

FAX TO: NEVADA STATE ENGINEER
FAX 775-684-2811
FROM: WATER KEEPERS
Michael Garabedian *MG*
PHONE 916-719-7296
RE: INTERESTED PERSON REQUEST PART 2
SNAKE VALLEY WATER RIGHTS HEARING
DATE: June 16, 2008
PAGES: cover sheet and six page letter

State 'S EXHIBIT 10
DATE: 7-15-08

WATER KEEPERS
705 Aultman St. – Suite 2 PMB 77
Ely, Nevada 89301

June 16, 2008

Tracy Taylor
State Engineer
Attention: Susan Joseph-Taylor
Chief Hearing Officer
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701-5250

Re: Part 2, Request for recognition of Interested Person status
For hearing on Snake Valley Applications 54022-54030

Dear Mr. Taylor:

Water Keepers makes this request pursuant to Nevada Administrative Code section 533.100 to be recognized as an Interested Person for hearings on Snake Valley Applications 54022 through 54030. We submitted a check for the filing fee in the amount of \$225.00 on June 13, 2006 as Part 1 of our request. Part 2 of our request by this letter identifies the matters on which Water Keepers seeks to testify regarding law, broad public issues, and how actions of the State Engineer on the applications will affect the operation specific water transportation and supply projects. NAC 533.100(3).

Extreme circumstances preventing filing a protest

Requests for recognition as an Interested Party are granted only upon a showing that extreme circumstances prevented filing a protest in a timely manner. NAC 533.100(2). We believe that protests on the October 1989 applications were due 18 years ago by July 21, 1990. The extreme circumstances preventing us from filing a protest by July 21, 1990, are:

(1) Water Keepers did not exist until 2008. Our formation steering committee first met in February 2008.

(2) Conditions of water shortages in the Colorado River relating to a number of factors including drought, basing the Colorado River water regime on a period of high precipitation, and so forth, relating to and up through the December 2007 Bureau of Reclamation Record of Decision implementing the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lakw Powell and Lake Mead. 2000-2007 was the driest eight-year period in the

100-year historical record of the Colorado River. These and related factors demonstrate an extreme, indeed, a radical, change in the factors affecting both the decision to file a protest, and the need for the NSE to permit Interested Party status that is herein sought in order to address the legal, broad public issues and affected operations of the Colorado River itself as, and its water transportation and supply projects. Issues here and below could not have been raised in 1990.

(3) Global warming is an extreme change with a similar effect on protest and Interested Party applications.

(4) We would have filed protests this year, except that the office of the Nevada State Engineer ("NSE") refuses to accept and returns protests filed after the protest period has ended. Water Keepers by this request does not admit or acknowledge that Interested party status in the Snake Valley hearing and in these proceedings is a suitable substitute for the benefits of being a protestant, or that Interested Party status provided the necessary due process to Water Keepers and its members under the Nevada or United States constitution.

(5) Applicants Las Vegas Valley Water District ("LVVWD") and Southern Nevada Water Authority ("SNWA") did not act with due diligence to pursue the nine applications, and is also guilty of laches. SNWA's absence of due diligence is demonstrated by a number of facts. SNWA originally requested scheduling a Snake Valley hearing at the January 5, 2006 pre-hearing conference which was 15 ½ years after the protest period ended. SNWA instead made a priority of seeking other water supply options. On March 8, 2006 the NSE directed that the Snake Valley hearing would be scheduled at some later date, but SNWA did not request a Snake Valley hearing until over two years later in a letter dated May 23, 2008. Nothing stopped SNWA from seeking a hearing sooner, and, indeed, it requested this Snake Valley hearing prior to a decision in the Cave, Dry Lake and Delamar hearing. SNWA's effort to obtain authorization for a water transportation project for the applications was similarly tardy and did not come until the Lincoln county Lands Act of 2004, PL 108-424.

(6) The NSE definitions of "extremely unusual circumstances" in this proceeding. The NSE's first ruling in 1991 on all LVVW/SNWA permit applications pending at the time, including the nine Snake Valley applications, provided, "Motions for continuance will only be granted for good cause and only upon extremely unusual circumstances." Interim Ruling on Motions and Procedures, August 26, 1991, page 4. The NRC 533.100 standard of extreme circumstances is a lower threshold to meet than extremely unusual circumstances.

We seek Interested Party status in order to submit evidence including testimony and legal argument regarding the following matters.

Law

That the NSE should first as part of its consideration of the applications apply the law of the State of Utah to any appropriations that would affect surface and groundwater, including water entering and the amount of water being discharged from ground and surface water systems in Utah.

That regarding appropriation of interstate ground-water, the NSE should define and apply the "maximum sustainable beneficial use" standard required in the Lincoln County Lands Act, that this can not be the law of Nevada, and that it should be the definition of sustainability in the USGS publication, "Sustainability of Groundwater Resources" USGS Circular 1186 (1999).

Abuse of discretion if, prior to opening the hearing or at minimum prior closing of the hearing and prior to decision, the NSE does not require preparation of agricultural background and futures reports, obtain testimony from appropriate state and federal agencies, wait for completion of BARCASS I report, wait for completion of BARCASS II.

The piecemealing of application decisions sequentially by basin.

Subpoenas for state and federal witnesses.

The Department of Interior-SNWA stipulation preparation process, and stipulation content including operational governing committees and teams including the devolution of federal sovereignty.

The application of the public trust doctrine based on Nevada and Utah law.

The state and federal Nevada constitutional problems for the NSE who must manage all waters for the state even as Nevada no longer has an upper house in the legislature to assuredly protect the rural interests, including for water (the Senate has 14 members representing Clark County, 4 representing Washoe County including Reno and parts of Storey and Carson City, one with the capital district, and two representing the rest of the state, one who represents both White Pine county and Lincoln County).

State and federal constitutional issues regarding the authority and power the SNWA and its director have in relation to those of Nevada's Governor and Federal Agency Directors.

That no party including SNWA has any constitutional, statutory, regulation or other authority, or right of action, or standing, to challenge or object to any request for NAC 533.100 Interested Person status. Regardless, SNWA's has committed laches by its delays in requesting this proceeding and has forfeited Any rights it may have had to object to any request for Interested person status.

The absence of authority for the NSE for a \$25.00 request for Interested Party fee; to require more than one request fee for any one requesting party; to require that all Snake Valley requesters for Interested Party status pay a \$25.00 filing fee for all nine valley applications even if the request is for less than nine applications; to prohibit anyone from filing the number of Snake Valley Interested Party requests of their own choosing, whether one, two or up to eight.

The NSE's not continuing informational briefings in each affected county "to better inform the protestants and the public at large as to the scope of the entire project," and not continuing to deposit some hearing materials in the county public library affected by each hearing. Interim Ruling on Motions and Procedures, April 26, 1991, pages 1 and 2. The need to place a copy of hearing transcripts from affected and neighboring counties, which transcripts can only be ordered from court at court reporter rates, and color copies of documents used by witnesses, as a necessary exercise of discretion.

The absence of NSE regulations on the subject of large applications of this nature.

Broad public issues

The relationship of SNWA groundwater appropriations and Colorado River water supplies to Nevada.

The flaws in the geology used by SNWA and the NSE and the necessity to address the absence of minimally necessary geological knowledge as defined by Alan Chamberlain and the reasons for this including that a statewide geological survey has not been completed for Nevada.

Declining demand for water and declining rate of growth of demand for water based on declining new condominium and other construction, increasing building material costs due to oil price increases, the highest foreclosure rates in the country, increasing gasoline and airfare prices, the continued growth of Indian Gaming, and other multipliers.

State, regional, county, community, settlements and city economic impacts including agricultural, interbasin job transfer, small business, fairs, family dislocation and costs of the stewardship and policing of public land stewardship when the ranch owner-operators who do this now are gone or replaced by absentee owners or SNWA.

Grassland including range impacts and assumptions regarding lowering of water tables on grasses and other forage.

The critical mass of the numbers of farms and ranches, water supply, workforce, equipment suppliers, veterinary services, etc. needed to maintain the agricultural community. The failure up to this time to prepare agricultural background and futures reports for each affected county, including counties bordering White Pine and

SNWA ranch purchases including those specific to the applications as when SNWA purchases farm and ranch lands which owners have filed protests, and who are not permitted to file protests or whose applications for Interested Party status is opposed by SNWA and then denied by the NSE including when denial is followed by SNWA purchase of the land (e.g., Nevada Land and Resource Company).

The size, nature and economy of the hunting and wildlife economy, including impacts on herd and herd migration impacts, hunting, fishing, sporting group and club, birding, and so forth.

Recreation impacts including hiking, mountain biking, motorized biking, four-wheel drive clubs, camping, antler hunting and other activities.

The significance of the applications for recent, pioneering, and Native American historic and current communities and tribes

The full absence of documentary and testimonial evidence in the hearings so far, the absence of the request for it by the NSE, and the need issue subpoenas to the agencies of the State of Nevada and the State of Utah regarding geology, hydrogeology, hydrology, applicable Utah water law, wildlife and plant communities, endangered species, the state's economy, population trends, mining, recreation, etc.

The absence of documentary evidence submitted pre-hearing from federal land managers (Bureau of Land Management, US Forest Service, Fish and Wildlife Service, etc.) about the plans and practices for managing the basin and interconnected and related natural resources including wildlife, including how the appropriations would affect such future plans.

The applications as disposal of public lands and domain, that is, as a land rush, and a receipts for their sale, including the nature of (a) the appropriations in the Snake and other basins of origin, (b) the land sales around Las Vegas with their water demand, and (c) receipts from the land sales to SNWA, as affected by the permitting of water rights under public lands by the NSE, the withdrawing of protests by Department of Interior Agencies, the sales, and so forth.

The severe conflict of interest the U.S. Department of Interior has as an application protestant in the NSE proceedings when its agencies (a) the Bureau of Land Management is selling the public lands around Las Vegas for

development and therefore has to a significant degree an obligation to assure a water supply for the lands it sells, and (b) the Bureau of Reclamation in managing Colorado River projects has vested and other interests in Las Vegas receiving appropriations of groundwater outside of the Colorado River basin in order to relieve pressure on the Colorado River.

The request for hearing in relation to timing to start a hearing during the present administration in Washington and the presidential primary results.

Specific water supply and transportation projects that are also broad public issues

Matters concerning how the actions of the NSE on the 1989 applications, and the Snake Valley applications in particular, may affect the operation of the Colorado River water supply and transportation projects.

Water Keepers is contacting potential substantive witnesses and legal doctrine experts. A Water Keeper officer is expected to testify who is former Resident Engineer for the state Department of Transportation, former engineer for White Pine County and small businessman. We will update the NSE as we define our case.

We look forward to this opportunity to address to the Engineer the needs of the Snake Valley applications.

We dedicate our Snake Valley effort to our founding steering committee member Gene Kaplan of Wells who died April 20, 2008.

Sincerely,



Michael Garabedian
President
916-719-7296