

ADVOCATES FOR COMMUNITY AND ENVIRONMENT

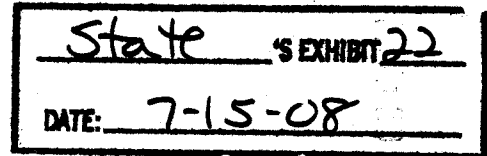
Empowering Local Communities to Protect the Environment and their Traditional Ways of Life

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June 16, 2008

BY HAND

Tracy Taylor, P.E.
State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701



Re: Rescheduling Hearing on Southern Nevada Water Authority Snake Valley Applications (Application Nos. 54022 – 54030)

Dear Mr. Taylor,

I am writing on behalf of a sizeable, and growing, group of protestants and interested parties (Protestants) to urge you to reschedule the hearing on the Southern Nevada Water Authority's (SNWA's) Snake Valley applications (Application Nos. 54022-54030) from July 15, 2008, to a later date. As grounds for this request, the Protestants state the following:

By setting the hearing date for July 15, the State Engineer is departing from the practice adopted with regard to SNWA's closely related blocks of applications in Spring, Cave, Dry Lake, and Delamar valleys. The hearings on all these applications are proceeding under Intermediate Order No. 3 (March 8, 2006), and in the past the State Engineer scheduled the pre-hearing conference on the second block of these applications only after the ruling had been issued on the first block and the 30-day statutory period for appeal of that ruling to court had run. Given the unified nature of all these applications, the protestants and interested public reasonably have relied on the State Engineer's past practice in planning for the Snake Valley hearing.

The July 15 hearing date is unnecessarily and unreasonably accelerated to such a degree that it will unduly prejudice the Protestants' ability to adequately prepare for the hearing. As you know, the Protestants have very limited resources with which to respond to the overwhelming resources (drawn from annual multi-billion dollar budgets) that SNWA has used to prepare its case in support of these applications.

In addition, SNWA has had the better part of two decades to use those awesome resources to methodically prepare its case in support of these applications while seeking to stage-manage the administrative process to delay their consideration until the most convenient time for SNWA and the most inconvenient time for the Protestants. In contrast, the Protestants have had only a few months before each of these blocks of applications to focus their extremely limited resources on the preparation of a protest case for that particular block of applications.

Further, not all protestants have been given notice of the July 15 hearing. On its face, the May 28 notice fails to include a substantial number of the protestants to SNWA's Snake Valley applications. These protestants, or their successors in interest, must be notified if they are expected to be present at that hearing. Locating and notifying this group of people will take time and warrants rescheduling the hearing to a later date.

In the absence of a ruling on SNWA's applications in Cave, Dry Lake, and Delamar valleys, a July 15 hearing date has the effect of forcing the Protestants to adopt positions and present their planned Snake Valley case before they have even received, let alone had time to evaluate, vital information that may shape the issues to be addressed, and inform the nature of the evidentiary case that Protestants must present, in the Snake Valley hearing. The result of placing this artificial, unwarranted pressure on the Protestants may be to increase the likelihood that there will be a court challenge to the State Engineer's ruling on the Cave, Dry Lake, and Delamar valleys applications and that such a challenge will involve a request for injunctive relief to prevent the Snake Valley hearing from proceeding prematurely.

There appears to be no legitimate justification for hastily setting the Snake Valley hearing on such an accelerated schedule. Only a few days after receiving SNWA's May 23 scheduling request, the State Engineer rushed to set the hearing. Protestants did not even receive notice of SNWA's scheduling request until May 30, two days after the State Engineer set the hearing date. Thus, Protestants were deprived of any opportunity to have input on the scheduling of the hearing in a matter of undeniably great public importance.

The State Engineer has no obligation to schedule a hearing, particularly one of such broad public import, simply to suit the whims of an applicant. Rather, the State Engineer's charge is to evaluate all the available relevant evidence and come to a sound, well-informed, decision that protects senior water rights, the environment, and future economic growth in the affected area pursuant to the pertinent statutory criteria. In keeping with this mandate, the State Engineer has historically made a point of basing his decisions on the best available evidence.

There is no urgent need to rush this hearing. At a minimum, SNWA cannot begin to implement its groundwater export project until after the rest of the required government review processes are completed, including the federal NEPA process, which will take at least two-to-three years. In addition, SNWA cannot plausibly continue to assert that there is an urgent need for its project, in light of the collapse in the Las Vegas area housing market.

Further, because Snake Valley spans the border of Nevada and Utah, the State Engineer cannot make a well-grounded determination about the availability of groundwater in Snake Valley for appropriation in Nevada until the two states have negotiated the allocation of available water between Utah and Nevada. A decision granting water rights to SNWA could be meaningless if Utah asserts rights to the same water. Therefore, the prudent decision would be to wait until the allocation of Snake Valley groundwater between the two states has been concluded.

Given the fact that other processes will prevent SNWA from moving ahead with actual implementation of its groundwater export project for a number of years, it would be far more prudent and equitable for the State Engineer to follow his prior practice and schedule the Snake

Valley hearing with a more reasonable amount of lead time for the Protestants to thoroughly develop their case. The addition of a few months on the front end of the process would make no difference to SNWA's ultimate timetable for construction and operation of the project, whereas it would make an enormous difference to the Protestants' ability to adequately develop and present a thorough body of evidence for the State Engineer's consideration. Clearly, then, both the relative equities in this case and the State's interest in conducting as thorough and well-informed a decision-making process as possible weigh heavily in favor of rescheduling the Snake Valley hearing to a date not earlier than 30 days after the issuance of the ruling on SNWA's Cave, Dry Lake, and Delamar valleys applications.

The Protestants are concerned not only with the early setting of the preliminary procedural portion of the hearing (in effect, the pre-hearing conference) on July 15. They are at least equally concerned that the accelerated schedule being planned for the entire, substantive Snake Valley hearing will greatly prejudice their ability to present their protest case by depriving them of a reasonable amount of time to develop the necessary evidence to support that case.

As noted above, the Protestants are working with limited resources. Consequently, a condensed hearing schedule presents a significant burden and inhibits their ability to adequately develop their protest case. A condensed hearing schedule will have the effect of marginalizing protestants to the benefit of SNWA thereby undermining the integrity of the process that the State Engineer has sought to protect. Not only would the condensed schedule prejudice the Protestants, it also would deprive the State Engineer of valuable evidence.

The hearing on SNWA's Snake Valley water rights applications is clearly the most complex of the pending SNWA water rights applications hearings in terms of hydrology, legal issues, and public opposition. As such, a prudent, deliberate approach is especially important.

In contrast, accelerating the schedule of the most complex and controversial of the three hearings on this massive groundwater export proposal would serve merely to aid SNWA in its repeatedly demonstrated quest to avoid a genuine, transparent public decision-making process. Such an outcome is contrary to Nevada water law and policy, or any sound water law or policy.

In addition, the extraordinary rushed schedule set by the State Engineer is unduly burdensome on individuals and entities who wish to be recognized as "interested persons" for the Snake Valley hearing. The State Engineer mailed out the notice of the extraordinarily accelerated July 15 hearing date on Wednesday, May 28. The practical effect of this was that even the most informed members of the interested public only learned of this unexpectedly early hearing date, and the even earlier deadline for seeking interested person status, at the very end of May. In reality, most people with an interest in this proceeding learned about these premature dates and deadlines during the week of June 2.

In effect, then, most people likely to seek interested person status were given less than two weeks' real notice of the June 16 deadline for filing their requests. Given the heightened level of concern and controversy surrounding these applications, two weeks' notice is an unreasonably short amount of time to give the interested public to evaluate whether to file a request for recognition as an interested person and to sort through the requirements of submitting such an

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application. Indeed, it appears from questions that have begun surfacing in a number of quarters during this short time period that many people are confused by the process and that their confusion has been compounded by the hastiness with which the process is being rushed forward.

A considerable number of individuals and entities may have legitimate bases for making such a request, but most such people are inexperienced with the process and reasonably expected that they would be given more advance warning of what is in effect the pre-hearing conference for SNWA's Snake Valley applications. NAC 533.100's apparent intent is to provide reasonable access for interested persons to the hearing process. Given the lack of resources and sophistication that characterize many of these people, we believe it would be more consistent with that intent to provide the interested public with at least one month's notice of the deadline for filing their requests.

Accordingly, the Protestants request that the State Engineer reschedule the July 15 hearing for a date no earlier than 30 days after the issuance of the ruling on SNWA's Cave, Dry Lake, and Delamar valleys applications. Protestants also request that the deadline for requesting Interested Person status be adjusted accordingly. Finally, Protestants request that the Snake Valley Hearing be scheduled after Nevada's 2009 legislative session.

Sincerely,

Simeon Herskovits *9

Simeon Herskovits

cc: All Parties on 5-28-08 Notice of Hearing Service List