOSED USE WOULD BE ENVIRONMENTALLY UNSOUND AND DETRIMENTAL TO THE PUBLIC INTEREST ON ENVIRONMENTAL GROUNDS

The State Engineer should deny the subject Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c), because approval of this Application and proposed use in Ruby's Project, of which this Application is a part, would threaten to cause serious environmental harms in the basin from which water is proposed to be appropriated and conveyed, and in hydrologically connected basins. Therefore, this Application, if approved, would be detrimental to the public interest and would be environmentally unsound as it relates to the basin of origin and to hydrologically connected basins. The Federal District Court for Nevada, in *United States v. Cappaert*, 375 F. Supp. 456 (D. Nev. 1974), recognized that "Congress, state legislatures, local government, and citizens have all voiced their expression for the preservation of our environment . . . ." Thus, preservation of the environment is a broadly established goal of governmental policy and is clearly in the public interest.

The State Engineer has previously set forth criteria he found in Nevada water law for assessing whether the appropriation of water would threaten to be detrimental to the public interest. The State Engineer has previously decided that "reasonable and economical uses" would be in the public interest, so long as other public interests were not unreasonably compromised or could not be mitigated. The State Engineer also has previously determined that to impair endangered or threatened species, or

degrade the quality of water, would threaten to prove detrimental to the public interest. While the State Engineer must balance the economic and growth concerns for the state against environmental issues of concern, it is clear that negative environmental impacts would result from the approval of the Applications and discharge of water into another basin as is proposed by the Project. The State Engineer must exercise discretion and balance in his interpretation of public interest. The environmental harms that would result from the approval of the Applications would prove to be detrimental to the public interest at state, tribal, and local levels. These grounds, in addition to the other environmental reasons below, weigh in favor of the State Engineer denying this Application.

A. Long-Term Hydrologic and Environmental Impacts

The State Engineer's discretion in evaluating whether an appropriation and proposed use would be "environmentally sound" includes environmental impacts tied to hydrology. The State Engineer is responsible for ensuring that there is sufficient water left in the basin from which the water would be exported to ensure that the basin would remain environmentally viable and ensure that the protection of the basin's environment and water would provide for future growth in the basin. The subject basin and hydrologically connected basins have been experiencing drought conditions, posing an even greater duty on limited groundwater.

Any appropriation of water in the subject basin also must not impact downgradient basins. It is clear that the legislative intent of 533.370(6)(c) is to protect natural resources of basins, while providing for responsible use of available water. The Applications are not responsible use of available water and the appropriation(s) would not protect natural resources in the subject basin because a cone-of-depression is likely to move downgradient and cause a multitude of environmental harms. Drought conditions are likely to cause even more lasting effects of the cone-of-depression. Moreover, this

appropriation and proposed use would cause unreasonable and irreversible impacts to water resources, and cause unreasonable and irreparable impacts on hydrologic-related natural resources that are dependent on those water resources. These natural resources in the subject basin and in hydrologically connected basins are vital to the Tribe for multifarious cultural and religious purposes.

B. Harm to Wildlife and Habitat

The State Engineer and courts have previously considered harm to wildlife and habitat in their analysis of the public interest. Accordingly, the State Engineer must consider whether harm to wildlife and habitat would be detrimental to the public interest within both the export basin and basin in which water will be discharged. The proposed appropriation and conveyance to another basin would result in lowered groundwater levels in the basin from which the appropriation and export is proposed and in hydrologically connected downgradient basins. Those declining groundwater levels will result in drying out springs, seeps, wetlands, and wet meadows and subsequently will cause significant direct harm to wildlife species in the subject basin and in hydrologically connected downgradient basins.

In addition to NRS 533.370(6)(c), the appropriation and proposed use from the Applications are subject to NRS 533.367, which provides that there is clear demonstration of the public interest in that the sources of water for wildlife and ecosystems remain accessible and viable. These are components of cultural and religious resources vital to the Tribe. The unique wildlife habitat areas and refugia are likely to be harmed by the appropriation and discharge of water proposed in this Application. Because of these harmful impacts, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.367.

C. Degradation of Cultural, Traditional, Historic, and Sacred Resources

The environmental harms described above also will lead to the pronounced degradation, and in

some instances destruction, of cultural resources, traditions, sacred sites, and various historic and pre-historic resources in the basin expressly targeted in this Application and in hydrologically connected basins. The subject basin has been part of the Tribe's aboriginal territory since time immemorial. The groundwater drawdown from this Application, if approved, will cause harm to cultural resources, sacred sites, traditions, and Tribal history. Cultural resources likely to be harmed by the appropriation and discharge of water under this Application may include, but are not limited to, ceremonial and sacred sites, various cultural artifacts, prehistoric village or dwelling sites, Native American graves or burial sites, and historic massacre sites of Tribal ancestors. Cultural resources also include spring and seep ecosystems and various plant and animal species that the Tribe holds sacred and utilize for ceremonial purposes. These and other cultural resources may be damaged or destroyed if this Application is approved. These resources constitute an important part of the Tribe's, Nevada's, and the Nation's, historical and cultural legacy that numerous state and federal mandates have sought to protect. Therefore, the State Engineer should deny this Application pursuant to NRS § 533.370(5) because the proposed appropriation and use would cause degradation of cultural resources that would be detrimental to the public interest.

D. Degradation of Water Quality

The State Engineer has the authority to consider whether the degradation of water quality (1) within the subject basin and hydrologically connected basins and (2) within water bodies or ground surfaces where water would be discharged would be detrimental to the public interest. This Application, if approved, is likely to cause a cone-of-depression in the subject basin and in downgradient basins to an extent that brackish groundwater and other pollutants would infiltrate the groundwater supply. The consequence of this infiltration of poor quality groundwater and other pollutants would be significant

degradation of groundwater quality in the basin expressly targeted by this Application and downgradient hydrologically connected basins. This degradation of groundwater quality would prevent humans, livestock, and wildlife from relying on the groundwater from these aquifers, as they have throughout history. These impacts would be environmentally unsound, bearing long-term and irreversible impacts on water quality. The quality of water in the subject basin and hydrologically connected basins is highly important as cultural resources, traditional teachings, and religious practices. Because such an outcome would be detrimental to the public interest and would be environmentally unsound in the basin of origin, the State Engineer should deny this Application pursuant to NRS §§ 533.370(5) and 533.370(6)(c).

II. THE APPLICANT HAS NOT IMPLEMENTED A SUFFICIENT WATER CONSERVATION PLAN FOR THE BASIN(S) IN WHICH WATER WILL BE DISCHARGED

Nevada Revised Statute § 533.370(6) provides that in determining whether an application for an interbasin transfer of groundwater must be rejected, the State Engineer shall consider whether a water conservation plan is advisable for the basin into which the water is imported and whether the applicant has demonstrated that the water conservation plan has been adopted and is being effectively carried out. The Project will discharge water from the pipeline as part of the hydrostatic testing procedures. Water will be discharged onto "open ground" in various locations along the pipeline route, with some discharge entering water bodies and/or dry land. The Applicant has not developed a sufficient conservation plan to protect natural resources that are likely to be impacted from that water discharge, despite provisions in Ruby's Hydrostatic Test Plan. The Applicant's plan and goals do not sufficiently protect natural resources that are in the public interest. Because there are substantial conservation gains

that may be obtained without detriment to the public interest and welfare, the State Engineer must require Ruby to achieve the highest practicable level of conservation of water and of natural resources at discharge locations. These conservation levels should be measured by reference to presently available technologies and methods and to the highest obtainable conservation levels before being permitted to use groundwater from the subject basin for hydrostatic testing purposes. The State Engineer must require the Applicant to submit a conservation plan that utilizes all feasible conservation strategies to achieve the highest conservation goals. In addition to the other reasons justifying a denial of the Applications, the State Engineer should deny the Application pursuant to NRS § 533.370(6)(b) unless the Applicant submits a sufficient plan.

III. THE APPLICANT HAS NOT DEVELOPED OR IMPLEMENTED A SUFFICIENT CONSERVATION PLAN TO PROTECT THE AFFECTED BASINS

Several provisions in Nevada water laws require sufficient safeguards to be in place to protect affected basins from unreasonable and detrimental harms due to water appropriations and/or interbasin transfers of water. First, NRS § 533.370(6)(c) provides that the proposed action is environmentally sound as it relates to the basin from which water is exported. As explained in Section II above, the Application and proposed Project are environmentally unsound and will have long-term environmental impacts within the subject basin and hydrologically connected basins.

Second, NRS § 533.367 provides that an applicant must ensure that wildlife which customarily uses surface water from seeps or springs (which is linked to groundwater) will have continued access to that water. The Application and proposed use will cause a cone-of-depression and impact water from seeps and springs, and subsequently restrict or truncate water supply for wildlife that customarily use or

rely on such water sources as the cone-of-depression moves downgradient. Ruby does not provide sufficient safeguards to prevent adverse impacts on downgradient springs, seeps, and associated wildlife.

Third, NRS § 533.020 provides that it is the intention of the Nevada Legislature to prevent the pollution and contamination of groundwater. A cone-of-depression and lowering of the water level that would result from the approval of the Applications is very likely to negatively affect water quality by drawing in low quality water. Water quality is also likely to be adversely affected at various discharge locations. Such impacts will occur within the subject basin, in downgradient basins and at discharge locations. Ruby has not provided a means to prevent these unreasonable and adverse impacts to the subject basin, nor has Ruby developed plans to offset those impacts.

IV. THE APPROPRIATION AND PROPOSED USE WOULD HARM THE PUBLIC INTEREST ON THE GROUNDS THAT CULTURAL, HISTORIC, AND RELIGIOUS RESOURCES THAT ARE INEXTRICABLY LINKED TO WATER RESOURCES WOULD BE UNREASONABLY IMPACTED

Nevada Revised Statutes §§ 533.370 and 533.370(6)(e) provide that the State Engineer must deny an application when the application and proposed use threatens to prove detrimental to the public interest, and that the State Engineer shall consider any other factor he determines to be relevant, respectively. The Nevada Legislature and the State Engineer have clearly recognized that protection and preservation of natural resources, which by definition includes historic and cultural resources, water quality, and other resources, are in the public interest. By establishing the State Historic Preservation Office under NRS § 383, the legislature deemed the preservation of historic and cultural resources and sites to be in the public interest. Moreover, the State Engineer has previously stated that he believes

"that the legislative intent of NRS § 533.370(6)(c) was to protect the natural resources of the basin of origin . . . ." *See Ruling No. 5726.* The State Engineer also has found that while "NRS § 533.370(6)(c) requires the State Engineer to consider environmental issues . . . the perspective he is to focus on is that of hydrologic issues." Moreover he has stated: "[the] State Engineer finds this means whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those water resources." Because it is within the purview of the Nevada Legislature to protect natural resources that are dependent on water resources, which include historic, cultural, and religious resources, of the basin of origin from impacts from water appropriations and proposed uses, the State Engineer therefore must consider the impacts on historic, cultural, and religious resources within the subject basin.

The appropriation, proposed use, and discharge will cause unreasonable damage, and in many cases outright destruction, of historical, cultural, and religious resources and sites. As such, the State Engineer has the authority to and must deny the Application pursuant to NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

V. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE FEDERAL AND STATE LAWS THAT PROTECT HISTORIC, CULTURAL, AND RELIGIOUS RESOURCES

The appropriation and proposed use would violate numerous federal and state laws that are in place to protect historic, cultural, and religious resources and sites. Approval of this Application would violate at least the following: state-level SHPO requirements, the National Historic Preservation Act, American Indian Religious Freedom Act of 1978, Religious Freedom Restoration Act, Native American Graves Protection and Repatriation Act of 1990, and Executive Order 13007. The Nevada Legislature's

intent of giving the State Engineer authority to approve water applications must be done in a manner that is consistent with state and federal policies and mandates, and consistent with state and federal court decisions that guide the protection of historic, cultural, and religious resources and sites. Approval of this Application and the discharge of water will violate some or all of the above-listed laws and policies due to irreparable and detrimental impacts on cultural resources and sites. While the State Engineer generally must look to Nevada water law to make appropriation decisions, he cannot ignore or violate federal and state laws. As such, the State Engineer to make decisions that are consistent with applicable laws and policies. To do otherwise is against the public interest and welfare. For the foregoing reasons, the State Engineer must deny the Application under NRS §§ 533.370(5), 533.370(6)(c), and 533.370(6)(e).

VI. THE APPROPRIATION AND PROPOSED USE WOULD VIOLATE THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE TRIBE AND THEREFORE PROVE DETRIMENTAL TO THE PUBLIC INTEREST

Congress and the federal government, as representatives of the public interest and welfare, have made clear that the federal government bears a critical trust and fiduciary responsibility to Indian tribes. This trust responsibility was initially recognized and has been repeatedly reaffirmed by the United States Supreme Court and numerous Executive Orders recognizing the supreme legal importance of treaties and the unique government-to-government relationship between the United States and sovereign Indian tribal governments. That trust responsibility has also been incorporated in numerous regulations and landmark court decisions to protect Indian resources, including but not limited to, the protection of treaty rights and cultural resources.

The federal-tribal relationship and the federal government's responsibility to protect Indian

resources are in the public interest, not only on a national level but within states, including Nevada. *See, e.g.,Cherokee Nation v. Georgia*, 30 US 1, 17 (1831); *Klamath & Modoc Tribes*, 304 US 119 (1938). A multitude of federal mandates, policies, and federal court decisions recognize and reaffirm the federal government's trust responsibility to protect the Tribe's interests, resources, and rights.[2] Thus, the federal government's trust responsibility standard is to be thorough and vigilantly followed in protecting tribal resources, including cultural and historic resources.

Because of the federally mandated trust responsibility to the Tribe is in the public interest and relates specifically to potential impacts on cultural resources from the use and discharge of water resources, the State Engineer should consider this highly relevant factor in making a decision on this Application. This Application and proposed use, if approved, would ignore the federal government and its agencies from the trust and fiduciary obligation to protect the Tribe's various resources within the Tribe's aboriginal territory. As such, the State Engineer should deny the Application under NRS §§ 533.370(5) and 533.370(6)(e).

VII. PROTESTANT RESERVES THE RIGHT TO AMEND THIS PROTEST AS MAY BE WARRANTED BY FUTURE DEVELOPMENTS AND RECEIPT OF ADDITIONAL INFORMATION

The Project's adverse impacts are certain. New information, and changed circumstances, may uncover different bases for this Protest. Accordingly, the Tribe reserves the right to amend and supplement the subject Protest of the Application to include such issues and information as they are developed and become available.

2 *See, e.g.*, Cherokee Nation v. Georgia, 30 US 1, 17 (1831); Seminole Nation v. US, 316 US 297 (1942); Worcester v. Georgia, 31 US 515; Manchester Band of Pomo Indians v. US, 363 F. Supp. 1238, 1245-1247 (ND Cal 1973); Nance v. EPA, 645 F.2d 701, 711 (9th Cir 1981); Menominee Tribe v. US, 101 Ct Cl 10, 19-20 (1944); Pardvano v. Babbitt, 70 F.3d 539, 545 (9th Cir 1995).

VIII. INCORPORATION OF OTHER PROTESTS TO RUBY'S APPLICATIONS BY REFERENCE

The Tribe hereby incorporates by this reference as though fully set forth herein and adopts as its own, each and every reason or ground for other protests to this Application and/or to any Application filed that is included in Ruby's Project and filed pursuant to NRS § 533.365, including but not limited to the attached Protest.