



State of Utah
DEPARTMENT OF NATURAL RESOURCES
Division of Water Rights

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor

MICHAEL R. STYLER
Executive Director
KENT L. JONES
State Engineer/Division Director

MAY 13 2014

ORDER OF THE STATE ENGINEER
For Application to Appropriate Water Number 14-118 (A76676)

Application to Appropriate Water Number 14-118 (A76676), in the name of Central Iron County Water Conservancy District (CICWCD), was filed on October 17, 2006, to appropriate 15,000.00 acre-feet (af) of water from the groundwater in Pine Valley. It is proposed divert water from 16-inch wells drilled between 100 and 2000 feet in depth to be located: (1) North 1900 feet and East 1300 feet from the SW Corner of Section 17, T30S, R16W, SLB&M; (2) North 2300 feet and West 1650 feet from the SE Corner of Section 14, T28S, R17W, SLB&M; (3) South 1000 feet and East 1700 feet from the NW Corner of Section 24, T29S, R18W, SLB&M; (4) North 500 feet and East 500 feet from the SW Corner of Section 14, T29S, R17W, SLB&M; (5) South 400 feet and East 2200 feet from the NW Corner of Section 19, T29S, R16W, SLB&M; (6) South 1850 feet and West 2000 feet from the NE Corner of Section 25, T29S, R17W, SLB&M; (7) North 500 feet and East 350 feet from the SW Corner of Section 32, T29S, R16W, SLB&M; (8) South 2000 feet and East 2550 feet from the NW Corner of Section 2, T30S, R17W, SLB&M; (9) North 2250 feet and East 500 feet from the SW Corner of Section 15, T30S, R17W, SLB&M; and (10) South 300 feet and East 250 feet from the NW Corner of Section 36, T30S, R17W, SLB&M. The water is to be used for the year-round stockwatering of 2000.00 equivalent livestock units (in cattle, horses, or equivalent species); and year-round municipal purposes within the service area of Central Iron County Water Conservancy District.

Notice of the application was published in The Beaver Press on November 23 and 30, 2006, and the Spectrum on November 23 and 29, 2006. Protests were received from: National Park Service, U.S. Dept. of the Interior (late protest); Beaver High School Students; Marie Puffer and Duray G. Dalley (late protest); Bruce P. Dalley (late protest); Lyle Wiseman (late protest); Dustin S. Wiseman (late protest); Matthew Wood (late protest); Viola Reynolds (late protest); Shaun and Tammy Pearson (late protest); Minersville Town (late protest); Gary and Gina Mayer (late protest); Seth Davie (late protest); Carla and Dale Eyre (late protest); David Robinson (late protest); Jetta Robinson (late protest); Elsie Mayer (late protest); Ruby and D. Magnuson; Helena Bartsch (late protest); Allan and Syble Smith (late protest); Stacy and Chris Barnes (late protest); Jodi Robinson (late protest); Jared Smith (late protest); Dixie (late protest); Dustin and Heidi Thomas (late protest); Ruth Carter (late protest); Babara Farnsworth (late protest); Deyette and Gary Bradley (late protest); Louise and Darrell Alford (late protest); Resident; Natalie Rollins (late protest); Lisa Hendrickson (late protest); Norman and Virginia Bradshaw (late protest); John Carter (late protest); Wayne Burrows (late protest); Eric Jessup; Theron and Linda Jessup; Darlene Vaughn; Lori Ann Hoffman; Steven Yardley; Roger and Ronda Williams (protest withdrawn); Mark J. Wintch; Green Diamond Ranch; Lyle Wiseman; William Chad Dalton; Beaver County; Barry Thiriot; Gilbert and Denise and Emily Yardley; Elk Meadows Special Service District; Southern Nevada Water Authority; Lisa Nielson; Seldon Nowers; Davis and Alisha Edwards; David and Susan Edwards; Lee Foster; Resident; United States Department of the Interior; Lary Carter; James Carter; Southern Utah Water Study, L.C.; Michelle Smith;

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Jeannie Yardley; John Dee and Susan Smith; Julie Chatur; S. Noel; Terry and Penny Levering; David Heslington; Helen Murchie; Lana Reed; Kim Solberg; Raymond Benson and Betty Harwell; Thomas Bartts; Russell and Stephanie Helm; David and Tina Robinson; Norma Thomas; Janet Oakden; K. Hussry; Kim Oakden; Crystal Bradshaw; Jennie Smith; Concerned Citizens of Beaver Co.; Bradshaw Farms & Equipment & Kents Lake Irrigation Co. and Harris Willis Irrigation Co.; Brady Bradshaw; Collette and Robbie Bradshaw; Jonney Quarnberg; Greg Gunderson and Residents; Max Carter; I. Linda and Lem Lucey; William and Betty Treder; Denise and Dwane Bradshaw; Emma and Ray Davis; Harlon Thomas; S & W Hall Co. Inc.; Robert Storey; James Williams; Brent and Sandra and Bessie Edwards; Lisa and Brent Carter; Mark Whitney; Tina and Tomas Smith; Teresa and Michael Bradshaw; Ray and Shirley Morris; Carl Best; Sly Family; Nickole and Lou Montoya; Lynn Bradshaw; Kaylene Eyre-Quarnberg; Warren Quarnberg; Sportsmen for Fish & Wildlife; Robert Christensen; Clinton Baumont; Jan and Miles Barney; Gene and Cerrie Gatz; Arlan Mayer; Jolene Mayer; Jace and Amy Lambeth; Second South Bench Reservoir & Irrigation Co.; Anne Swindlehurst; Ray Walbeck; John and Heather Gates; Kent and Mary Marshall; Eleana Marshall; Hinal and Shirley Wright; Steve Judd; Scott Wiseman; Dan Joseph; W. Neal Wood; Steve Bcelleow; Bruce and Benaley Randall; Smith Family et al; Kelly CasMiller; Michael and Barbara Robinson; F. Kelly Mortensen; Kim Wood; Rhonda McQuarrie; Jeffrey Joseph; Joyce and Donald Pettit; Ronald C. Beebe; Clark W. Grimshaw; Dennis Hardy; Minersville Land and Livestock; W. Kelly Wood; L. Ben and Melinda Dalton; Honey Low; Cheryl Low; Christine Clitso; Ray Alan and April R. and Kasey Yardley; L. Farnsworth; Reed Dalton; David and LaDona Reynolds; P. A. Duncan, Clyde D. Alford; Francis Bridges; Fern S. Wilber; Val and Ila Smith; Racheal Stewart; Madlyne and George M. Griffiths; Vernon A. and Carol J. Condie; Orson and JoAnn Blackner; Ronald and Vickie Turner; Chitt and Tina Pearsen; Sharen R and Douglas E. Turner; Gerald W. Resident; Connie Huddlesten; Casid y Barnson; Neil Ammon Cadie; Eva Yardley; Janette Brannwell; Harold LaMorr Morris; ElRoy L. and Alda Stucki; Richard and Noreen Bradshaw; Alan Gale; Ralph Smith; Joyce D. Boyter; Lynn B. and Melissa Yardley; Wm. E. and Georgan Warby; Beth Puffer; Paul and Marilyn Anderson; Leonard and Beryl Brown; Arlene Edwards; Kristen Sisneros; Tina Harris; Joan Ruplinger; Sandra Lawsen; Marjorie S. Raddon; Craig and Lois Willden; Gordon G. and Ann Eyre; Orvis and Ruby Bowers; Velby N. Ashworth; Beatrice Willden; Carol Crandy; Lucille P. Strong; Peggy Blackner; Hal and Mary Christensen; Shirley M. Howard; Scott and Wilma Hansen; Alan and Shaunna Mayer; Milford Valley Water Users Board; Leslie and Nanette Davis; J. Grant and Gayle L. Wood; Wayne A. Thompson; Alan and Vicki Gurney; Dale A Yardley; Mitch and Rebecca Carter; Reed and Debra Carter; Daniel and Breezy Carter; Jay and Meliss Carter Lane; Robert H. and Mary Helen Lee; Mark J. Yardley; Joseph R. and Penny Yardley; Robert J. Yardley; Kiley Eyre; Kellee and Mitchell Dalton; Mary J. and Ray Yardley; Richard M. Davis; William I. Bradshaw; Beverly C. Barek; Dean and Teri Eyre; Brad Eyre; Leeola G. and Burton R. Myers, Margaret Miller; William and Kathy Acklin; Delmont and Jolene Goff; Susan Maggard; Russ T. Bradshaw; Jeb, Christina, Blake and Todd Marshall; Harold W. and Marilyn Bradshaw; Wayne and Traci Bradshaw; Clarence D. Pope; Colleen Freeman; Charles S. Barnes; Tony Christensen; Deborah and Eddie Smith; Mary Jane and Max L. Thompson; Lee and Cynthia Hansen; Sandra and Tom Nickell; Blake Marshall; Terri Nelson; Leslie and Lynn Kitchen; Dewey B. Hawkins; Floyd Yardley; Concerned Citizens

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of Beaver County Utah; Brent McCulley and Kathy Ryan; Sue Byers; Debora K. Nichols; Joanne Geotzman; Gary W. and Carol G. Roberts; Allan and Christine McCulley; Wayne and Evelyn McCulley; Justin McCulley; Claude R. Fordham; Westside Irrigation Co.; Michael Smith; Clark Carter; Clark W. Smith; Duane and Maurine Yardley; Joan Davis; Sheldon and Mary Albrecht; Karen and Arnell Gale; S. Edwards; Jennifer Cox; Virginia Marshall; Jason S. Davis; Idonna L. Doerig and Karma M. Mitchell; Robert Eyre; Dixie Power-Water-Light & Telephone, Inc.; Lucille P. Strong; Welby K. Aagard Family L.C.; Fairview Land & Livestock Co., Inc.; Jane Scott; Thomas and Margorie McLaughlin; Resident; D. G. and Faye McShane; Hal D. Murdock; Millie Ritchie; Marjorie Staheli; Rebecca Hale; Gayle Conney; Joyce M. Joseph; Yvonne E. Leilua; James E. Bohn; Ann Marshall, David Christensen; City of Milford; Dean Carter; Shanna and Lyle Carter; Bryan D. Graham; Al J. Boyt; D. Carol McCulley; LaMar J. and Pearl Briggs; Donald C. and Leah Glenn; Beverly R. and Rondo Farrer; Jennifer L. Brennan; Harold Deems; Maureen Hodges; Bruce M. and Karen Marchant; M. P. Thompson; John and Carmen Caffrey; Frank H. Smith; Roy Kramer; Delbert and Audrey Kent; Chris L. Kesler; Afton S. Kesler; Donald P. and Julia M. Moore; and Frank and Janice Smith. A hearing was held on July 14, 2010.

The protestants' concerns can be summarized as follows:

1. Development of this application will result in impairment of established, vested rights from spring and well sources by lowering water levels. The quality of the remaining ground water resource may be impacted. There is very little precipitation in the area and all sources of water are critical to the existing water users.
2. The proposed diversions of water will occur in Beaver County and water is needed for projects in Beaver County. Currently there is a competing application for municipal use by Beaver County in Pine Valley.
3. This application will monopolize all available water from the proposed source. The application was not filed in good faith but for the purpose of speculation.
4. The applicant does not have any right-of-way or authorization to utilize public land for any of the proposed wells or conveyance works.
5. This application does not satisfy the statutory criteria set forth in Section 73-3-8 of the Utah Code for approval of applications to appropriate.
6. There is no unappropriated water available in the proposed source.
7. The application will prove detrimental to the public welfare.

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The applicant summarized its position in its closing remarks to the administrative hearing as follows:

1. Utah law encourages maximizing the beneficial use of the waters of the state, liberal approval of applications, and experimentation in the face of uncertainty. The statutory process for approving water includes a liberal policy favoring application approval followed by experimentation.¹ A properly filed application to appropriate water must be approved if it satisfies the criteria set forth in Section 73-3-8 of the Utah Code. The proof standard for the applicant is the rather low threshold of "reason to believe".² Nothing in Title 73 of the Utah Code prevents diverting water in one locale and delivering it for use in another – even though it constitutes an export of water from one drainage basin to another.
2. There is reason to believe there is unappropriated water in the source. Ultimately, the best way to determine the amount of unappropriated water available is via pump tests and monitoring after approval. CICWCD desires to develop groundwater resources within the long term safe yield of the hydrologic system without interfering with other rights.
3. There is reason to believe water can be put to the proposed use without impairment of existing rights.
4. There is reason to believe the proposed plan is physically and economically feasible, and the applicant has the financial ability to complete the project.
5. There is reason to believe the application was filed in good faith and not for purposes of speculation or monopoly. Groundwater in Cedar Valley is being mined and there is an immediate need for additional water there.
6. There is reason to believe the application will not interfere with a more beneficial use of water, unreasonably affect public recreation or the natural stream environment, or prove detrimental to the public welfare. The State Engineer has not promulgated regulations detailing or defining this "public welfare" criterion. The only reported Utah case directly handling the "public welfare" criterion is *Tanner v. Bacon*, 136 P.2d 957 (Utah 1943) which supports CICWCD's position. In this decision, a junior Application to Appropriate (A12144) prevailed over a senior more speculative power filing. In regard to this application, CICWCD's need for water is more immediate while Beaver County's appears more speculative.

¹ See *Searle v. Milburn Irr. Co.*, 2006 UT 16, ¶ 38, 133 P.3d 382, 392.

² E.g., *Bench Irr. Co. v. State*, 300 P.2d 603, 605-06 (1956).

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For an application to be approved, the Utah Code Ann. § 73-3-8 criteria must be met. The statute reads:

(1) (a) *It shall be the duty of the State Engineer to approve an application if:*

- (i) *there is unappropriated water in the proposed source;*
- (ii) *the proposed use will not impair existing rights or interfere with the more beneficial use of the water;*
- (iii) *the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;*
- (iv) *the applicant has the financial ability to complete the proposed works; and*
- (v) *the application was filed in good faith and not for purposes of speculation or monopoly.*

(b) (i) *If the State Engineer, because of information in the State Engineer's possession obtained either by the State Engineer's own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watermg, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove detrimental to the public welfare, it is the State Engineer's duty to withhold approval or rejection of the application until the State Engineer has investigated the matter.*

(ii) *If an application does not meet the requirements of this section, it shall be rejected.*

The State Engineer has considered the information presented by the parties. Pursuant to an analysis of this application based on statutory requirements, submittals made by the applicant and protestants, and the information available, the State Engineer makes the following findings:

1. USGS Technical Publication No. 51 indicates that precipitation within the Pine Valley surface drainage basin contributes 21,000 acre-feet per year of groundwater recharge to the groundwater system. The publication also indicates that 3,000 acre-feet per year of this recharge contributes to the groundwater of Wah Wah Valley by subsurface inflow leaving a total estimated annual recharge to the groundwater in Pine Valley of 18,000 acre-feet. The total diversion amount for approved and perfected water rights from groundwater sources within Pine Valley, including springs, appears to be approximately 1,350 acre-feet per year. Therefore, the amount of water available for appropriation within Pine Valley is approximately 16,650 acre-feet. There has been very little actual pumping of groundwater in Pine Valley to stress the groundwater system such that recharge estimates can be verified through a quantitative analysis. Although the state engineer believes there is water available for appropriation, estimates of the amount of water should be considered preliminary at this time. Applicant should understand that this decision is based on the information and data currently available. Should the groundwater

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resource prove to be over appropriated as diversions under this and other applications are made, a groundwater management plan could be formulated in the future to address that issue.

2. In 2012 the Division of Water Rights contracted with USGS to conduct a new study of the water resources in Pine Valley. Data is currently being gathered and it is hoped the results of the study will be published in the fall of 2015. The data presented in the study and actual pumping of groundwater from the valley will enable a better understanding of the groundwater resources in the area.
3. There are existing rights to use water in Pine Valley. Utah Code Ann. §73-3-8(1)(a)(i) requires that unappropriated water be available. The applicant, based on currently available hydrologic data, proposes to divert and export most of the unappropriated groundwater in the valley. Understandably, this raises concern among existing users. All of the applicant's proposed wells are located on land where known groundwater levels are several hundred feet below land surface. Groundwater flow in the valley is presumed to be primarily from South to North with East and West margins of the valley flowing toward the center (based on Technical Publication 51 and other more recent studies). The State Engineer believes pumping the valley fill aquifer as proposed will not likely diminish the yield of springs located along the margins of the valley fill. The State Engineer finds that this application meets §73-3-8(1)(a)(i) criterion and there is limited unappropriated water available in Pine Valley. Additionally, the State Engineer also finds that there is reason to believe that approval of this application will not impair prior rights and it therefore complies with §73-3-8(1)(a)(ii).
4. Applicant does not own land upon which to locate wells or other infrastructure necessary to implement this project and has not presented evidence that those property rights have been obtained or negotiations to obtain them have commenced. All land ownership, access, or use issues must be resolved by the applicant including obtaining authority from and conforming to the rules and regulations promulgated by agencies of the federal government for public land use. It is notable that the Bureau of Land Management (from which approvals for use of federal lands must be obtained) has expended money and time to develop a groundwater model which it believes demonstrates the project will negatively impact public lands. A critical element of this project is applicant's ability to obtain authority to use federal land. Pending approval from land owners, it is the opinion of the State Engineer that this application meets the criteria of §73-3-8(1)(a)(iii) in that it is feasible to divert water as proposed.

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5. The State Engineer finds that the applicant has the ability under §17B-1-103 to sell bonds, levy taxes, assess user fees, and obtain financing through other means within limits established by the legislature. It is the finding of the State Engineer that there is reason to believe that the applicant meets the § 73-3-8(1)(a)(iv) criterion.
6. Utah water right law operates under the principal of first in time, first in right. Utah Code Section 73-3-18(4) provides the priority of a water right application is determined by the day on which the State Engineer's office receives the written application. The State Engineer's duty is to study the application proposal and approve only those applications which the state engineer has reason to believe represent viable projects. Some protestants have stated that water from the proposed source is needed for local projects in Beaver County. This application is to be approved if it is not detrimental to the public welfare. However, the public welfare as viewed by the protesting parties concerned about Beaver County issues is different from those of the applicant in its efforts to act in behalf of its constituents outside of Beaver County. This application seeks to appropriate 15,000 acre-feet of the estimated 18,000 acre-feet available. Approving this application as filed will leave $3,000 - 1,350 = 1,650$ acre-feet for future uses within Pine Valley. The State Engineer finds that there is reason to believe this application is not detrimental to the public welfare.
7. The State Engineer believes that this application was filed in good faith and not filed for purposes of speculation and monopoly.
8. It is the finding of the State Engineer that, except as described in finding 9, there is reason to believe that the application meets the §73-3-8 criteria and should be approved.
9. Additionally, the State Engineer finds that, the only description of the place of use for the applicant's stockwatering request was "within the District Service area and Pine Valley." Utah Code Section 17B-1-202 provides that a local district may be created to "provide within its boundaries" specific services. Raising livestock is not a specific service for which a district may be created, and the applicant has provided no specific plan describing how livestock watering beyond that which may occur under municipal use within the district's boundaries is to occur. Since providing livestock water to its customers can be made under the approval for municipal use of this water, there is no reason to approve the use of water for watering 2000 livestock independent of the municipal use.

It is, therefore, **ORDERED**: Watering 2,000 livestock as applied for in this application is **REJECTED**; and the remainder of Application to Appropriate Water Number 14-118 (A76676) is hereby **APPROVED** subject to prior rights and the following conditions:

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1. As noted, this approval is granted subject to prior rights. The applicant must, as necessary, mitigate or provide compensation for any impairment of prior rights such as may be stipulated among parties or decreed by a court of competent jurisdiction.
2. This approval is limited to the rights to divert and beneficially use water and does not grant any rights of access to, or use of land or facilities not owned by the applicant.
3. Water use under this approval shall be limited to the municipal use within the service area of Central Iron County Water Conservancy District with a maximum annual diversion allowance of 15,000.0 acre-feet of water. It is noted that the diversion of water from Pine Valley is able to be fully consumed by CICWCD for municipal use.
4. Each well under this application is to be individually metered and a permanent record of the water diverted from each well shall be maintained. The applicant shall make those records of the diversions made available for inspection by personnel of the Division of Water Rights upon reasonable request. **An annual report of all water diversions under this approval shall be submitted to the Division of Water Rights.**
5. The documents submitted as proof of beneficial use for this application, as required by statute at Section 73-3-16, Utah Code Annotated, shall include a full and correct copy of the metering record maintained as required herein.
6. All wells used as public water supply wells are regulated by the Utah Division of Drinking Water. Plans for the construction of new wells must be reviewed and approved by the Division of Drinking Water prior to any drilling or construction activity being commenced. The approval of this water right application does not constitute approval of the well for use as a public water supply by the Division of Drinking Water. Applicants are advised to contact the Division of Drinking Water at (801) 536-4200 to review applicable standards and for information about approval of a source of supply for public use.
7. Along with this approval, the applicant shall develop a monitoring program to ensure that no prior rights are being impaired and that the aquifer system is not exceeding safe yield. Plans for this monitoring program must be submitted to and approved by the State Engineer prior to diversion of any water from the proposed sources.

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The applicant is strongly cautioned that other permits may be required before any development of this application can begin and it is the responsibility of the applicant to determine the applicability of and acquisition of such permits. Once all other permits have been acquired, this is your authority to develop the water under the above referenced application which under Sections 73-3-10 and 73-3-12, Utah Code Annotated, 1953, as amended, must be diligently prosecuted to completion. The water must be put to beneficial use and proof must be filed on or before May 31, 2019, or a request for extension of time must be acceptably filed; otherwise the application will be lapsed.

Proof of beneficial use is evidence to the State Engineer that the water has been fully placed to its intended beneficial use. By law, it must be prepared by a registered engineer or land surveyor, who will certify to the location, uses and extent of your water right.

Upon the submission of proof as required by Section 73-3-16, Utah Code, for this application, the applicant must identify every source of water used under this application and the amount of water used from that source. The proof must also show the capacity of the sources of supply and demonstrate that each source can provide the water claimed to be diverted under this right as well as all other water rights which may be approved to be diverted from those sources.

Failure on your part to comply with the requirements of the applicable statutes may result in the lapsing of this Application to Appropriate Water.

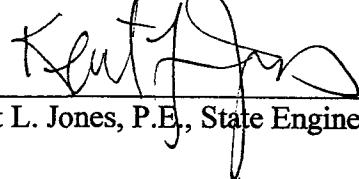
It is the applicant's responsibility to maintain a current address with this office and to update ownership of their water right. Please notify this office immediately of any change of address or for assistance in updating ownership.

Your contact with this office, should you need it, is with the Southwestern Regional Office. The telephone number is 435-586-4231.

This Order is subject to the provisions of Administrative Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 of the Utah Code which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

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Dated this 13rd day of May, 2014.



Kent L. Jones, P.E., State Engineer

Mailed a copy of the foregoing Order this 13rd day of May, 2014 to:

Central Iron County Water Conservancy District
88 East Fiddlers Canyon Road, Suite A
Cedar City, UT 84720

Viola Reynolds
PO Box 2355
Beaver, UT 84713

National Park Service, U.S. Dept. of the Interior
c/o James E. Karkut
125 South State, Suite 6201
Salt Lake City, UT 84138

Shaun and Tammy Pearson
PO Box 119
Minersville, UT 84752

Beaver High School Students
c/o Marilee Y. Eyre - English Dept. Chair
PO Box 71
Beaver, UT 84713-0071

Minersville Town
c/o Council Members
PO Box 159
Minersville, UT 84752

Marie Puffer and Duray G. Dalley
2599 East Palo Alto
Fresno, CA 93710

Gary and Gina Mayer
PO Box 998
Milford, UT 84751

Bruce P. Dalley
8949 North Sierra Vista Ave.
Fresno, CA 93720

Seth Davie
PO Box 18
Minersville, UT 84752

Lyle Wiseman
PO Box 476
Milford, UT 84751

Carla and Dale Eyre
PO Box 103
Minersville, UT 84752

Dustin S. Wiseman
PO Box 212
Milford, UT 84751

David Robinson
PO Box 700
Beaver, UT 84713

Matthew Wood
525 Cedarwood Terrace
Cedar City, UT 84720

Jetta Robinson
PO Box 111
Minersville, UT 84752

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Elsie Mayer
PO Box 97
Milford, UT 84751

Ruby and D. Magnuson
PO Box 1427
Beaver, UT 84713

Helena Bartsch
PO Box 1427
Beaver, UT 84713

Allan and Syble Smith
290 North 400 West
Beaver, UT 84713

Stacy and Chris Barnes
PO Box 875
Milford, UT 84751

Jodi Robinson
PO Box 2371
Beaver, UT 84713

Jared Smith
PO Box 912
Beaver, UT 84713

Dixie
Minersville, UT 84752

Dustin and Heidi Thomas
PO Box 221
Milford, UT 84751

Ruth Carter
PO Box 57
Minersville, UT 84752

Babara Farnsworth
90 North 200 West
Beaver, UT 84713

Deyette and Gary Bradley
120 South 200 East
PO Box 358
Minersville, UT 84752

Louise and Darrell Alford
PO Box 1004
Beaver, UT 84713

Natalie Rollins
PO Box 315
Minersville, UT 84752

Lisa Hendrickson
PO Box 2144
Beaver, UT 84713

Norman and Virginia Bradshaw
PO Box 83
Beaver, UT 84713

John Carter
PO Box 935
Milford, UT 84751

Wayne Burrows
HC 74 Box 5102
Adamsville, UT 84731

Eric Jessup
HC 74 Box 5113
Adamsville, UT 84731

Theron and Linda Jessup
PO Box 1180
Beaver, UT 84713

Darlene Vaughn
417 North 400 West
Beaver, UT 84713

Lori Ann Hoffman
2446 West 5700 North
Enoch, UT 84720

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Steven Yardley
315 West 1175 North, #16
Cedar Fort, UT 84013

Roger and Ronda Williams
PO Box 873
Beaver, UT 84713

Mark J. Wintch
Wah Wah Ranch
Milford, UT 84751

Green Diamond Ranch
c/o Wendy Bowden Crowther
201 South Main Street, 13th Floor
Salt Lake City, UT 84111

Lyle Wiseman
c/o Wendy Bowden Crowther
201 South Main Street, 13th Floor
Salt Lake City, UT 84111

William Chad Dalton
c/o Wendy Bowden Crowther
201 South Main Street, 13th Floor
Salt Lake City, UT 84111

Beaver County
c/o Wendy Bowden Crowther
201 South Main Street, 13th Floor
Salt Lake City, UT 84111

Barry Thiriot
c/o Wendy Bowden Crowther
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Gilbert and Denise and Emily Yardley
PO Box 288
Beaver, UT 84713

Elk Meadows Special Service District
c/o Leo G. Kanell - Attorney
PO Box 471
Beaver, UT 84713

Southern Nevada Water Authority
c/o Jody L. Williams, Attorney
222 South Main Street, Suite 2200
Salt Lake City, UT 84101-2194

Lisa Nielson
PO Box 2465
Beaver, UT 84713

Seldon Nowers
PO Box 793
Beaver, UT 84713

Davis and Alisha Edwards
PO Box 1818
Beaver, UT 84713

David and Susan Edwards
PO Box 140
Beaver, UT 84713

Lee Foster
HC 74 Box 147
Beaver, UT 84713

Resident
PO Box 87
Beaver, UT 84713

United States Department of the Interior
c/o James E. Karkut
125 South State, Suite 6201
Salt Lake City, UT 84138

Lary Carter
PO Box 39
Milford, UT 84751

James Carter
PO Box 681
Beaver, UT 84713

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Southern Utah Water Study, L.C.
c/o Jeffrey W. Appel
PO Box 45385
Salt Lake City, UT 84145-0385

Michelle Smith
PO Box 70
Minersville, UT 84752

Jeannie Yardley
PO Box 1705
Beaver, UT 84713

John Dee and Susan Smith
PO Box 220
Beaver, UT 84713

Julie Chatur
PO Box 915
Beaver, UT 84713

S. Noel
PO Box 1188
Beaver, UT 84713

Terry and Penny Levering
PO Box 2042
Beaver, UT 84713

David Heshington
PO Box 293
Beaver, UT 84713

Resident
PO Box 1598
Beaver, UT 84713

Helen Murchie
PO Box 1598
Beaver, UT 84713

Lana Reed
PO Box 1084
Beaver, UT 84713

Kim Solberg
PO Box 443
Beaver, UT 84713

Raymond Benson and Betty Harwell
PO Box 2329
Beaver, UT 84713

Thomas Bartts
HC 74 Box 4116
Greenville, UT 84731

Russell and Stephanie Helm
381 North 100 West
Milford, UT 84751

David and Tina Robinson
PO Box 1998
Beaver, UT 84713

Norma Thomas
PO Box 506
Milford, UT 84751

Janet Oakden
PO Box 324
Beaver, UT 84713

Resident
PO Box 1944
Beaver, UT 84713

K. Hussry
PO Box 2378
Milford, UT 84751

Kim Oakden
PO Box 1405
Beaver, UT 84713

Resident
PO Box 1690
Beaver, UT 84713

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Crystal Bradshaw
PO Box 2104
Beaver, UT 84713

Jennie Smith
PO Box 1940
Beaver, UT 84713

Resident
PO Box 184
Beaver, UT 84713

Concerned Citizens of Beaver Co.
c/o Margaret Wellman (second submittal)
PO Box 348
Beaver, UT 84713

Bradshaw Farms & Equipment and Kents Lake
Irrigation Co. and Harris Willis Irrigation Co.
c/o Robin and Carrie Bradshaw
PO Box 1051
Beaver, UT 84713

Brady Bradshaw
6903 36th Street
Lubbock, TX 79416

Collette and Robbie Bradshaw
PO Box 2232
Beaver, UT 84713

Jonney Quarnberg
PO Box 881
Beaver, UT 84713

Greg Gunderson and Residents
213 West Hwy 153 Stonewood Mt. Home #3
Beaver, UT 84713

Max Carter
PO Box 86
Minersville, UT 84752

I. Linda and Lem Lucey
PO Box 1626
Beaver, UT 84713

William and Betty Treder
HC 74 Box 4311
Greenville, UT 84731

Denise and Dwane Bradshaw
HC 74 Box 205
Beaver, UT 84713

Emma and Ray Davis
PO Box 639
Beaver, UT 84713

Harlon Thomas
4398 South Hwy 21
Milford, UT 84751

S & W Hall Co. Inc.
c/o Sophia J. Hall
PO Box 197
Newcastle UT 84756

Robert Storey
PO Box 1934
Beaver, UT 84713

James Williams
PO Box 131
Minersville, UT 84752

Brent and Sandra and Bessie Edwards
HC 74 Box 4106
Greenville, UT 84731

Lisa and Brent Carter
PO Box 39
Milford, UT 84751

Mark Whitney
PO Box 739
Milford, UT 84751

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Tina and Tomas Smith
PO Box 2352
Beaver, UT 84713

Clinton Baumont
PO Box 2116
Beaver, UT 84713

Teresa and Michael Bradshaw
HC 74 Box 5116
Adamsville, UT 84731

Jan and Miles Barney
PO Box 214
Beaver, UT 84713

Ray and Shirley Morris
PO Box 1057
Beaver, UT 84713

Gene and Cerrie Gatz
123 West Village Circle
Beaver, UT 84713

Carl Best
PO Box 1627
Beaver, UT 84713

Arlan Mayer
PO Box 942
Milford, UT 84751

Sly Family
PO Box 55
Beaver, UT 84713

Jolene Mayer
PO Box 97
Milford, UT 84751

Nickole and Lou Montoya
PO Box 706
Milford, UT 84751

Jace and Amy Lambeth
PO Box 225
(city not listed on protest)

Lynn Bradshaw
PO Box 1023
Beaver, UT 84713

Second South Bench Reservoir & Irrigation Co.
c/o Jeffrey Joseph
PO Box 1993
Beaver, UT 84713

Kaylene Eyre-Quarnberg
PO Box 261
Minersville, UT 84752

Anne Swindlehurst
PO Box 1024
Beaver, UT 84713

Warren Quarnberg
PO Box 251
Minersville, UT 84752

Ray Walbeck
PO Box 24
Beaver, UT 84713

Sportsmen for Fish & Wildlife
c/o Chad Nowers, Jaden Edwards and Paul Marshall
(Address Not Listed On Protest)

John and Heather Gates
HC 74 Box 4105
Greenville, UT 84731

Robert Christensen
PO Box 307
Beaver, UT 84713

Kent and Mary Marshall
PO Box 85
Minersville, UT 84752

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Eleana Marshall
PO Box 247
Minersville, UT 84752

Hinal and Shirley Wright
PO Box 51
Beaver, UT 84713

Steve Judd
PO Box 2158
Beaver, UT 84713

Scott Wiseman
PO Box 218
Minersville, UT 84752

Dan Joseph
PO Box 305
Beaver, UT 84713

W. Neal Wood
PO Box 81
Minersville, UT 84752

Steve Becelleow
PO Box 655
Beaver, UT 84713

Bruce and Benaley Randall
PO Box 1166
Beaver, UT 84713

Smith Family, et al
PO Box 912
Beaver, UT 84713

Kelly CasMiller
HC 74 Box 4309
Greenville, UT 84731

Michael and Barbara Robinson
PO Box 30
Beaver, UT 84713

F. Kelly Mortensen
PO Box 1012
Beaver, UT 84713

Kim Wood
PO Box 112
Minersville, UT 84752

Rhonda McQuarrie
PO Box 463
Beaver, UT 84713

Jeffrey Joseph
PO Box 421
Beaver, UT 84713

Joyce and Donald Pettit
PO Box 5607
Sun City West, AZ 85376-5607

Ronald C. Beebe
PO Box 63
Beaver, UT 84713

Clark W. Grimshaw
PO Box 151
Milford, UT 84751

Dennis Hardy
PO Box 538
Milford, UT 84751

Minersville Land and Livestock
c/o Roger K. Carter - President
PO Box 127
Minersville, UT 84752

W. Kelly Wood
PO Box 88
Minersville, UT 84752

L. Ben and Melinda Dalton
PO Box 109
Minersville, UT 84752

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Honey Low
PO Box 126
Beaver, UT 84713

Cheryl Low
PO Box 832
Beaver, UT 84713

Christine Clitso
PO Box 1441
Beaver, UT 84713

Ray Alan and April R. and Kasey Yardley
PO Box 68
Beaver, UT 84713

L. Farnsworth
300 North 240 West
Beaver, UT 84713

Reed Dalton
PO Box 2288
Beaver, UT 84713

David and LaDona Reynolds
PO Box 838
Beaver, UT 84713

P. A. Duncan
PO Box 2454
Beaver, UT 84713

Clyde D. Alford
PO Box 151
Milford, UT 84751

Francis Bridges
PO Box 1328
Beaver, UT 84713

Fern S. Wilber
PO Box 60
Beaver, UT 84713

Val and Ila Smith
PO Box 102
Beaver, UT 84713

Racheal Stewart
320 West 800 South
Milford, UT 84751

Madlyne and George M. Griffiths
260 North 500 West
Milford, UT 84751

Vernon A. and Carol J. Condie
PO Box 267
Beaver, UT 84713

Orson and JoAnn Blackner
HC 74 Box 4203
Greenville, UT 84731

Ronald and Vickie Turner
213 West Hwy 153 Stonewood #1
Beaver, UT 84713

Chitt and Tina Pearsen
365 North Main
Milford, UT 84751

Sharen R. and Douglas E. Turner
284 North 100 East
North Salt Lake, UT 84054

Gerald W.
PO Box 397
Milford, UT 84751

Connie Huddlesten
PO Box 547
Milford, UT 84751

Casidy Barnson
9 North Main
Milford, UT 84751

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Neil Ammon Cadie
PO Box 1583
Beaver, UT 84713

Eva Yardley
PO Box 2320
Beaver, UT 84713

Janette Brannwell
PO Box 188
Beaver, UT 84713

Harold LaMorr Morris
262 North Main
Milford, UT 84751

ElRoy L. and Alda Stucki
PO Box 642
Beaver, UT 84713

Richard and Noreen Bradshaw
PO Box 4
Milford, UT 84751

Alan Gale
PO Box 97
Beaver, UT 84713

Ralph Smith
PO Box 637
Beaver, UT 84713

Joyce D. Boyter
PO Box 504
Beaver, UT 84713

Lynn B. and Melissa Yardley
PO Box 1184
Beaver, UT 84713

Wm E. and Georangean Warby
PO Box 667
Beaver, UT 84713

Beth Puffer
PO Box 603
Beaver, UT 84713

Paul and Marilyn Anderson
(Address Not Listed On Protest)

Leonard and Beryl Brown
PO Box 1010
Beaver, UT 84713

Arlene Edwards
PO Box 1517
Beaver, UT 84713

Kristen Sisneros
PO Box 2121
Beaver, UT 84713

Tina Harris
PO Box 1711
Beaver, UT 84713

Joan Ruplinger
PO Box 950
Beaver, UT 84713-0950

Sandra Lawsen
PO Box 2318
Beaver, UT 84713

Marjorie S. Raddon
PO Box 385
Beaver, UT 84713

Craig and Lois Willden
PO Box 11
Beaver, UT 84713

Gordon G. and Ann Eyre
PO Box 2406
Beaver, UT 84713

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Orvis and Ruby Bowers
PO Box 311
Beaver, UT 84713

Velby N. Ashworth
PO Box 128
Beaver, UT 84713

Beatrice Willden
PO Box 27
Beaver, UT 84713

Carol Crandy
PO Box 407
Beaver, UT 84713

Lucille P. Strong
405 North 300 West
Beaver, UT 84713

Peggy Blackner
PO Box 247
Beaver, UT 84713

Hal and Mary Christensen
PO Box 831
Beaver, UT 84713

Shirley M. Howard
737 South 1300 East, #11W
Salt Lake City, UT 94102-3713

Scott and Wilma Hansen
982 East Mutton Hollow
Kaysville, UT 84037

Alan and Shaunna Mayer
A & S Farms, Inc.
PO Box 216
Milford, UT 84751

Milford Valley Water Users Board
c/o Michael Yardley
PO Box 981
Milford, UT 84751

Leslie and Nanette Davis
PO Box 997
Milford, UT 84751

J. Grant and Gayle L. Wood
PO Box 338
Toquerville, UT 84774

Wayne A. Thompson
PO Box 1569
Beaver, UT 84713

Alan and Vicki Gurney
c/o Lloyd D. Rickenbach - Attorney
PO Box 44008
Koosharem, UT 84744

Dale A. Yardley
PO Box 1323
Beaver, UT 84713

Mitch and Rebecca Carter
PO Box 784
Beaver, UT 84713

Reed and Debra Carter
PO Box 250
Beaver, UT 84713

Daniel and Breezy Carter
PO Box 331
Beaver, UT 84713

Jay and Meliss Carter Lane
62 West 1845 South
Washington, UT 84780

Robert H. and Mary Helen Lee
PO Box 558
Beaver, UT 84713

Mark J. Yardley
PO Box 1476
Beaver, UT 84713

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Joseph R. and Penny Yardley
PO Box 1713
Beaver, UT 84713

Robert J. Yardley
PO Box 506
Beaver, UT 84713

Kiley Eyre
PO Box 905
Beaver, UT 84713

Kellee and Mitchell Dalton
PO Box 148
Minersville, UT 84752

Mary J. and Ray Yardley
PO Box 108
Beaver, UT 84713

Richard M. Davis
PO Box 636
Beaver, UT 84713

William I. Bradshaw
PO Box 1002
Beaver, UT 84713

Beverly C. Barek
PO Box 327
Beaver, UT 84713

Dean and Teri Eyre
T + D Ranch Enterprises, Inc.
PO Box 234
Minersville, UT 84752

Brad Eyre
PO Box 277
Minersville, UT 84752

Leeola G. and Burton R. Myers
PO Box 921
Beaver, UT 84713

Margaret Miller
PO Box 72
Milford, UT 84751

William and Kathy Acklin
PO Box 81
Milford, UT 84751

Delmont and Jolene Goff
PO Box 1937
Beaver, UT 84713

Susan Maggard
PO Box 1531
Beaver, UT 84713

Russ T. Bradshaw
HC 74 Box 5108
Adamsville, UT 84731

Jeb, Christina, Blake and Todd Marshall
PO Box 252
Minersville, UT 84752

Harold W. and Marilyn Bradshaw
PO Box 748
Beaver, UT 84713

Wayne and Traci Bradshaw
PO Box 5112
Adamsville, UT 84731

Clarence D. Pope
PO Box 1551
Beaver, UT 84713

Colleen Freeman
PO Box 1991
Beaver, UT 84713

Charles S. Barnes
PO Box 190
Milford, UT 84751

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Tony Christensen
PO Box 2127
Beaver, UT 84713

Deborah and Eddie Smith
PO Box 142
Beaver, UT 84713

Mary Jane and Max L. Thompson
PO Box 1287
Beaver, UT 84713

Lee and Cynthia Hansen
PO Box 1436
Beaver, UT 84713

Sandra and Tom Nickell
HC 74 Box 5115
Adamsville, UT 84731

Blake Marshall
PO Box 104
Minersville, UT 84752

Terri Nelson
PO Box 386
Milford, UT 84751

Leslie and Lynn Kitchen
PO Box 1759
Beaver, UT 84713

Dewey B. Hawkins
PO Box 353
Milford, UT 84751

Floyd Yardley
Box 107
Beaver, UT 84713

Concerned Citizens of Beaver County Utah
c/o Margaret Wellman - et al
PO Box 348
Beaver, UT 84713

Brent McCulley and Kathy Ryan
553 West 3560 North
Erda, UT 84074

Sue Byers
PO Box 1576
Beaver, UT 84713

Debora K. Nichols
PO Box 91
Beaver, UT 84713

Joanne Geotzman
PO Box 778
Beaver, UT 84713

Gary W. and Carol G. Roberts
PO Box 1075
Beaver, UT 84713

Allan and Christine McCulley
PO Box 2445
Beaver, UT 84713

Wayne and Evelyn McCulley
4743 West Baldy Drive
West Jordan, UT 84088

Justin McCulley
8190 West Danbury Drive
Magna, UT 84044

Claude R. Fordham
PO Box 893
Beaver, UT 84713-0893

Westside Irrigation Co.
c/o David Bradshaw
Box 1475
Beaver, UT 84713

Michael Smith
Box 1190
Beaver, UT 84713

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Clark Carter
Box 817
Beaver, UT 84713

Clark W. Smith
Box 787
Beaver, UT 84713

Duane and Maurine Yardley
Box 58
Milford, UT 84751

Joan Davis
PO Box 474
Milford, UT 84751

Sheldon and Mary Albrecht
PO Box 103
Milford, UT 84751

Karen and Arnell Gale
PO Box 219
Beaver, UT 84713

S. Edwards
59 North 130 West
Greenville, UT 84731

Jennifer Cox
PO Box 561
Milford, UT 84751

Virginia Marshall
PO Box 2441
Beaver, UT 84713

Jason S. Davis
PO Box 266
Milford, UT 84751

Idonna L. Doerig and Karma M. Mitchell
HC 74 Box 4104
Greenville, UT 84731

Robert Eyre
PO Box 205
Minersville, UT 84752

Dixie Power-Water-Light & Telephone, Inc.
c/o Darrell G. Hafen - President
PO Box 675
Washington, UT 84780

Lucille P. Strong
5750 North Dapple Gray Road
Las Vegas, NV 89149-3327

Welby K. Aagard Family L.C.
c/o W. Kim Aagard - Manager
PO Box 271
Moroni, UT 84646

Fairview Land & Livestock Co., Inc.
c/o John S. McAllister
140 West 400 North #44
Mt. Pleasant, UT 84647

Jane Scott
PO Box 82
Beaver, UT 84713

Thomas and Margorie McLaughlin
PO Box 1275
Beaver, UT 84713

Resident
PO Box 1692
Beaver, UT 84713

D. G. and Faye McShane
PO Box 626
Beaver, UT 84713

Hal D. Murdock
PO Box 281
Beaver, UT 84713

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Millie Ritchie
PO Box 1714
Beaver, UT 84713

Marjorie Staheli
PO Box 2013
Beaver, UT 84713

Rebecca Hale
PO Box 2272
Beaver, UT 84713

Gayle Conney
PO Box 923
Beaver, UT 84713

Joyce M. Joseph
PO Box 305
Beaver, UT 84713

Yvonne E. Leilua
PO Box 2113
Beaver, UT 84713

James E. Bohn
PO Box 909
Beaver, UT 84713

Ann Marshall
PO Box 2213
Beaver, UT 84713

David Christensen
PO Box 836
Beaver, UT 84713

City of Milford
c/o Eugene H. Mayer - Mayor
PO Box 69
Milford, UT 84751

Dean Carter
PO Box 245
Minersville, UT 84752

Shanna and Lyle Carter
c/o Running C. Ranch
PO Box 125
Minersville, UT 84752

Bryan D. Graham
1273 North Creek Loop Road
HC 74 Box 165-8
Beaver, UT 84713

Al J. Boyt
PO Box 1336
Beaver, UT 84713

D. Carol McCulley
PO Box 1108
Beaver, UT 84713

LaMar J. and Pearl Briggs
PO Box 603
Beaver, UT 84713

Donald C. and Leah Glenn
PO Box 1284
Beaver, UT 84713

Beverly R. and Rondo Farrer
PO Box 1199
Beaver, UT 84713

Jennifer L. Brennan
PO Box 2422
Beaver, UT 84713

Harold Deems
PO Box 922
Beaver, UT 84713

Maureen Hodges
PO Box 1319
Beaver, UT 84713

Bruce M. and Karen Marchant
PO Box 281
Beaver, UT 84713

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M. P. Thompson
PO Box 113
Milford, UT 84751

John and Carmen Caffrey
PO Box 1015
Beaver, UT 84713-1015

Frank H. Smith
1065 Burnt Rock Way
Templeton, CA 93465-8374

Roy Kramer
PO Box 1740
Beaver, UT 84713

Delbert and Audrey Kent
PO Box 1028
Beaver, UT 84713

Chris L. Kesler
PO Box 1597
Beaver, UT 84713

Afton S. Kesler
PO Box 786
Beaver, UT 84713

Donald P. and Julia M. Moore
HC 74 Box 187-6
Beaver, UT 84713

Frank and Janice Smith
PO Box 185
Beaver, UT 84713

Division of Water Rights
Water Use Program

BY:


Sonia R. Nava, Applications/Records Secretary