LEWIS ROCA ROTHGERBER
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169-5996

Case No. CV-1204049
Consolidated with CV-1204050
CV-1204051
CV-1204052
CV-1205053
CV-1204054
CV-1204055
CV-0418012
CV-0419012

Dept. 1

Affirmation pursuant to NRS 239B.030
The undersigned affirms that this document does not contain the social security number of any person

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE NEVADA

IN AND FOR COUNTY OF WHITE PINE_

MILLARD COUNTY, UTAH and JUAB COUNTY, UTAH, *et al.*

Consolidated Petitioners,

vs.

JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents,

and

SOUTHERN NEVADA WATER AUTHORITY,

Respondent-Intervenor.

(Consolidated caption as used by the district court)

MILLARD COUNTY, UTAH; JUAB COUNTY, UTAH; CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ON BEHALF OF CLEVELAND RANCH; ELY SHOSHONE TRIBE; CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION;

NOTICE OF APPEAL

DUCKWATER SHOSHONE TRIBE; WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES INC.; BATH LUMBER; PANACA FARMSTEAD ASSOCIATION; BORDER INN; PEARSON FARMS; RAFTER LAZY C RANCH; SPORTSWORLD; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; BRISTLECONE ALLIANCE; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; VAUGHN M. HIGBEE & SONS; ARMANDO AGUILEW; CHRIS ADLER; BART ANDERSON; AMY ASPERHEIM; MICHELE AUSTRIA; CRAIG & GRETCHEN BAKER, individually and on behalf of their minor children, MATTHEW & EMMA; DAVID A. & TANA R. BAKER, individually and on behalf of their minor children, CLAYTON F. DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually and on behalf of their minor children ALYSHIA, CALEB, MEGAN & KAYLI; JERALD BATES; JAMES & DONNA BATH; SHANNON BARKER; CHRISTIA BARLOW; MARGARET BARLOW; RICHARD A. BARR; BRIAN BEACHER; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; LOUIS BENEZET; KATHY BINGLEY; MICHAEL BIVINS; GARY BODELL; SEAN BONNELL; BOBBY BONNELL; LUKE BOTTCHE; JOHN BOWMAN; D. DANIE BRADFIELD; JAMES E. BRADY; ANN & JIM BRAUER; JOEL BRISCOE; WALTER)

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FRANKLIN BROWN; TOM E. BROWN; BERNARD & EVA BUSWELL; MICHELE R. BUTLER; WILLIAM BUTTS; ART CAMERON; KAREN CAMPBELL; DALE CANEPA; RACHEL CARLISLE; BEAU CARLSON; DAVID CARLSON; LOUISE CARLSON; MARIE A. CARRICK; MELISSA CHEENEY; STEVE CHOUQUER; BRANDON CHRISTIAN; CRAIG CHRISTIANSON; LENE CLAY; WILLIAM COFFMAN; PETER COROON; JOHN S. COLE; KATHLEEN M. COLE; LANDON COLE; DAWNE COMBS; JOHN CONDIE; WILLIAM & GENIEL CONNOR; KATHY COOK; DAVID & HALLI COX; ROBERT CRAGER; PATRICIA J. CROSTHAIAIT; DUSTIN CROWTHER; CARY CURCIO; KELLEY DABEL; BRAD & ROBIN DALTON; GARY DAVIS; PETE TONY DELMUE; LUDELL DEUTCHER; ROM DICIANNO; TRAVIS DORMINA; ANTHONY PAUL DONOHUE; ORRIN DOTSON; DENNIS DOTSON JR.; JOSEPH A. DUNNE; JERRI ELLIOT; VELDA EMBRY; JERRY ETCHART; JAMES R. FERRELL; JODY FINICUM; MIKE & JO FOGLIANI; PAULA J. FOHT; MELISSA JO FREE; JUSTIN FREHNER; PATRICK FULLER; VERONICA GARCIA; BRENT GARDNER; ANNETTE & CECIL GARLAND; JO ANNE GARRETT; PATRICIA J. GLADMAN; DONALD GENT; ANNA E. GLOECKNER; PAUL & NANCY GLOECKNER; PAT & KENA GLOECKNER, individually and on behalf of their minor children, KYLEE, KORI, & KOURTNEY; TAMI GUBLER; CHARLES HAFEN; DENNIS HAFEN; LAVOY HAFEN; FREDRICK HAMMEL; RELENA HANLEY; MICHAEL HANLEY; BART HANSEN; DANIEL & JUNE HANSEN; RICK HANSEN; BILLIE HARKER; CAROL HARKER; DELSA NAIA HARKER; EVE HARKER; JOSETT HARKER; THORA HARKER; DAVID HARTLEY; ROCKY & LYNDA HATCH STEVEN HEISELBETZ; AARON CARL HGFELDT; KATHY HIATT; EDWIN E. HIGBEE; KENNETH F. & KATHRYN A. HILL; JANICE HILTON; BRANDON HOLTON; N. PETER HORLACHER; ANDREW M. HORSCH; CAROL HULLINGER; RAY HULSE; DON HUNT; MARIAN K. HUNT; MERLENE HURD; JENNIFER JACK; ROBERT JENNINGS; JERONE A. JENSEN; AARON JESSOP; CARL JESSOP; JESSICA JESSOP; KEVIN J. JESSOP; LORIN JESSOP; LORIN Z.)

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JESSOP; MIKE JESSOP; VIVIAN JESSOP; ABIGAIL C. JOHNSON; HOPE JOHNSON; KIRK JOHNSON; LAURA JOHNSON; LINDA G. JOHNSON; MARK D. JONES; WILLIAM JORDAN; DENNIS JURGENSEN; PATRICK M, KELLEY; ROSE DIANE KELLEY; BECKY KLEIM; JESS KLOTZ; MICHAEL KNIPES; RONALD KOZAK; WILLIAM KRAMER; KATHLEEN LAJOIE; LARRY LAJOIE; ROBERT LAUBACH; LEAH R. LAWSON KYLE LEANY; JACK T. LEE; JIMMIE SUE LEE; MERRILEE LEE; ROLLIN KIM LEE; JACOB LESTER; SARAH LESTER; WESLEY R. & ELAINE R. LEWIS; BEVAN LISTER; BRAD LLOYD; JO & JASON LLOYD; MICK & LYNN LLOYD; TERESA LLOYD; WILLIAM LONG; D.L. LUCCHESI; FARRELL & MANETTA LYTLE; KEN & DONNA LYTLE; LISA L. LYTLE; CHRYSTAL MALLOY; DIANNE E. MASON; MARK A. MASON; BARBARA J. MASON-WANKET; MAJOR MASTIN; NEVIN MAYGARY MCBRIDE; MARIE MCBRIDE; JOHN T. MCCLELLAN; NATHAN MCCLURE; KATHERINE MCCROSKY; MELINDA MCCROSKY; STEVE MCCROSKY; RODERICK MCKENZIE, PAULA & PARKER MCMANUS; AARON MCRORY; NATALIE MELLEM; LAUREL ANN MILLS; AMANDA MOORE; JOE MORROW; KARI MORTENSEN; DEAN MOSSGR; LISA M. NIELSEN; ALLAN K. NYBERG; DENNIS O'CONNOR; MARK OLSON; TERRY OLSON; CARLOS PALENCIA; JANICE PALMERI; AXEL PEARSON; KEITH A. & LACIE PEARSON; LEE PEARSON; MARGARET PENSE; GARY & JO ANN PEREA; GRANT PERKINS; CLIFFORD PETE PETERSON; INDIA PHILLIPS; KEVIN PHILLIPS; RACHELLE PHILLIPS; TERRYLE H. PHILLIPS; TONI PINKHAM; ARLA PRESTWICH; RICHARD PRINCE; MERLE RAWLINGS; PHILLIP REEVES; MERLIN RHODE; JANIE RIPPETOE; MARK RIPPETOE; RONALD JEREMY ROBINSON; DONALD RODRIGUEZ; LARENE & CHUCK ROGERS; DANILE ROHR; KEITH & MARY ROSE; GARY ROSONLUND; KATHERINE & WILLIAM ROUNTREE; ROBERT ROWE; RICHARD A. RULLO; DAMIAN SANDOVAL; GREG SCHATZLE; TREY SCOTT; TOM H. SEARS; VAUGHAN E. SEEBEN JR.; JOHN SETTLES; CHRIS SHINKLE; AARON SHOWELL; DAN &

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CONNIE SIMKINS; RANDY & SHARLAN SIMKINS; SUMMER & SHANE SIMKINS; SAMMYE L. SKINNER; JIM SLOUGH; WILLIAM SMITH; SARAH SOMERS; DEVIN SONNENBERG;ED SPEAR; SHANNON SPENDLOVE; MARSHALL STACKHOUSE; THEODORE STAZESKI; TERRANCE & DEBRA STEADMAN; PAUL STEED; RACHEL STEED; MICHELLE STEPHENS; KEITH STEVER; LARRY STEVER; JACKIE STEWART; KARL C. STEWART; BEVERLY STRICKLAND; SHELBY TAYLOR; SIDNEY TAYLOR; RUSS & CHEYENNE THOMPSON; REX & GRACIE THOMPSON; LAURA TIBBETTS; RYAN TIMMONS; ANNA M. TROUSDALE; DEB UMINA; DENNIS VANWINKLE; ED VINCENT; ALEX, NICHOLAS & JOSEPH VINCENT; EDWARD & STEPHANIE VINCENT; MIKE VITT; HENRY C. & DANA VOGLER, individually and on behalf of their minor children; STINSON VOGLER; DUANE E. & BRYNLEE WADSWORTH; JAYCEE, TYLER & KATHY WADSWORTH; JOHN WADSWORTH; MARCIA WADSWORTH; MARK WADSWORTH; TYLER WADSWORTH; BRADLEY WALCH; ACHIEL E. WANKET; EDITH B. WARREN; JO WELLS; SUSAN WETMORE; B.J. WHITNEY; SHARON WILLIAMS; WILLIAM & HOLLY M. WILSON; EDWARD E. WRIGHT; MARGARET JOYCE & GORDON F. YACH; MICHELLE YOSAI; and DONALD ZOOK,

Consolidated Petitioners,

vs.

JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents,

and

SOUTHERN NEVADA WATER AUTHORITY,

Respondent-Intervenor.

(Consolidated caption reflecting all "Consolidated Petitioners")

MILLARD COUNTY, UTAH AND JUAB

LEWIS ROCA ROTHGERBER
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169-5996

COUNTY, UTAH,

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; AND THE NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Respondents,

(Caption in Case No. CV-1204049)

In the matter of the State Engineer's approval of Application Nos. 54003 to 54015, 54019, 54020 in Ruling 6164

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, on Behalf of CLEVELAND RANCH,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-120450)

ELY SHOSHONE TRIBE
on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

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(Caption in Case No. CV-1204052)

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION
on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204052)

DUCKWATER SHOSHONE TRIBE OF THE DUCKWATER RESERVATION, NEVADA,
on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204053)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL;

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WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES INC.; BATH LUMBER; BORDER INN; PEARSON FARMS; RAFTER LAZY C RANCH; SPORTSWORLD; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; UTAH AUDUBON COUNCIL; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; CRAIG & GRETCHEN BAKER, INDIVIDUALLY, and on behalf of their minor children MATTHEW & EMMA; DAVID A & TANA R. BAKER, individually and on behalf of their minor child, CLAYTON F., DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually, and on behalf of their minor children ALYSHIA, CALEB, MEGAN, & KAYLI; JERALD BATES; JAMES & DONNA BATH; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; ANN & JIM BRAUER; JOEL BRISCOE; TOM E. BROWN; WILLIAM BUTTS; MARIE A. CARRICK; WILLIAM COFFMAN; PETER COROON; LUDELL DEUTCHER; ROM DICIANNO; ANNETTE & CECIL GARLAND; JO ANNE GARRETT; PATRICIA J. GLADMAN; PAT & KENA GLOECKNER; individually and on behalf of their minor children KYLEE, KORI & KOURTNEY; EDWIN E. HIGBEE; KENNETH F. & KATHRYN A. HILL; ABIGAIL C. JOHNSON; LINDA G. JOHNSON; ROBERT LAUBACH; WESLEY R. & ELAINE R. LEWIS; TERRANCE P. MARASCO; MARGARET PENSE; GARY & JO ANN PEREA; MERLE RAWLINGS; KATHERINE & WILLIAM ROUNTREE; ED SPEAR; THEODORE STAZESKI; TERRANCE & DEBRA STEADMAN; HENRY C. & DANA VOGLER, individually and on behalf of their minor children; STINSON VOGLER; SUSAN WETMORE; SHARON WILLIAMS; WILLIAM & HOLLY M. WILSON,

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE

LEWIS ROCA ROTHGERBER
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ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204054)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH, SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES, INC.; BATH LUMBER; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; UTAH RIVERS COUNCIL; BRISTLECONE ALLIANCE; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; CRAIG & GRETCHEN BAKER, individually, and on behalf of their minor children MATTHEW & EMMA; DAVID A. & TANA R. BAKER, individually and on behalf of their minor child, CLAYTON F.; DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually, and on behalf of their minor children ALYSHIA, CALEB, MEGAN & KAYLI; JAMES & DONNA BATH; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; ANN & JIM BRAUER; JOEL BRISCOE; TOM E. BROWN; WILLIAM BUTTS; MARIE A. CARRICK; LUDELL DEUTCHER; ROM DICIANNO; BRENT GARDNER; ANNETTE & CECIL GARLAND; JO ANNE GARRETT; PAT & KENA GLOECKNER, individually, and on behalf of their minor children KYLEE, KORI &

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KOURTNEY; ROCKY & LYNDA HATCH; EDWIN E. HIGBEE; KENNETH F. & KATHRYN A. HILL; ROBERT LAUBACH; LEAH R. LAWSON; ED SPEAR; THEODORE STAZESKI; TERRANCE & DEBRA STEADMAN; AND WILLIAM & HOLLY M. WILSON,

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204055)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA, EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; PANACA FARMSTEAD ASSOCIATION; BAKER RANCHES, INC.; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; *et al.*,

Petitioners,

vs.

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JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-0418012)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA, EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; PANACA FARMSTEAD ASSOCIATION; BAKER RANCHES, INC.; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION, *et al.*

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-0419012)

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NOTICE OF APPEAL

Please take notice that respondent-intervenor SOUTHERN NEVADA WATER AUTHORITY hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Decision," filed December 13, 2013, notice of entry of which was served electronically on January 2, 2014 (Exhibit A);
3. All interlocutory rulings and orders made appealable by any of the foregoing.

This notice of appeal applies to all consolidated cases resolved by the district court. Pursuant to the district court's "Order to Consolidate Cases, Change Venue, and Set Briefing Schedule," filed October 22, 2013, these cases were consolidated pursuant to NRCP 42(a). "[W]hen cases are consolidated by the district court, they become one case for all appellate purposes." *Mallin v. Farmers Ins. Exchange*, 106 Nev. 606, 608–09, 797 P.2d 978, 980 (1990).

DATED this 9th day of January, 2014.

LEWIS ROCA ROTHGERBER LLP

BY: _____

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Attorneys for Southern Nevada Water Authority

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Las Vegas, NV 89169-5996

EXHIBIT A

EXHIBIT A

Case No.CV-1204-049 (And Consolidated Cases)
Dept. No. 1

Affirmation pursuant to NRS 23913.030
The undersigned affirms that this document does not contain the personal information of any person.

IN THE SEVENTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

MILLARD COUNTY, UTAH and JUAB COUNTY, UTAH, et al., Consolidated Petitioners, v. JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES, Respondents. and SOUTHERN NEVADA WATER AUTHORITY Respondent-Intervenor.	**NOTICE OF ENTRY OF DECISION**

PLEASE TAKE NOTICE THAT on the 13th day of December, 2013, a **Decision** was entered in the above captioned matter.

///

///

A copy of the **Decision** is attached hereto as Exhibit "A".

DATED this 2nd day of January, 2014.

Iris Thornton, *pro hac vice*
Simeon M. Herskovits, Nevada State Bar No. 11155
Advocates for Community and Environment
P.O. Box 1075
El Prado, NM 87529
Telephone: (575)758-7202
Facsimile: (575)758-7203
Email: simeon@communityandenvironment.net
Email: iris@communityandenvironment.net

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2014, I served, via email, a complete copy of the foregoing **NOTICE OF ENTRY OF DECISION** addressed as follows. This document applies to Case Nos. CV-1204049, CV-1204050, CV-1204051, CV-1204052, CV-1204053, CV-1204054, CV-1204055, CV-0418012, and CV-0419012.

Honorable Robert E. Estes (Courtesy Copy)
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12/13/13 WP CLERK

Case No. CV1204049
Dept. 1

FILED

2013 DEC 13 AM 11:53

LINDA F. DURLEIGH
WHITE PINE COUNTY CLERK
BY _____ DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

WHITE PINE COUNTY and CONSOLIDATED CASES, E.T.. al.,

Plaintiffs,

vs.

DECISION

JASON KING, P.E., NEVADA STATE ENGINEER, STATE OF NEVADA, DIVISION OF WATER RESOURCES,

Defendant.

_____/

This matter is an appeal from the Nevada State Engineer, Jason Kings' rulings 6164, 6165, 6166 and 6167 concerning the grant of water rights to Southern Nevada Water Authority in Spring Valley (Lincoln and White Pine Counties), Cave Valley, Dry Lake Valley and Delarmar Valley.

Petitioners include the Great Basin Water Network, (GBWN),[1] White Pine County, Nevada, Millard and Juab County, Utah, Ely Shoshone and Duckwater Shoshone Tribes, Confederate Tribe of the Goshute Reservation and the Presiding Bishop of the Churchill of Latter-Day Saints on behalf of the Cleveland Ranch.

As explained below, the State Engineer's rulings is remanded: for recalculation of water available from the respective basins; for additional hydrological study of Delamar, Dry

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[1] GBWN is a non-profit corporation formed by over fifty individuals and related conservation groups.

Lake and Cave Valley; and to establish standards for mitigation in the event of a conflict with existing water rights or unreasonable effects to the environment or the public interest.

I
HISTORY

In 1989, Las Vegas Valley Water District applied for unappropriated water in hydrographic basins 180, 181, 182 and 184; Cave Valley, Dry Lake, Delamar Valley and Spring Valley respectively. In 1991, the current real party in interest, South Nevada Water Authority (SNWA) became the successor in interest to the Las Vegas Valley Water District.

Several protests were filed against the application in July of 1989. The Nevada State Engineer (Engineer) was required to rule on the application within one-year of the protest's filing date. NRS 533.370(2). The applications were not ruled on within one-year, however, hearings on the application were held in 2006. By 2006, the water rights had changed hands many times and few right holders received notice of the 2006 hearings. Great Basin Water Network v Nevada State Eng'r, 126 Nev. Adv. Op. 20, 234 P.3d 912 (2010).[2]

Prior to the 2006 hearings, The National Park Service, Bureau of Fish and Wildlife, Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) were actively protesting the orders granting water rights to SNWA: All of these entities are divisions of the Department of the Interior. ROA 000007. Each entity entered into an agreement with SNWA, withdrawing their protests in exchange for implementation of a hydrologic and biologic Monitoring, Management and Mitigation plan. ROA 000012; 020791; 020806; Ex. SE 041. This plan's stipulation was affirmed prior to the 2011 hearings, Id. and later revised to the current plan approved by the Engineer. Certain specifics of this agreement will be addressed later in this order. The Engineer is not a party to the stipulation, but has approved of the agreement and incorporated its terms into his rulings. ROA 000103-000106.

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[2] Subsequently, the Engineer's orders were vacated, new notices were sent, and the hearings rescheduled for September and November, 2011.

After the Fall 2011 hearings, the Engineer approved 61,127 acre-feet annually (afa) to SNWA from Spring Valley and reserving 4,000 afa for future growth in Order 6164 (March, 2012). ROA 000216. Other terms of the Order include:

A. First stage pumping is limited to 38,000 afa for eight years, data to be collected, modelled reported to the Engineer annually.

B. Stage two pumping shall be limited to 50,000 afa for a minimum of eight years with the data collection and modelling to be reported annually.

C. Stage three, SNWA will be allowed to pump the full 61,127 afa.

Id.

Further, the Enginner must approve each stage of pumping and SNWA must comply with the MMM plan prepared by SNWA and approved by the Engineer. ROA 000216-000217.

Orders 6165, 6166 and 6167 concern the water rights granted to SNWA in Cave Valley, Dry Lake Valley and Delamar Valley respectively. All three orders condition the water grants as Compliance with the Hydrologic MMM plan prepared by SNWA and the Biological Monitoring plan. ROA 00387-8; 000551; 00713-4. The MMM plan shall be subject to modification by the Engineer. SNWA must report annually and provide 10-25-100 year predictive models to the Engineer.

The Cave Valley appropriation is 5,235 afa with 50 afa reserved for future growth. Dry Lake Valley's appropriation is 11,584 afa, 50 afa for future growth. Delamar Valley's appropriation is 6,042 afa and 50 afa for future growth. Id.

The four rulings by the Engineer represent the largest water appropriations in Nevada history. The water basins concerned including Spring, Cave, Dry Lake and Delamar Valleys encompass 20,688 square miles of Nevada. ROA 000125.

The basins size has been compared to New England, encompassing great portions of Vermont, New Hampshire, Massachusetts, Connecticut and some of New York.

SNWA Ex. 339, ROA 020181. It is likely the largest interbasin transfer of water in U.S. history.

II
AUTHORITY AND OBLIGATIONS OF THE STATE ENGINEER

The Engineer "[s]hall approve an application submitted in proper form which contemplates the application to beneficial use if:"

(a) The application is accompanied by the prescribed fee;

(b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of the applicant's:

(1) Intention is good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and
(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

NRS 533.370 (1).

Additionally, the Engineer must determine;

1. Whether there is unappropriated water;

2. Whether the proposed use will conflict with existing rights and/or domestic wells; or
(a) If the appropriation threatens to prove detrimental to the public interest,

"The State Engineer shall reject the application" NRS 533.370 (2).

The Engineer must also consider:

(a) Whether the applicant has justified the need to import the water from another basin.

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development to the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant.

NRS 533.370(3).

III
STANDARD OF REVIEW

After the Engineer issues the rulings, an aggrieved party is entitled to have the order or decision reviewed by the District Court, in the nature of an appeal. NRS 533.450. On a petition for judicial review, the Court is confined to considering the administrative record. NRS 533.450 (1). The proceedings in every case must be heard by the Court, and must be informal and a summary, but a full opportunity to be heard must be had before judgment is pronounced. NRS 533.450 (2).

In reviewing the record, the Court must treat the State Engineer's decision as "prima facie correct, and the burden of proof shall be upon the party" challenging the decision. NRS 533.450 (9). The Court may not substitute its judgment for that of the State Engineer, but is limited to determining whether there is substantial evidence in the record to support the decision. Revert v. Ray, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." Bacher v. Office of the State Eng'r of Nev., 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006).

> [A] conclusion that substantial evidence supports the findings of the State Engineer does not, however, dispose of the . . . appeal. The applicable standard of review of the decisions of the State Engineer, limited to an inquiry as to substantial evidence, presupposes the fullness and fairness of the administrative proceedings: all interested parties must have had a "full opportunity to be heard," *See* NRS 533.450 (2); the State Engineer must clearly resolve all the crucial issues presented, *see Nolan v. State Dep't of Commerce,* 86 Nev. 428, 470 P.2d 124 (1970) (on rehearing); the decision maker must prepare findings in sufficient detail to permit judicial review, *id.; Wright v State*

> *Insurance Commissioner, 449 P.2d 419 (Or. 1969)*; see also *NRS 233B.125.* When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, this court will not hesitate to intervene. *State ex rel. Johns v. Gragson, 85 Nev. 478, 515 P.2d 65 (1973).*

Revert, 95 Nev. At 786, 603 P.2d at 264.

The Court is free to decide purely legal questions de novo. Town of Eureka v. Office of the State Eng'r of Nev., 108 Nev. 163, 165, 626 P.2d 948, 949 (1992). A purely legal question is one that is not dependant (sic) upon, and must necessarily be resolved without reference to, any fact in the case. Beavers v Department of Motor Vehicles & Pub. Safety, 109 Nev. 435, 438 n.1, 851 P.2d 432, 434 n.1 (1993). While the State Engineer's interpretation of law is persuasive, and the court should give it great deference when it is within the language of the applicable statutory provisions, it is not controlling. Town of Eureka, 108 Nev. at 165, 826 P.2d at 950; Andersen Family Assocs., v Ricci, 124 Nev. Adv. Rep. 17, 179 P.3d 1201, 1203 (2008).

IV

NEVADA ENGINEERS' RULINGS COMMON TO SPRING, DELAMAR, CAVE AND DRY LAKE VALLEY

"The State Engineer held a hearing on the Spring, Cave, Dry Lake and Delamar Valley application between September 26, 2011, and November 18, 2011." ROA 000010. NRS 533.370 (1) (c); (2) and (3) requires findings that water is available to be appropriated and that the statutory criteria for granting the water is satisfied by substantial evidence. "Both the Applicant [SNWA] and protestants submitted thousands of pages of scientific information, evidence and testimony for consideration during a record-long six-week hearing." ROA 000029.

The Engineer made the following findings of fact:

> That Southern Nevada provided substantial evidence of need for additional water "independent of the Colorado River," ROA 000037, and that "current available supplies [are] insufficient to meet projected future water demands under normal conditions." ROA 000038.
>
> That Southern Nevada provided substantial evidence that it "intends to construct the works necessary and put water from the applications to beneficial use . . . with reasonable diligence." ROA 000046.
>
> That Southern Nevada provided substantial evidence of financial ability and a "feasible conceptual plan of development. ROA 000047.

These findings were opposed by many of the Protestants and countered with expert opinions. However, there is no real question that the Engineer's findings above were not based on substantial evidence acceptable to a reasonable mind. Further, the Protestants had a full and fair opportunity to present their evidence. Thus, the Engineer's findings were not arbitrary or capricious.

V
OBJECTIONS MADE BY PROTESTANTS

Virtually all of the Protestants which include Cleveland Ranch (Corp. of the Church of Latter-Day Saints), White Pine, Eureka, Elko, and Nye counties, Nevada, The Confederate Tribes of the Goshute Reservation, Ely and Duckwater Shoshone Tribes and Millard and Juab counties, Utah, object to the Engineer's orders on the basis of the Monitor, Manage and Mitigate Plan (MMM). The Protestants allege that as the plan is currently written it cannot adequately protect existing rights or the environment.

Most of the Protestants object to the Orders alleging that any amount of water awarded to SNWA is excessive or should not be granted at all, citing to evidence and arguments presented to the Engineer at the 2011 hearings. Essentially, the objections are that the award is neither environmentally sound nor in the public interest, pursuant to NRS 533.370. The objections are either relating to the entire Spring Valley Basin and/or Delamar,

Cave or Dry Lake Valleys, or localized areas inhabited or used by the Ely, Duckwater and Goshute Native Americans.

Other, more specific objections are that NRS 533.3705 (which allows staged development of a water award) is inapplicable to the instant case because the statute is not retroactive to SNWA's 1989 application; and that hydrological knowledge of the respective basins is so incomplete that any water award is premature and; that the perennial yield of Delamar, Dry Lake, and Cave Valley, as part of the White Pine River Flow System is already appropriated in the lower parts of the flow system.

Some of the Protestants argue that SNWA failed to meet its burden of proving need, good faith intentions to construct the infrastructure, and financial ability to perform the construction. As stated above, this court finds the Engineer's ruling valid regarding need, good faith and financial ability.

Regarding the argument that NRS 533.3705, allowing staged development, does not apply retroactively, as interpretation is a matter of law, this court finds that NRS 533.3705 does apply in this case. Enacted in 2007 the law states "[u]pon approval of an application to appropriate water, the State Engineer may limit the initial use of water to a quantity that is less that the total amount approved for the application." The applications in question were approved in March, 2012, after the enactment of the statute. *See generally* PEBP v LVMPD, 124 Nev. 138 (2008).

Millard and Juab counties, Utah, object that Ruling 6164 does not specifically include Snake Valley, Utah in the mitigation process. Snake Valley is specifically to be monitored by six (6) wells and sixteen (16) monitoring sites. ROA 000114-115. Snake Valley, Utah is not specifically mentioned as a mitigation site. Whether the omission was inadvertent or not, Ruling 6164 is remanded to include Snake Valley, Utah in the mitigation plan.

The Confederated Tribes of the Goshute Reservation argue that pursuant to the Public Trust Doctrine, the Spring Valley awards must be vacated.

> If the current law governing the water Engineer does not clearly direct the Engineer to continuously consider in the course of his work the public's interest in Nevada's natural water resources, the law is deficient. It is then appropriate, if not our constitutional duty, to expressly reaffirm the Engineer's continuing responsibility as a public trustee to allocate and supervise water rights so that the appropriations do not substantially impair the public interest in the lands and waters remaining. [The public trust] is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands, and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust. Our dwindling natural resources deserve no less.

Lawrence v Clark County, 127 Nev. Adv. Op. 32, 254 P.2d. 606, 611 (2011).

The Goshute's argument is well taken, but whether Spring Valley groundwater is part of the Public Trust Doctrine or not, Nevada law requires the Engineer to oversee an environmentally sound stewardship of the water, the same goal as the doctrine.

VI
SPRING VALLEY APPROPRIATIONS

A. THE AWARD OF 61,127 AFA VIOLATES THE STATE ENGINEER'S RULES

The Engineer relied on substantial evidence, produced from numerous sources, when determining the amount of water available for the Spring Valley appropriation granted to SNWA. ROA 000057-000090. Considering the evidence of evapotranspiration, inter-basin flow and recharge, the Engineer found 84,000 afa available. ROA 000090. Further, he found, "there is no substantial evidence that the proposed use will conflict with protectable interests in existing domestic wells, or that the use will threaten to prove detrimental to the public interest." ROA 000215.

The Engineer began his calculation of the Spring Valley appropriation with the "estimated average groundwater evapotranspiration (E.T.)," at 84,100 afa. Thus, the perennial yield of Spring Valley is 84,000 afa. ROA 000214. Existing water rights are 18,873 afa and "an additional 4,000 afa is reserved for future growth and development for a total of

22,873 afa of water committed to the basin. Subtracting 22,873 afa from the perennial yield of 84,000 afa leaves 61,127 afa available for appropriation." ROA 000215.

Perennial yield has been for many years defined by the Engineer as:

> The perennial yield of a groundwater reservoir may be defined as the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less.

ROA 000056.

In theory, with enough time the water removed from the system equals the recharge of the system thereby reaching equilibrium. However, reaching equilibrium may take hundreds of years, and "always involves the depletion of water from transitional storage." Engineer Ans. Brief, p.54. If more water comes out of a reservoir than goes into the reservoir, equilibrium can never be reached. This is known as water mining and "[w]hile there is no statute that specifically prevents groundwater mining, the policy of the Engineer for over one hundred (100) years has been to disallow groundwater mining. This policy remains today. Id.

The Engineer defines groundwater mining as pumping exceeding the perennial yield over time such that the system never reaches equilibrium. ROA 56. Natural discharge in Spring Valley is almost exclusively E.T. ROA 000057. E.T. occurs by plants and phreatophytes discharging the groundwater from the basin through use. In Spring Valley, this is the water sought for beneficial use. Of course, to do so, the phreatophytes must be completely eliminated. Engineer Ans. Brief, p.53-54.

Obviously, any water-well cannot capture all of the E.T., and while pumping and E.T. are both occurring, the water table drops. A reasonable lowering of the water table and death of most of the phreatophytes is a trade-off for a beneficial use of the water. "It is a condition of each appropriation of groundwater acquired under this Chapter that the right of

the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion." NRS 534.110(4). The Engineer specifically found "there is no provision in Nevada water law that addresses time to capture, and no State Engineer has required that E.T. be captured within a specific period of time. It will often take a long time to reach near equilibrium in large basins . . . and this is no reason to deny water right applications." ROA 000090. The Engineer is correct that the time to reach equilibrium is not a valid reason to deny the grant of water, but it may very well be a reason to limit the appropriation below the calculated E.T.

Here, there is no valid evidence of when SNWA will capture E.T., if ever. Evidence was submitted at the hearing over many days, the Engineer stated that seventy-five (75) year models of groundwater pumping are appropriate due to "existing data." ROA 000146. However, over seventy-five (75) years becomes less certain. Id. Moreover, the Engineer did not require SNWA to prove that they could capture all of the E.T. SNWA did claim that after two hundred (200) years; their evidence showed that eighty-four (84%) percent of the E.T. would be captured and eighty four percent [is] close to a hundred percent." SNWA Ans. Brief p.288. Simple arithmetic shows that after two hundred (200) years, SNWA pumping and evapotranspiration removes 70,977 afa from the basin with no equilibrium in sight. That is 9,780 afa more than SNWA's grant.

Mr. Stockton, arguing on behalf of the Engineer stated that, "requiring these E.T. salvage projects . . . it's just not appropriate. It can't be done in most basins because the federal government owns the land. They're not going to allow it to be dotted with wells all over the place and the State Engineer found that it wasn't appropriate to require an E.T. salvage project." SE Ans. Brief, Vol. I, p.54. SNWA stated that "[t]he whole question of groundwater mining and E.T. capture and timed equilibrium are not part of the water law and they are not necessary." SNWA Ans. Brief, Vol. I, p.69.

The Engineer acknowledged that it is unlikely all of the E.T. in a basin will be captured. Additionally, "[i]t is unclear where [Cleveland Ranch] got the impression that groundwater development in Nevada is required to be an E.T. salvage project, which is certainly not contained in statutory law." Engineer Ans. Brief, p.54. Perhaps Cleveland Ranch and the other Protestants "got the impression" from the Engineer's definition: "Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use." ROA 000056. Moreover, in the Engineer's Ruling 5726 he defined perennial yield as an "assumption that water lost to natural E.T. can be captured by wells and placed to beneficial use." Cleveland Ranch Opening Brief, App. 1 at 27, citing Ruling 5726. The Nevada Supreme Court stated, "[t]he perennial yield of a hydrological basin is the equilibrium amount or maximum amount of water that can safely be used without depleting the source." *Pyramid Lake Paiute Tribe of Indians v Ricci*, 126 Nev. Adv. Op. 48; 245 P.3d 1146, 1147 (2010).

The Engineer 's finding that equilibrium in Spring Valley water basin will "take a long time" was not based on substantial or reliable evidence, and is incorrect. Indeed, by his own statements – and evidence – equilibrium will never be reached.

The Engineer has also said that "[d]rawdown of less than 50 feet over a seventy-five year period is generally a reasonable lowering of the static water table." ROA 000132. However, after two hundred (200) years of pumping the water table is losing 9,780 afa over and above the amount SNWA has been authorized to pump. SNWA's expert certified that uncaptured E.T. would have to be deducted from the perennial yield. ROA 34928. This, the Engineer did not do.

This Court finds that the Engineer's own calculations and findings, show that equilibrium, with SNWA's present award, will never be reached and that after two hundred (200) years, SNWA will likely capture but eighty-four (84%) of the E.T. Further, this court finds that losing 9,780 afa from the basin, over and above E.T. after 200 years is unfair to

following generations of Nevadans, and is not in the public interest. In violating the Engineer's own standards, the award of 61,127 afa is arbitrary and capricious.

This finding by the court requires that this matter be remanded to the State Engineer for an award less than the calculated E.T. for Spring Valley, Nevada, and that the amended award has some prospect of reaching equilibrium in the reservoir.

B. THERE ARE NO OBJECTIVE STANDARDS AS TO WHEN THE MITIGATION PART OF THE MONITOR, MANAGE AND MITIGATE PLAN GO INTO EFFECT

SNWA's expert reports make it clear that the hydrology of Spring Valley, as well as Delamar, Dry Lake and Cave Valley, is not completely understood. Much of the data collected over the years is analyzed by computer models and is "significantly" limited in accuracy concerning the hydrological framework, actual precipitation, recharge and other factors. ROA 010704; 010708-9. The experts recognize that inaccuracies exist because of a lack of data collection over vast areas of Spring Valley, Delamar, Dry Lake and Cave Valleys. ROA 010706. For example, 10 years of data collection generally means an accurate predictive model for the next 10 years. ROA 000146. Thus, the Engineer has stated that a 75 year model is a reasonable simulation because there are 75 years of existing data. "Over 75 years becomes less certain." Id. "[U]ncertainty is reduced overtime as more baseline and operational data become available." ROA 013244. "Much is not known about the groundwater-influenced ecosystems in the [initial biological monitoring area] (e.g., relationship, between groundwater levels and spring-flow: relative dependence of certain vegetation on groundwater versus other sources of water), and the response of these systems to groundwater withdrawal by SNWA." Biological Monitoring Plan Spring Valley Stipu. ROA 020648.

Recognizing that no one really knows what the impact of pumping water from Spring Valley on such a large scale will be (ROA 000135-6 and 020066), the Engineer found that staged pumping is environmentally sound and will insure no conflicts with existing rights.

ROA 000151. Additionally, the Engineer adopted the MMM Plan created by SNWA and the National Park Service, Bureau of Fish and Wildlife, and the Bureau of Indian Affairs. A description of the plan is contained in State Engineer's Order No. 6164. ROA 000103-120.

The MMM plan is a stipulation between SNWA and Federal agencies (supra). In summary, SNWA's pumping will be managed to avoid "unreasonable harm to scenic values" in the Great Basin National Park and the "loss of surface vegetation." ROA 020496. The three principal components are:

> *Monitoring Requirements* – including, but not limited to monitoring wells, spring flow measurements, water chemistry analyses, quality control procedures, and reporting requirements; and
>
> *Management Requirements* – including, but not limited to the creation of a Technical Review Panel ("TRP") to review information collected under this Plan and advise the Executive Committee (a group consisting of one management-level person from each Party, as described below in Management Requirements), the use of an agreed-upon regional groundwater flow system numerical model(s) to predict effects of groundwater withdrawals by SNWA in the Spring Valley HB, and the establishment of a consensus-based decision-making process; and
>
> *Mitigation Requirements* – including, but not limited to the modification relocation or reduction in points of diversion and/or rates and quantities of groundwater withdrawals or the augmentation of Federal Water Rights and/or Federal Resources as well as measures designed and calculated to rehabilitate, repair or replace any and all Federal Water Rights and Resources if necessary to achieve the goals set forth in Recital G of the Stipulation.

ROA 20791.

Similarly, the Biologic Monitoring, Management and Mitigation Plan has been instituted to "determine the appropriate course of action to avoid and/or mitigate any effects to Water-dependent Ecosystems . . . within the Great Basin National Park [and other Federal] 'Areas of Interest.'" ROA 020806. The Biologic monitoring is to "determine potential indicator species and appropriate parameters to monitor for early warning of unreasonable adverse effects and of any effect within the boundaries of Great Basin National Park . . .

resulting from SNWA's withdrawal of ground water from the Spring Valley HB." Id. The Mitigation portion of the Plan briefly describes what could possibly be done to mitigate unreasonable effects. Id.

Appendix B of NSE Ruling 5726 contains objectives 6, 7, and 8 of the "Plan":

> 6. During the Pre-Withdrawal Phase, establish the range of variation for each indicator (or suite of indicators) that will be considered acceptable.
>
> 7. Define what constitutes an "unreasonable adverse effect" during the Pre-Withdrawal Phase.
>
> 8. In coordination with TRP, during the Pre-Withdrawal Phase, establish criteria that will initiate the BWG consultation process as outlined in the Stipulation.
>
> The Stipulation directs there be no "unreasonable adverse effect" to groundwater-influenced ecosystems in the IBMA and no adverse effect to GBNP as a result of SNWA's groundwater withdrawal in Spring Valley. In order to meet these requirements, it is imperative that impacts are detected and assessed, and appropriate management actions are initiated, prior to such effect occurring.

ROA 020647.

As noted above, the Engineer has instituted the MMM Plan as a condition of the SNWA appropriations (ROA 000181), and has been involved in developing the Plan. ROA 013243-44. However, the MMM Plan is flawed in several respects, most notably: "Mitigation planning is not part of this plan but will be handled separately when impact location and magnitude are better understood." ROA 020648. Nonetheless, the MMM Plan emphasizes that mitigation will cure any adverse effects and the Engineer has found that the existing, non-Federal rights are sufficiently protected by the Plan. ROA 000215.

There are no objective standards to determine when mitigation will be required and implemented. The Engineer has listed what mitigation efforts can possibly be made, i.e., stop pumping, modifying pumping, change location of pumps, drill new wells, or increase or improve leopard frog populations in a different location from one that suffers an

unreasonable impact. ROA 000190. Also, the Engineer has noted that if pumping has an adverse effect on swamp cedars, SNWA could mitigate, ROA 000189. but does not cite objective standards of when mitigation is necessary. The Engineer states: "where unreasonable impacts may occur and how bad the impacts may be is not understood and thus mitigation cannot be part of the plan at the present." Not knowing where or how bad an impact is, is not the same thing as defining what an adverse impact..

The Engineer has found that it is "premature to attempt to set quantitative standards or triggers for mitigation actions," because "[f]actors such as natural variation in the environmental resources must be understood before any standards or triggers are set." ROA 000311. "Selecting specific standards before a full baseline is developed would be premature. It would not lead to sound scientific decisions." ROA 000182-183.

While this Court cannot completely disagree with the Engineer's statement above, he has also stated: "The State Engineer finds that the applicant [SNWA,] gathered and presented substantial environmental resource baseline material and that the environmental resource baseline information provides a platform for sound, informed decision making." ROA 00176. Thus, if SNWA, and thereby the Engineer, has enough data to make informed decisions, setting standards and "triggers" is not premature. Curiously, the Engineer has made the finding that a failure to even make "Mitigation" a part of the current MMM plan "demonstrates Applicant's determination to proceed in a scientifically informed, environmentally sound manner." ROA 000183. It seems that if there is enough data to make informed decisions, exactly when an unreasonable impact to either the environment or existing rights occurs, the Engineer or SNWA should recognize it and make the decision to mitigate. If there is not enough data (as shown earlier, no one really knows what will happen with large scale pumping in Spring Valley), granting the appropriation is premature. The ruling is arbitrary and capricious.

Still other flaws with the MMM Plan are evident. The Engineer stated: "the regulation of water rights is in the State Engineer's purview, and the State Engineer proactively monitors impacts to existing rights and the environment." ROA 000183. Also, "[t]he State Engineer finds that the potentially impacted water rights . . . are or will be monitored and that this monitoring will allow for early warning of potential impacts to these water rights . . . and will exercise his authority as needed to protect these existing rights and will require mitigation if needed." ROA 000139-140.

The Engineer found that lowering the Spring Valley water table by 50 feet is "reasonable," but has avoided any mention of what is unreasonable. Nor did he state how monitoring will be accomplished, or what constitutes an impact, potential or otherwise. There is no standard to know how much of an impact is unreasonable to leopard frogs, or to swamp cedars, before mitigation is necessary. The Engineer gives a vague statement of how mitigation can be done, but has no real plan or standard of when mitigation would be implemented. Without a stated, objective standard, the ruling is arbitrary and capricious.

Regarding monitoring and proactive monitoring by the Engineer, there is no plan. The Federal/SNWA stipulation requires yearly reports to the Engineer, but even a cursory examination of the stipulation reveals that between SNWA, the Federal agencies and existing water right holders, the goals and motivations of each party will certainly conflict. The Engineer finds that he has jurisdiction to oversee the "environmental soundness" of the project "and will do so." ROA 000178. Again, he has not stated how this will be accomplished. If the Engineer believes that his department will monitor the non-Federal rights and environment, he has not said how it will be done. The Engineer pointed out in *Great Basin Water Network v. State Engineer*, 126 Nev. Adv. Op. 20; 234 P.3d 912 (2010), that he is short staffed. There are 172,605 acres in Spring Valley alone. ROA 18788. Without a plan to monitor that large of an area, a statement that the Engineer will monitor the area is also arbitrary and capricious.

Impliedly, the Engineer has ceded the monitoring responsibilities to SNWA. "The State Engineer finds that [SNWA] has the ability to identify impacts of the project through its environmental monitoring plan." ROA 000193. Yet, the plan has failed to set any standard of how impacts may be recognized. Essentially, the Engineer is simply saying, "we can't define adverse impacts, but we will know it when we see it."

Both SNWA and the Engineer have properly referenced the successful MMM plan used at Devil's Hole in the Armagosa Valley. In Devil's Hole, aside from being a small fraction of area compared to Spring Valley, Delamar, Dry Lake and Cave Valley, the MMM plan specifically has a "trigger." When the water level falls 2.7 feet below a copper washer, mitigation must occur. Transcript, Vol. I, p.65. This is an objective and recognizable standard.

The Engineer has stated several times that "under specific conditions" SNWA will be required to modify or curtail pumping. ROA 013248 and 013264. Yet again, there are no specifics stated.

The Engineer rightly recognized his "heavy burden of ensuring" that this water project is environmentally sound. ROA 000173. A heavy burden indeed and one which is not complete. Several of the Protestants noted that the MMM plan is filled with good intentions but lacks objective standards. This Court agrees. Granting water to SNWA is premature without knowing the impacts to existing water right holders and not having a clear standard to identify impacts, conflicts or unreasonable environmental effects so that mitigation may proceed in a timely manner. Based on the above, this matter must be remanded to the State Engineer until objective standards can be established and stated – as to when mitigation must occur.

VII
CAVE, DRY LAKE AND DELAMAR VALLEY

A. THE WATER AWARDED TO SNWA IN RULINGS 6165, 6166 AND 6167 IS ALREADY APPROPRIATED IN THE LOWER BASINS

Cave, Dry Lake, and Delamar Valley (CDD) are contiguous and linear, stretching from White Pine County, Nevada, southerly, into Lincoln County. It is approximately sixty (60) miles from the Northern tip of Cave Valley to the Southern end of Delamar Valley. ROA 020507. Unlike Spring Valley, which is a "closed valley", the CDD basins are "not closed". ROA 000599. In closed valleys, natural water discharge is by evapotranspiration (E.T.). In CDD, water is discharged by water flow from one basin into another. "Just like water in streams, groundwater moves from areas of higher hydraulic heads to areas of lower hydraulic heads." ROA 017407.

The Engineer described the CDD basins as part of the White River Flow system, consisting of ten (10) additional hydrographic basins, which discharge primarily into the White River Valley, Pahranagat Valley, and the Muddy Springs Area. ROA 000599. Approximately 2,000 afa flow into Dry Lake Valley from Pahroc. ROA 010588. "There is no groundwater E.T. in Dry Lake Valley, (ROA 017415) so all groundwater in Dry Lake Valley flows down gradient to the south to Delamar Valley." Id. and continues from Delamar to northern Coyote Springs Valley. Id.

The Protestants allege that the CDD water allocation to SNWA, has been previously appropriated. The awarding SNWA water from the higher gradient of the White River Flow allows SNWA to take the water before it recharges the lower basins, which conflicts with earlier established water rights. In other words, the same water has been awarded twice, once in the upper basins, and again in the lower basins.

The Engineer tacitly acknowledges the double appropriation of the same water but rationalizes it in two different ways. First, he refers to the rights in Coyote Springs as "paper water rights." Oral Arg. Trans., Vol. II, p.255. Exactly what the Engineer means by "paper water rights" is unclear, but this Court takes it to mean: valid, existing rights. If the rights were invalid, there would be no over appropriation. Second, the Engineer states that "up-

gradient use will not, if at all, measurably affect down-gradient supply for hundreds of years." ROA 000599-600. Further, he found that "if no measurable impacts to existing rights occur within hundreds of years, then the statutory requirement of not conflicting with existing water rights is satisfied." ROA 000600.

Considering that models which project water disbursement longer than seventy-five (75) years are uncertain (ROA 020061) – and giving some deference to the Engineer's ruling, (see *Town of Eureka*, 108 Nev. 163 (1992)), this Court cannot agree with the Engineer's interpretation of NRS 533.370 (2). The statute is unequivocal, if there is a conflict with existing rights, the applications "shall" be rejected.

Moreover, it is also unseemly to this court, that one transitory individual may simply defer serious water problems and conflict to later generations, whether in seventy-five (75) years or "hundreds," especially when the "hundreds" of years is only a *hoped* for resolution.

There may be water from the CDD basins which could properly be appropriated without conflicting with down-gradient rights. The current orders do not contain such a calculation. For this reason, rather than an outright reversal of the appropriations from Cave, Dry Lake and Delamar Valleys, the matter is remanded to the Engineer for recalculation of possibly unappropriated water.

B. LIKE SPRING VALLEY, THE MONITOR, MANAGE AND MITIGATION PLAN REQUIRES SPECIFIC STANDARDS TO BE AN EFFECTIVE PLAN

The analysis of the MMM Plan and the requirement for standards to be applied to determine when mitigation is necessary in the Cave, Dry Lake and Delamar Valleys is much the same as in Spring Valley. There is still a great deal of uncertainty regarding the hydrology of CDD. ROA 000671. Because of the unknowns, the Engineer has adopted the MMM Plan in the CDD valleys:

> The State Engineer finds an effective management program that includes monitoring activities, management tools and mitigation options is critical to the determination that the Applications will not

> conflict with existing water rights or with protectable interests in existing domestic wells.

ROA 000632.

The Engineer has also found that a drawdown of less than fifty (50) feet over a seventy-five (75) year period is a reasonable lowering of the static water table "made on a case-by-case basis". ROA 000653. He has presumably accepted testimony of SNWA's expert predicting one (1%) percent to seventeen (17%) percent spring flow reductions in the White River and Pahranagat Valleys and has determined a seventeen (17%) percent flow reduction is reasonable.

Additionally, he found that "Federal and state laws, including the National Environmental Policy Act ("NEPA"), the [Environmental Species Act (ESA)], the Clean Water Act ("CWA") and Nevada water law, require environmental protection through comprehensive permitting and regulatory process." ROA 000683. "The ESA imposes strict substantive protections, in the form of reasonable and prudent alternatives, that include minimization and mitigation measures that prevent jeopardy to listed species or their critical habitat." ROA 000684. Further, "non-listed" species will also be protected – "resulting in an even greater breadth of coverage." Id. Notwithstanding the Federal involvement, the Engineer states that he still has the jurisdiction and responsibility to determine environmental soundness independently of other agencies – "and will do so." ROA 000684.

The Engineer has, in effect, relinquished his responsibilities to others. Again, the Engineer has failed to state under what specific conditions he will require mitigation. The Engineer also recognizes that SNWA will extensively monitor springs and sensitive sites in the CDD valleys and finds that the Applicants' monitoring plan will be effective. ROA 000636-000640.

Like the Spring Valley Plan, the Engineer finds that it is premature to set standards and/or triggers because there is not enough "baseline" data. ROA 000641. Yet, the

Engineer has also made the specific finding "that the Applicant gathered and presented substantial environmental resource baseline material and that the environmental resource baseline information provides a platform for sound, informed decision-making." ROA 000683. Whether this is contradictory or not (sufficient baseline data v. insufficient baseline data), standards, triggers or thresholds, however phrased, must be objective to provide notice of when and where mitigation is necessary. Without standards, any decision to mitigate is subjective and thus, arbitrary and capricious.

Stated differently, the Engineer decided that because the final configuration of the wells and locations of wells within the valleys is unknown at the present, setting quantitative standards, "or triggers" for mitigation is pre-mature because it must be known how the aquifer responds to pumping. ROA 000641. It seems that when and where unreasonable effects occur, is not the same as recognizing an unreasonable effect, wherever or whenever it appears. Paraphrasing Samuel Clemens, show me a man who knows what's reasonable and I'll show you a man who knows what isn't.

Further, the Engineer found that "natural variability in the system must be documented to determine if observed changes are due to pumping, rather than natural fluctuations due to seasonal recharge or other factors." ROA 000641. The Engineer has already found that SNWA has gathered and presented enough baseline data to make sound and informed decisions, not to mention that SNWA has been studying the basins and valleys for at least twenty-five (25) years and likely longer. In short, without standards, triggers or thresholds the MMM Plan is not a "comprehensive" plan, "critical to the determination that the Applications will not conflict with existing water rights or with protectable interests in existing domestic wells". ROA 000632.

This Court is charged with "determining whether there is substantial evidence in the record to support the [Engineer's] decision." *Revert v. Ray*, 95 Nev. 782, 786 (1979). Here, the Engineer said, however not quite consistently, that there is not enough evidence to

implement, what he has characterized as "critical," the MMM Plan. Thus, if there is insubstantial evidence and it is premature to set triggers and thresholds, it is premature to grant water rights.

As stated in the Plan, a definition of an unreasonable adverse effect, i.e. a trigger, a standard, a threshold must be defined. ROA 020647. Absent a thorough plan and comprehensive standards for mitigation, any mitigation, (or lack thereof) is subjective, unscientific, arbitrary and capricious. This matter must be remanded to the Engineer so that objective standards may be established.

VIII
CONCLUSION

After an in-depth review of the record this Court will not disturb the findings of the Engineer save those findings that are the subject of this Order. This Court remands orders 6164, 6165, 6166 and 6167 for:

1. The addition of Millard and Juab counties, Utah in the mitigation plan so far as water basins in Utah are affected by pumping of water from Spring Valley Basin, Nevada;

2. A recalculation of water available for appropriation from Spring Valley assuring that the basin will reach equilibrium between discharge and recharge in a reasonable time;

3. Define standards, thresholds or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley, Cave Valley, Dry Lake Valley and Delamar Valley, and;

4. Recalculate the appropriations from Cave Valley, Dry Lake and Delamar Valley to avoid over appropriations or conflicts with down-gradient, existing water rights.

DATED this 10th day of December, 2013.

ROBERT E. ESTES
SENIOR DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2014, and pursuant to section 10 of the Court's October 22, 2012, Order to Consolidate Cases, I served the foregoing **NOTICE OF APPEAL** by electronic mail to the persons and addresses listed below. This document applies to Case Nos. CV-1204049, CV-1204050, CV-1204051, CV-1204052, CV-1205053, CV-1204054, CV-1204055, CV-0418012, and CV-0419012.

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Case No. CV-1204049
Consolidated
with CV-1204050
CV-1204051
CV-1204052
CV-1205053
CV-1204054
CV-1204055
CV-0418012
CV-0419012

Dept. 1

Affirmation pursuant to NRS 239B.030
The undersigned affirms that this document does not contain the social security number of any person

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE NEVADA

IN AND FOR COUNTY OF WHITE PINE_

MILLARD COUNTY, UTAH and JUAB COUNTY, UTAH, *et al.*

Consolidated Petitioners,

vs.

JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents,

and

SOUTHERN NEVADA WATER AUTHORITY,

Respondent-Intervenor.

(Consolidated caption as used by the district court)

MILLARD COUNTY, UTAH; JUAB COUNTY, UTAH; CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ON BEHALF OF CLEVELAND RANCH; ELY SHOSHONE TRIBE; CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION;

CASE APPEAL STATEMENT

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DUCKWATER SHOSHONE TRIBE; WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES INC.; BATH LUMBER; PANACA FARMSTEAD ASSOCIATION; BORDER INN; PEARSON FARMS; RAFTER LAZY C RANCH; SPORTSWORLD; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; BRISTLECONE ALLIANCE; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; VAUGHN M. HIGBEE & SONS; ARMANDO AGUILEW; CHRIS ADLER; BART ANDERSON; AMY ASPERHEIM; MICHELE AUSTRIA; CRAIG & GRETCHEN BAKER, individually and on behalf of their minor children, MATTHEW & EMMA; DAVID A. & TANA R. BAKER, individually and on behalf of their minor children, CLAYTON F. DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually and on behalf of their minor children ALYSHIA, CALEB, MEGAN & KAYLI; JERALD BATES; JAMES & DONNA BATH; SHANNON BARKER; CHRISTIA BARLOW; MARGARET BARLOW; RICHARD A. BARR; BRIAN BEACHER; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; LOUIS BENEZET; KATHY BINGLEY; MICHAEL BIVINS; GARY BODELL; SEAN BONNELL; BOBBY BONNELL; LUKE BOTTCHE; JOHN BOWMAN; D. DANIE BRADFIELD; JAMES E. BRADY; ANN & JIM BRAUER; JOEL BRISCOE; WALTER

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Consolidated Petitioners,

vs.

JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents,

and

SOUTHERN NEVADA WATER AUTHORITY,

Respondent-Intervenor.

(Consolidated caption reflecting all "Consolidated Petitioners")

MILLARD COUNTY, UTAH AND JUAB

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COUNTY, UTAH,

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; AND THE NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Respondents,

(Caption in Case No. CV-1204049)

In the matter of the State Engineer's approval of Application Nos. 54003 to 54015, 54019, 54020 in Ruling 6164

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, on Behalf of CLEVELAND RANCH,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-120450)

ELY SHOSHONE TRIBE on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

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(Caption in Case No. CV-1204052)

CONFEDERATED TRIBES OF THE GOSHUTE RESERVATION on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204052)

DUCKWATER SHOSHONE TRIBE OF THE DUCKWATER RESERVATION, NEVADA, on behalf of itself and its members,

Petitioner,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204053)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL;

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WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES INC.; BATH LUMBER; BORDER INN; PEARSON FARMS; RAFTER LAZY C RANCH; SPORTSWORLD; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; UTAH AUDUBON COUNCIL; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; CRAIG & GRETCHEN BAKER, INDIVIDUALLY, and on behalf of their minor children MATTHEW & EMMA; DAVID A & TANA R. BAKER, individually and on behalf of their minor child, CLAYTON F., DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually, and on behalf of their minor children ALYSHIA, CALEB, MEGAN, & KAYLI; JERALD BATES; JAMES & DONNA BATH; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; ANN & JIM BRAUER; JOEL BRISCOE; TOM E. BROWN; WILLIAM BUTTS; MARIE A. CARRICK; WILLIAM COFFMAN; PETER COROON; LUDELL DEUTCHER; ROM DICIANNO; ANNETTE & CECIL GARLAND; JO ANNE GARRETT; PATRICIA J. GLADMAN; PAT & KENA GLOECKNER; individually and on behalf of their minor children KYLEE, KORI & KOURTNEY; EDWIN E. HIGBEE; KENNETH F. & KATHRYN A. HILL; ABIGAIL C. JOHNSON; LINDA G. JOHNSON; ROBERT LAUBACH; WESLEY R. & ELAINE R. LEWIS; TERRANCE P. MARASCO; MARGARET PENSE; GARY & JO ANN PEREA; MERLE RAWLINGS; KATHERINE & WILLIAM ROUNTREE; ED SPEAR; THEODORE STAZESKI; TERRANCE & DEBRA STEADMAN; HENRY C. & DANA VOGLER, individually and on behalf of their minor children; STINSON VOGLER; SUSAN WETMORE; SHARON WILLIAMS; WILLIAM & HOLLY M. WILSON,

Petitioners,

vs.

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ENGINEER, NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204054)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH, SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES, INC.; BATH LUMBER; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; UTAH RIVERS COUNCIL; BRISTLECONE ALLIANCE; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; SCHOOL OF THE NATURAL ORDER; CRAIG & GRETCHEN BAKER, individually, and on behalf of their minor children MATTHEW & EMMA; DAVID A. & TANA R. BAKER, individually and on behalf of their minor child, CLAYTON F.; DEAN & BARBARA BAKER; TOM & JANILLE BAKER, individually, and on behalf of their minor children ALYSHIA, CALEB, MEGAN & KAYLI; JAMES & DONNA BATH; ELIZABETH BEDELL; CYNTHIA LEE BELL; "ROBIN" EDWARD JOHN BELL III; ANN & JIM BRAUER; JOEL BRISCOE; TOM E. BROWN; WILLIAM BUTTS; MARIE A. CARRICK; LUDELL DEUTCHER; ROM DICIANNO; BRENT GARDNER; ANNETTE & CECIL GARLAND; JO ANNE GARRETT; PAT & KENA GLOECKNER, individually, and on behalf of their minor children KYLEE, KORI &

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Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-1204055)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA, EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; PANACA FARMSTEAD ASSOCIATION; BAKER RANCHES, INC.; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION; *et al.*,

Petitioners,

vs.

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JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-0418012)

WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA, EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; PANACA FARMSTEAD ASSOCIATION; BAKER RANCHES, INC.; BORDER INN; RAFTER LAZY C RANCH; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA; LEAGUE OF WOMEN VOTERS OF SALT LAKE CITY; UTAH AUDUBON COUNCIL; UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT; POST CARBON SALT LAKE; UTAH RIVERS COUNCIL; CITIZENS EDUCATION PROJECT; INDIAN SPRINGS CIVIC ASSOCIATION, *et al.*

Petitioners,

vs.

JASON KING, P.E., IN HIS OFFICIAL CAPACITY AS THE NEVADA STATE ENGINEER; and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES,

Respondents.

(Caption in Case No. CV-0418012)

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CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Respondent-Intervenor SOUTHERN NEVADA WATER AUTHORITY

2. Identify the judge issuing the decision, judgment, or order appealed from:

THE HONORABLE ROBERT E. ESTES

3. Identify each appellant and the name and address of counsel for each appellant:

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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

Attorneys for Respondents WHITE PINE COUNTY, NEVADA; ELKO COUNTY, NEVADA; EUREKA COUNTY, NEVADA; NYE COUNTY, NEVADA; NYE COUNTY WATER DISTRICT; CITY OF ELY, NEVADA; CENTRAL NEVADA REGIONAL WATER AUTHORITY; GREAT BASIN WATER NETWORK; SIERRA CLUB; CENTER FOR BIOLOGICAL DIVERSITY; 2ND BIG SPRINGS IRRIGATION COMPANY; LUND IRRIGATION COMPANY; PRESTON IRRIGATION COMPANY; ALAMO SEWER & WATER GID; BAKER GID; MCGILL-RUTH SEWER & WATER GID; GREAT BASIN BUSINESS & TOURISM COUNCIL; WHITE PINE CHAMBER OF COMMERCE; NEVADA FARM BUREAU; N-4 STATE GRAZING BOARD; BAKER RANCHES INC.; BATH LUMBER; PANACA FARMSTEAD ASSOCIATION; BORDER INN; PEARSON FARMS; RAFTER LAZY C RANCH; SPORTSWORLD; PROGRESSIVE LEADERSHIP ALLIANCE OF NEVADA;

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League of Women Voters of Salt Lake City; Utah Audubon Council; Utah Physicians for a Healthy Environment; Post Carbon Salt Lake; Utah Rivers Council; Bristlecone Alliance; Citizens Education Project; Indian Springs Civic Association; School of the Natural Order; Vaughn M. Higbee & Sons; Armando Aguilew; Chris Adler; Bart Anderson; Amy Asperheim; Michele Austria; Craig & Gretchen Baker, individually and on behalf of their minor children, Matthew & Emma; David A. & Tana R. Baker, individually and on behalf of their minor child, Clayton F. Dean & Barbara Baker; Tom & Janille Baker, individually and on behalf of their minor children Alyshia, Caleb, Megan & Kayli; Jerald Bates; James & Donna Bath; Shannon Barker; Christia Barlow; Margaret Barlow; Richard A. Barr; Brian Beacher; Elizabeth Bedell; Cynthia Lee Bell; "Robin" Edward John Bell III; Louis Benezet; Kathy Bingley; Michael Bivins; Gary Bodell; Sean Bonnell; Bobby Bonnell; Luke Bottche; John Bowman; D. Danie Bradfield; James E. Brady; Ann & Jim Brauer; Joel Briscoe; Walter Franklin Brown; Tom E. Brown; Bernard & Eva Buswell; Michele R. Butler; William Butts; Art Cameron; Karen Campbell; Dale Canepa; Rachel Carlisle; Beau Carlson; David Carlson; Louise Carlson; Marie A. Carrick; Melissa Cheeney; Steve Chouquer; Brandon Christian; Craig Christianson; Lene Clay; William Coffman; Peter Coroon; John S. Cole; Kathleen M. Cole; Landon Cole; Dawne Combs; John Condie; William & Geniel Connor; Kathy Cook; David & Halli Cox; Robert Crager; Patricia J. Crosthaiait; Dustin Crowther; Cary Curcio; Kelley Dabel; Brad & Robin Dalton; Gary Davis; Pete Tony Delmue; Ludell Deutcher; Rom DiCianno; Travis Dormina; Anthony Paul Donohue; Orrin Dotson; Dennis Dotson Jr.; Joseph A. Dunne; Jerri Elliot; Velda Embry; Jerry Etchart; James R. Ferrell; Jody Finicum; Mike & Jo Fogliani; Paula J. Foht; Melissa Jo Free; Justin Frehner; Patrick Fuller; Veronica Garcia; Brent Gardner; Annette & Cecil Garland; Jo Anne Garrett; Patricia J. Gladman; Donald Gent; Anna E. Gloeckner; Paul & Nancy Gloeckner; Pat & Kena Gloeckner, individually and on behalf of their minor children, Kylee, Kori, & Kourtney; Tami Gubler; Charles Hafen; Dennis Hafen; Lavoy Hafen; Fredrick Hammel; Relena Hanley; Michael Hanley; Bart Hansen; Daniel & June Hansen; Rick Hansen; Billie Harker; Carol Harker; DelsaNaia Harker; Eve Harker; Josett Harker; Thora Harker; David Hartley; Rocky & Lynda HatchSteven Heiselbetz; Aaron Carl Hgfeldt; Kathy Hiatt; Edwin E. Higbee; Kenneth F. & Kathryn A. Hill; Janice Hilton; Brandon Holton; N. Peter Horlacher; Andrew M. Horsch; Carol Hullinger; Ray Hulse; Don Hunt; Marian K. Hunt; Merlene Hurd; Jennifer Jack; Robert Jennings; Jerone A. Jensen; Aaron Jessop; Carl Jessop; Jessica Jessop; Kevin J. Jessop; Lorin Jessop; Lorin Z. Jessop; Mike Jessop; Vivian Jessop; Abigail C. Johnson; Hope Johnson; Kirk Johnson; Laura Johnson; Linda G. Johnson; Mark D. Jones; William Jordan; Dennis Jurgensen; Patrick M, Kelley; Rose Diane Kelley; Becky Kleim; Jess Klotz; Michael Knipes; Ronald Kozak; William Kramer; Kathleen LaJoie; Larry LaJoie; Robert Laubach; Leah R. LawsonKyle Leany; Jack T. Lee; Jimmie Sue Lee; Merrilee Lee; Rollin Kim Lee; Jacob Lester; Sarah Lester; Wesley R. & Elaine R. Lewis; Bevan Lister; Brad Lloyd; Jo & Jason Lloyd; Mick & Lynn Lloyd; Teresa Lloyd; William Long; D.L. Lucchesi; Farrell & Manetta Lytle; Ken & Donna Lytle; Lisa L. Lytle; Chrystal Malloy; Dianne E. Mason; Mark A. Mason; Barbara J. Mason-Wanket; Major Mastin; Nevin MayGary McBride; Marie McBride; John T. McClellan; Nathan McClure; Katherine McCrosky; Melinda McCrosky; Steve McCrosky; Roderick McKenzie, Paula & Parker McManus; Aaron McRory; Natalie Mellem; Laurel Ann Mills; Amanda Moore; Joe Morrow; Kari Mortensen; Dean Mossgr; Lisa M. Nielsen; Allan K. Nyberg; Dennis O'Connor; Mark Olson; Terry Olson; Carlos Palencia; Janice Palmeri; Axel Pearson; Keith A. & Lacie Pearson; Lee Pearson; Margaret Pense; Gary & Jo Ann Perea; Grant Perkins; Clifford Pete Peterson; India Phillips; Kevin Phillips; Rachelle

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Attorneys for Respondents JASON KING, P.E., in his official capacity as the NEVADA STATE ENGINEER, and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES

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Carson City, Nevada 89701

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

Attorneys Iris Thornton, J. Mark Ward, Scott W. Williams, Curtis Berkey and Paul EchoHawk are not licensed to practice in Nevada. A copy of the orders granting them permission to appear are attached hereto as Exhibit A.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

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7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, e.g., date complaint, indictment, information, or petition was filed:

Millard County, Utah and Juab County, Utah v. Jason King, P.E., et al. (Case no. CV-1204049 - Petition filed April 19, 2012

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints on behalf of Cleveland Ranch v. Jason King, P.E., et al. (Case no. CV-1204050) – Petition filed April 20, 2012

Ely Shoshone Tribe v. Jason King, P.E., et al. (Case no. CV-1204051) – Petition filed April 20, 2012

Confederated Tribes of the Goshute Reservation v. Jason King, P.E., et al. (Case no. CV-1204052) – Petition filed April 20, 2012

Duckwater Shoshone Tribe v. Jason King, P.E., et al. (Case no. CV-1204053) – Petition filed April 20, 2012

White Pine County, Nevada, et al. v. Jason King, P.E., et al. (Case no. CV - 1204054) – Petition filed April 23, 2012

White Pine County, Nevada, et al. v. Jason King, P.E., et al. (Case no. CV - 1204055) – Petition filed April 23, 2012

White Pine County, Nevada, et al. v. Jason King, P.E., et al. (Case no. CV - 0418012) – Petition filed April 25, 2012

White Pine County, Nevada, et al. v. Jason King, P.E., et al. (Case no. CV - 0419012) – Petition filed April 25, 2012

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This case concerns applications by the Southern Nevada Water Authority ("SNWA") with the Nevada State Engineer to appropriate unused ground water from Spring, Cave, Dry Lake, and Delamar Valleys in eastern Nevada.

In this action, petitioners asked the court to review and vacate rulings of the State Engineer that granted SNWA's applications after an evidentiary hearing, which followed from the Supreme Court's opinion and order of remand in *Great Basin Water Network v. State Engineer*, 126 Nev. Adv. Op. 2, 222 P.3d 665 (2010).

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SNWA now appeals from the district court Decision of December 13, 2013, which directs the State Engineer to apply new standards and analysis for evaluating the applications.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

This action arises from proceedings on remand from *Great Basin Water Network v. State Engineer* (Case no. 49718).

12. Indicate whether this appeal involves child custody or visitation:

It does not.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

SNWA believes that participation in the settlement program would be fruitless and only cause unnecessary delay.

DATED this 9th day of January, 2014.

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BY: _____

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