

FAX TO: Susan Joseph-Taylor
NEVADA STATE ENGINEER
FAX 775-684-2811

FROM: WATER KEEPERS
Michael Garabedian *kg*
PHONE 916-719-7296

RE: Reply to SNWA opposition to Interested Person status
INTERESTED PERSON REQUEST PART 3
SNAKE VALLEY WATER RIGHTS HEARING

DATE: July 8, 2008

PAGES: cover sheet and four page letter

Second fax to assume complete transmission

State	'S EXHIBIT 31
DATE:	7-15-08

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

July 8, 2008

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

Re: Reply to Opposition of applicant Southern Nevada Water
Authority to Request for recognition of Interested Person status
For hearing on Snake Valley Applications 54022-54030

Dear State Engineer Taylor:

The purpose of Water Keepers is to keep all waters for the people, flora, fauna and economic activity in the basins where the water is found. Its geographic scope is all states with and affected by Basin and Range waters such as Nevada and Utah.

Absence of authority for applicant objections and for Nevada to consider them

In our request for recognition for Interested Person ("IP") status, Water Keepers pointed out that there is no authority for Applicant Southern Nevada Water Authority ("Applicant") to object to requests for IP status. Even if the Applicant had such authority, we are not aware of any source of discretion that the Nevada State Engineer ("NSE") has to accept and consider IP objections from anyone unless these assertions are, at minimum, made in a noticed hearing under oath. The Applicant has not provided any authority for it to oppose IP requests. Applicant's opposition points are speculative and not subject to cross-examination they should be give no weight by the NSE. The NSE can not rely on what's opined in Applicant's opposition. It should be dismissed and removed from the record.

We wish that for such a large and powerful agency to oppose the ability of people and groups to be IPs were only an act of smallness, which it is. But Applicant goes further and says that what all of the IP's could say is a waste of time (page 4) that does not deserve to be in evidence before the NSE (page 5). We request that in any order regarding IP status that the NSE make it clear that it is not

basing its decision on this demonstration of hostility by the Applicant to the public and to the public interest in the applications.

No actual or constructive notice to officers

Water Keepers President Michael Garabedian is a founder of the Desert Law , Agricultural and Water Science Forum (D-LAWS) that seeks to educate the public and decision makers about the legal, scientific and other bases for consideration of the water use in dry areas. He lived near Albany, New York, at the time of the applications and protest notice period. He first learned about Applicant's water rights applications in Spring of 2005. He has regularly visited the Snake Valley for nearly 30 years, including during his years in New York. His great-great grandfather Isaac Wiseman pioneered in Clover Valley below Wells in 1869 and was a member of the Nevada State Assembly 1887-1888. His great grandfather Abner H. Wiseman was a justice of the peace. His mother moved from Clover Valley to California with her parents Isaac F. and Edna Wiseman in 1917. She was the fourth Nevada generation of the Isaac Wiseman ranching family that also had mining interests. Her mother was from the Edward Michael and Andrea Adria Sullivan family of Carson City.

Water Keepers Secretary-Treasurer Jon Muller of Ely was overseas in the military 1989-1990 when the notice came out and during the protest period. A fifth generation Nevadan, he later gained knowledge of the area in a number of capacities including Resident Engineer for the State of Nevada and as Engineer for White Pine County. Now a small businessman in Ely, he has a recently permitted water right for his home in the Ely area, a right obtained in part because of the likelihood that the Applicant could seek water rights from his aquifer in the future. He and his family frequently travel remote valleys that would be affected by applications.

Water Keepers Vice President Gene Ockert is a resident of Ruth who also relies on a well. He is the Vice President of the International Four Wheel Drive Associations whose members frequently use the areas affected by the applications, and he and his wife also enjoy hunting. They have been coming to White Pine County for the last five years, including summers, and they moved here permanently last June after buying a house in Ruth. He works in Ely and talks to several people every day about the loss of the water in White Pine County. It would be a great lost for the area, with the hunting of deer, elk and antelope very active in this area and that keeps our economy going strong. He is concerned that if we lose water the animals will either die or some will seek to find habitat already occupied by other animals. He has noticed in the last two years that many of the springs have been drying up, with barely a trickle, and that some of the springs have completely dried up

No Water Keeper officer knew about the 146 Las Vegas Valley Water District applications or about the protest period. They are officers in an organization that

did not exist until now and that therefore could not have been on actual or constructive notice of the applications or of the protest period. Water Keepers submitted its application for nonprofit incorporation status for the first time in person to the Nevada Secretary of State on June 13, 2008.

The Law of Nevada and Utah applies to determinations regarding the ability of people and groups to participate in the hearing

Individuals and organizations such as Water Keepers whose members use the resources dependent on the interstate groundwater resource at issue, including those who live in Utah and use the affected water resources there should be allowed to participate in the hearing under the laws of both Nevada and Utah. Water Keepers is seeking legal expertise to bring the interstate legal issues to the attention of the NSE. One of these issues is whether the NSE should only apply only the substantive and procedural law of Nevada to IP requesters. We expect to argue that if someone is eligible to participate under either state law or under the Lincoln County Lands Act, they should be able to do so. The status of the public interest and public trust in the waters of each state is also expected to bear on this.

Utah water law has established statutory and case law providing for extension of time to file protests based on the events during the time the protest period was pending. The Utah Water Code provides:

§ 73-4-10. Amendment of pleadings -- Extensions of time. The court shall have power to allow amendments to any petition, statement or pleading; to extend as provided in this title the time for filing any statement of claim; and to extend, upon due cause shown, the time for filing any other pleading, statement, report or protest.

A 2004 Utah Supreme Court case interpreting this statute provides for retroactive extension of time in which to protest, and may raise questions about the adequacy of the NSE's methods of notification of water rights and protest period under the requirements of Utah law. In the Matter of the General Determination of Rights to the Use of Water, Both Surface and Underground Green River Canal Company v. Jerry D. Olds, State Engineer 515 Utah Adv. Rep. 12, 110 P.3d 666.

Application of only Nevada substantive and procedural law to the affected interstate waters may also raise issues of the viability of NSE determinations for any purposes related to the Lincoln County Lands Act, P.L. 108-424 of 2004, which specifically does not abrogate Utah water rights jurisdiction, does not "preempt Nevada or Utah State water law," and does not "limit or supersede existing water rights or interest in water rights under Nevada or Utah State law."

Interested person status as an organization

Water Keepers is informing individuals and groups about what they can do to keep water in the basins where they live, make a livelihood, own property, recreate, invest, or otherwise enjoy. We are also speaking for them. We are responding to a demand.

The NSE must also act to inform and involve the public, such as prior to the formal hearing through the county meetings required in the interim order.

Identification of matters on which an IP may submit evidence is not a requirement or measure affecting recognition of IP status

To be admitted a requester of IP status must show extreme circumstances. Not being in existence or on notice as described above is an extreme circumstance. The lengthy passage of time since closure of the protest period is an extreme circumstance, including for the reason that there are the new issues that have accumulated since 1990 that were not identified in timely filed protests. For purposes of the 146 applications in 1989, the rule of this case is established in the August 26, 1991 Interim Ruling requiring extremely unusual circumstances for continuance motions. The expected continuation of application hearings for over well over 20 years is in itself, for the unique purposes of this proceeding, an extremely unusual circumstance requiring approval of requests for IP status accepted by June 16, 2008.

Water Keepers has also demonstrated that as an organization its purpose and officers and its issue areas of concern mean that it has appropriate interests to be an IP. However, it is after IP status is approved that the question of what the IP seeks to offer into evidence becomes an issue. Applicant mistakenly argues that satisfaction of NAC 533.100(3) is a prerequisite to admission as an IP (Page 3, 5), and that Water Keeper's issues have no relation to hearing issues (Page 14.). This is a premature argument that must wait until after Water Keepers is accepted and then as an IP makes its proffer of evidence.

Sincerely,



Michael Garabedian
President
916-719-7296

cc: White Pine County Board of Commissioners
Paul G. Taggart, Southern Nevada Water Authority