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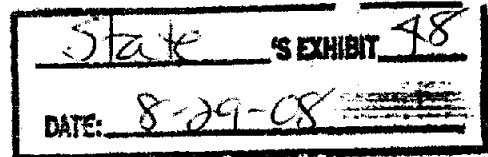
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August 29, 2008

**BY HAND DELIVERY**

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



Re: Response to Requests by Protestants to Present Evidence regarding SNWA's Justification of Need, Conservation Plan, and Financial Ability as it relates to SNWA's Snake Valley Applications 54022-54030

Dear Mr. Taylor:

On behalf of the Southern Nevada Water Authority ("SNWA") and in reply to the letters submitted by the Protestants, the undersigned counsel hereby submits the following response. As requested in SNWA's May 23, 2008 letter, the State Engineer should take administrative notice of his previous findings regarding 1) SNWA's need to import water from another hydrographic basin, 2) SNWA's adoption and effective implementation of a water conservation plan, and 3) SNWA's ability to finance the Clark, Lincoln, and White Pine Counties Groundwater Development Project. See NRS 533.370(1)(c); See also 533.370(6)(a)-(b).

Taking administrative notice of the evidence and findings that were referenced by your Office in Ruling Nos. 5726 and 5875 during the hearing on SNWA's Snake Valley applications is appropriate and would alleviate the need to present duplicative evidence. Additionally, taking such administrative notice is appropriate because these previous findings were not completely specific to the basins addressed in Ruling Nos. 5726 and 5875. Rather, these findings were made on a project-wide basis and are still applicable to SNWA's Snake Valley applications.

The State Engineer can take administrative notice of the evidence submitted at the Spring Valley hearing and use that evidence to consider SNWA's Snake Valley Applications. SNWA will summarize here the support in the administrative record regarding the issues addressed in Protestants' requests. Nonetheless, to accommodate the Protestants contested claim that a material change of circumstances has occurred, SNWA is not be opposed to allowing the presentation by SNWA and the Protestants of new evidence on these issues. But if such evidence is allowed, SNWA respectfully requests that the State Engineer limit the evidence to information regarding a change of circumstances since September, 2006.

**A. SNWA's Need to Import Water From the Snake Valley Basin is Evident From the Continued Growth in the Las Vegas Valley and the Current Drought Impacting the Colorado River.**

SNWA has established the need to import water, in accordance with NRS 533.370(6)(a), due to the continued growth in Southern Nevada and the expected decline in availability of water from the Colorado River. Protestants mistakenly interpret the crux of the need determination to rely solely upon the growth factor. However, Protestants fail to recognize that while growth in Southern Nevada is a factor to be considered, the most significant factor is Southern Nevada's reliance upon the Colorado River for 90% of its water supply. The Colorado River is currently experiencing a multi-year drought and due to the prolonged drought, it would be far from prudent for Southern Nevada to continue to rely almost exclusively on the Colorado River for its water supply. As a result, other in-state resources must be secured.

The Protestants argue new information and changed circumstances have invalidated the State Engineer's previous rulings which conclusively found that SNWA proved the need to import water and that SNWA's population projections were not unreasonable. Ruling No. 5726 p. 20; Intermediate Order No. 1 in the Cave Valley, Dry Lake Valley, Delamar Valley p. 13; Ruling No. 5875, p. 5-6. Protestants contend such new information and changed circumstances include the decline in growth and development in the Las Vegas Valley, the additional water secured by SNWA since the State Engineer made such rulings, and the *Hidden Oasis* Report findings regarding conservation in Southern Nevada.

Among other reasons, SNWA clearly needs to import water from the Snake Valley basin due to continued population growth in the Las Vegas Valley. SNWA concedes that Las Vegas may be experiencing an economic decline; however, that economic decline has not translated into a population decrease. Rather, the current economic downturn has merely slowed population growth, resulting in a smaller growth rate, but still growth nonetheless. The Center for Business and Economic Research at UNLV indicates that the population of Clark County in 2006 was 1,874,837 and 1,954,319 in 2007. Available at <http://cber.unlv.edu/pop.html> (accessed August 29, 2008). Additionally, the *Hidden Oasis* Report found that "Las Vegas is growing rapidly..." Heather Cooley, et al., *Hidden Oasis: Water Conservation and Efficiency in Las Vegas*, November 2007, p. 1. The Report further indicates, "[t]oday, Las Vegas is one of the fastest-growing metropolitan areas in the United States, having gained more than one million new residents in the past 15 years." *Id.* at p. 5.

While the population growth rate clearly establishes a need for the water, the drought currently impacting the Colorado River further substantiates this need. As indicated in Ruling No. 5726, Southern Nevada has depended upon the Colorado River, coupled with conservation, to satisfy its water need. p.19. However, in 2002, the Colorado River incurred a severe drought and Lake Mead dropped nearly 100 feet. *Id.*

Currently, the Colorado River continues to experience drought. As indicated by the State Engineer in Ruling No. 5726, in previous years Southern Nevada diverted approximately 480,000 acre-feet for a consumptive use of 300,000 acre-feet of Colorado River water, which is Nevada's total allotment. p. 20. As such, Southern Nevada is bumping up against the limits of the amount of water it can take from the Colorado River, and this does not even take drought shortages into consideration. *Id.* Also, the Integrated Water Planning Advisory Committee report found that the drought conditions impacting the Colorado River Basin have reduced the projected availability of water. *Id.* As such, Las Vegas must turn to other in-state resources to satisfy its water needs. Therefore, even if economic development and population growth is found to have slowed, Las Vegas must still import water from Snake Valley to replace the diminishing resources of the Colorado River.

Additionally, the water secured by SNWA from conservation and other resources will not be enough to satisfy Southern Nevada's current need. Also, the *Hidden Oasis* Report, as discussed below, fails to invalidate SNWA's need to import water. Therefore, SNWA has undoubtedly demonstrated its need to import water from the Snake Valley basin.

**B. SNWA is Currently Implementing an Effective Water Conservation Plan.**

SNWA has clearly demonstrated its adoption and effective implementation of an adequate water conservation plan in accordance with NRS 533.370(6)(b). The Protestants argue new information contained in the *Hidden Oasis* report has invalidated the State Engineer's previous rulings which conclusively found SNWA demonstrated a conservation plan was adopted and was being effectively carried out. Ruling No. 5726 p. 46; Intermediate Order No. 1 in the Cave Valley, Dry Lake Valley, Delamar Valley p. 14; Ruling No. 5875, p. 26. Protestants' argument focuses on the *Hidden Oasis* report's estimate that "water conservation and efficiency improvements for ... [single-family residential customers, hotels, and casinos] *could* reduce current water diversions by more than 86,000 acre-feet per year." p. 3. Emphasis added. However, this report is hypothetical and was conducted in a vacuum, basing its findings on perfect implementation of conservation efforts. As indicated in the report, "the amount of water saved will depend on implementation efforts, the resources devoted to conservation programs, public outreach and response, and the choice of strategies adopted." Further, the results of this report are partially based upon comparison of Las Vegas to other cities. However, as indicated by the State Engineer in Ruling No. 5726, such comparisons fail to take into consideration factors unique to Las Vegas, such as "tourism, social, economic, metrological and ecological factors." p. 46. Thus, the report in no way proves that SNWA's current conservation plan is ineffective.

In fact, in August 2008, SNWA thanked the Southern Nevada community for its conservation efforts that have led to saving 15 billion gallons of water since 2004. In recognition SNWA's conservation achievements, SNWA has received several awards. In 2006, SNWA received a "Water Efficiency Leader Award" from the United States Environmental Protection Agency. This award lauded the "innovation and simplicity" of SNWA's Water Smart

Landscapes program and recognized the Water Smart Home program. Additionally, in 2007, Doug Bennett, SNWA's Conservation Manager, was an International Award Finalist for the Intelligent Use of Water award sponsored by the Rain Bird Corporation. This award was based on demonstrated water savings, preservation of landscapes, innovation, and overall impact on the community. Also, in October of 2008, SNWA, in partnership with the United States Environmental Protection Agency's WaterSense program and other leading national and international partners, will be hosting the inaugural Water Smart Innovations Conference and Exposition. This conference is expected to be the largest urban water-efficiency and conservation conference of its kind.

**C. SNWA has Provided a Sufficient Estimate of the Costs for the Groundwater Development Project and has Proven its Ability to Meet Such Costs.**

In accordance with NRS 533.370(1) SNWA has provided a sufficient estimate of the costs for the Groundwater Development Project and has equally demonstrated its financial ability to meet such costs. The Protestants argue SNWA will not be able to pay for the Project, as new information indicates the cost of the Project exceeds previous estimates. The Protestants contend that because other large projects, including the Lake Powell Pipeline and the Yucca Mountain Project, have experienced an increase in costs in the last several years, that the State Engineer's previous ruling which found SNWA had the financial ability to construct the Project must be re-evaluated. Ruling No. 5726 p. 26; Intermediate Order No. 1 in the Cave Valley, Dry Lake Valley, Delamar Valley p. 13; Ruling No. 5875, p. 39.

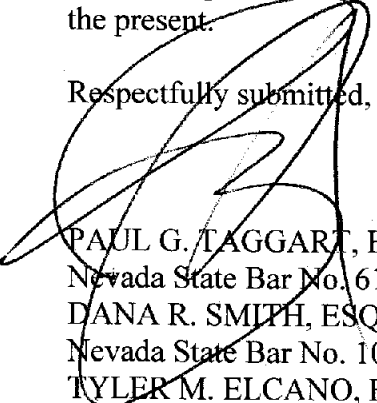
The Protestants, however, fail to explain the underlying reasons for the cost increases experienced by the Lake Powell Pipeline and the Yucca Mountain Project. Additionally, the Protestants provide no analysis concluding that the Lake Powell and Yucca Mountain projects can be meaningfully compared to SNWA's Project, or that such cost increases would be outside of SNWA's ability to finance them. Further, during the hearing on SNWA's Spring Valley applications, SNWA provided thorough testimony regarding its financial strength and the process through which projects of this type can be financed by SNWA. For example, the managing director and part owner of Public Financial Management stated that "bonds could be sold on capital markets [and] in light of SNWA's past practices, high credit rating and financial wherewithal, . . . these bonds would achieve very high credit ratings, which means they would be readily accepted by the marketplace and investors." Ruling No. 5726, p. 25. Based on this testimony, the State Engineer found in Ruling No. 5726 that SNWA has provided satisfactory proof of its good faith intention to construct the Project with reasonable diligence, and that SNWA has the financial ability to do so. p. 26. Therefore, because the fundamental financial strength of SNWA and the anticipated financing process that can be used to pay for Project costs has not changed, it would be appropriate for the State Engineer to take administrative notice of his previous findings on these issues.

**D. Conclusion.**

Based on the foregoing, SNWA respectfully requests that the State Engineer take administrative notice of his previous findings regarding 1) SNWA's need to import water from another hydrographic basin, 2) SNWA's adoption and effective implementation of a water conservation plan, and 3) SNWA's ability to finance the Clark, Lincoln, and White Pine Counties Groundwater Development Project.

In the event that the State Engineer finds it necessary to re-evaluate the issues discussed in this letter, SNWA would not be opposed to presenting evidence on these issues. However, SNWA does not believe that circumstances have changed enough to warrant presentation of such duplicative evidence. But in the event that the State Engineer does find that evidence regarding these issues should be presented during the hearing on SNWA's Snake Valley applications, SNWA requests that such evidence be limited in time and to the specific period of 2006 through the present.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

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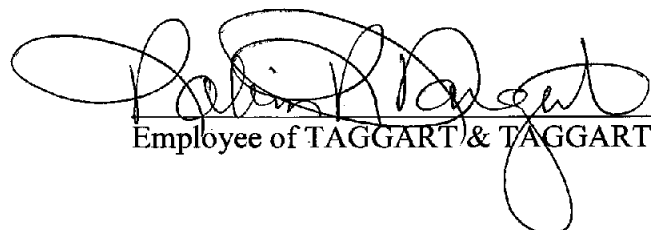
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DATED this 29<sup>th</sup> day of August, 2008.

  
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