

IN THE OFFICE OF THE STATE ENGINEER OF THE
STATE OF NEVADA

State	'S EXHIBITS	87
DATE:	9/26/11	

IN THE MATTER OF APPLICATIONS)
53987 THROUGH 53992, INCLUSIVE,)
AND 54003 THROUGH 54021,)
INCLUSIVE, FILED TO APPROPRIATE)
THE UNDERGROUND WATERS OF)
SPRING VALLEY, CAVE VALLEY,)
DELAMAR VALLEY, AND DRY LAKE)
VALLEY HYDROGRAPHIC BASINS)
(180, 181, 182 AND 184), LINCOLN)
COUNTY AND WHITE PINE COUNTY,)
NEVADA)

MILLARD AND JUAB COUNTIES'
RESPONSE TO:

SOUTHERN NEVADA WATER
AUTHORITY'S OBJECTION TO
WITNESSES HEILWEIL AND
HURLOW AND EXPERT REPORTS BY
HEILWEIL (MILL EX.10) AND
HURLOW (MILL EX. 11)

Southern Nevada Water Authority (SNWA) asserts that Dr. Victor Heilweil and Dr. Hugh Hurlow's reports and testimony to not stand in rebuttal to Southern Nevada Authority's (SNWA's) first evidentiary exchange. That assertion is without merit, and SNWA's objection should be overruled.

Rebuttal evidence is that which "explains, contradicts, or disproves evidence introduced by a defendant in his case-in-chief." *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096 (1990), *citing Morrison v. Air California*, 101 Nev. 233, 235-36, 699 P.2d 600, 602 (1985). It is clear from its first evidentiary exchange that SNWA purports to see no appreciable interbasin groundwater flow from Spring to Snake Valleys. SNWA's view is rebutted by the expert reports (MILL EXs 10, 11) and anticipated testimony of Heilweil and Hurlow. It is equally clear from SNWA's first evidentiary exchange that it purports to see adverse effects in Snake Valley due to SNWA pumping in Spring Valley. This view is also rebutted by Heilweil and Hurlow's expert reports and anticipated testimony. And, it is clear from SNWA's first evidentiary exchange that it sees no need for comprehensive monitoring

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mitigation in the form of reduced Spring Valley pumping in order to protect Snake Valley from adverse effects of Spring Valley pumping. This too is rebutted by Heilweil and Hurlow's expert reports and anticipated testimony. For purposes of LCB File No. R129-08, effective 2/11/09, amending NRS Chapter 533, Heilweil and Hurlow's reports and anticipated testimony "directly explain[], counteract[] and disprove[]" key elements of SNWA's first evidentiary exchange pertaining to Spring to Snake interbasin flow, Snake Valley impacts caused by Spring Valley pumping, and the need to monitor and mitigate Snake Valley impacts caused by Spring Valley pumping.¹

The following list is not exhaustive of all of SNWA's exhibits tendered in the first evidentiary exchange; rather, this is a list of selected examples of exhibits from SNWA's first evidentiary exchange to show that SNWA's objection is not well taken because at least the following evidence is rebutted by the expert reports and anticipated testimony of Heilweil and/or Hurlow:

- SNWA Ex. 58 entitled Geology and Geophysics of Spring, Cave, Dry Lake, and Delamar Valleys, White Pine and Lincoln Counties and Adjacent Areas, Nevada and Utah: The Geologic Framework of Regional Groundwater Flow Systems. For example, the conclusions stated at Sections 7.2.1 (Spring Valley) and 7.2.5 (Snake Valley and Great Basin National Park) which express or imply little or no impacts to Snake Valley due to Spring Valley pumping, are rebutted by the reports and anticipated testimony of Heilweil and Hurlow.
- SNWA Ex. 88 entitled Conceptual Model of Groundwater Flow for the Central Carbonate-Rock Province: Clark, Lincoln and White Pine Counties Groundwater Development Project. For example, Section 8.4 and Table 8-2 summarize SNWA's view of interbasin flow, yet these sections make no mention of any interbasin flow along the Spring-to-Hamlin-to-Snake Valleys groundwater path. Section 8.3.2 attempts to

¹ If nothing else, Heilweil and Hurlow's reports and testimony at the very least *tend* to contradict or disprove the above-stated positions of SNWA relative to inter-basin impacts to Snake Valley caused by Spring Valley pumping, thus satisfying the long standing minimal threshold recognized in *State v. Holt*, 47 Nev. 233, 219 P. 557, 560 (1923), that rebuttal evidence need not completely and entirely contradict evidence as long as it has a *tendency* to contradict or disprove it.

understate the extent of interbasin flow along this path by selectively referencing some but not all previous investigations of the question, and then declaring “Thus, the annual volume of flow across these basin boundaries was treated as constrained unknowns greater than zero in the solver.” This is rebutted by the reports and anticipated testimony of Heilweil and/or Hurlow.

- SNWA Ex. 89 entitled Transient Numerical Model of Groundwater Flow for the Central Carbonate-Rock Province: Clark, Lincoln and White Pine Counties Groundwater Development Project. For example: Section 6.4’s evaluation of simulated interbasin flow understate the extent of interbasin flow (and by implication the extent of impacts to Snake Valley) along the Spring-to-Hamlin-to-Snake Valley path. This is rebutted by the reports of Heilweil and/or Hurlow.
- SNWA Ex. 91 entitled Simulation of Groundwater Development Scenarios Using the Transient Numerical Model of Groundwater Flow for the Central Carbonate Rock Province: Clark, Lincoln, and White Pine Counties Groundwater Development Project. Overall, this report fails to isolate on non-external basin-to-basin boundary flows. Rather, Sections 4.2 and 4.3 focus only on impacts flows across boundaries external to the overall project area. This whitewashes over potential impacts on intra-project, interbasin boundaries such as the path from Spring Hamlin to Snake. This gloss-over is rebutted by the reports and anticipated testimony of Heilweil and Hurlow.
- SNWA Exs. 149 entitled Hydrologic Monitoring and Mitigation Plan for Spring Valley (Hydrographic Area 184) and 151 entitled Spring Valley Hydrologic Monitoring and Mitigation Plan (Hydrographic Area 184) February 2009. The reports and anticipated testimony of Heilweil and/or Hurlow will demonstrate that a much more comprehensive and forceful monitoring and mitigation plan than Ex. 149 Section 2.3 and Ex. 151 Sections 3.2 and 3.4 set forth, is necessary to reasonably and adequately protect Snake Valley from the effects of Spring Valley pumping.
- SNWA Ex. 258 entitled Hydrology and Water Resources of Spring, Cave, Dry Lake, and Delamar Valleys, Nevada and Vicinity. For example, Section 7.1.3 addresses interbasin flow from southeastern Spring Valley and Hamlin Valley (which is the path to Snake Valley) by understating the extent of such flow. This will be rebutted by the reports of Heilweil and/or Hurlow.

Moreover, under Nevada case authority it does not matter that Millard and Juab Counties could have possibly included Heilweil and Hurlow’s testimony in its first evidentiary exchange. In *Morrison* the Court held that a litigant’s rebuttal evidence is not excludable *merely because it could have been included in the litigant’s case in chief*. *Id.* It was certainly within Millard and Juab Counties’ rights to assess SNWA’s chief body of evidence first.

For these reasons, SNWA's objection to the expert reports and testimony of Drs. Heilweil and Hurlow should be overruled. It is unbecoming that SNWA would want the Nevada Engineer to not be advised by these two regionally respected USGS and Utah Geological Survey experts.

Respectfully submitted this 13th day of September, 2011.



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CERTIFICATE OF SERVICE

I certify that on this 13th day of September, 2011, true and correct copies of the foregoing document were sent via Federal Express Overnight Courier packets addressed to the respective persons entitled to receive actual service listed at pages 3-4 of the Nevada Engineer's June 6, 2011 AMENDED THIRD Informational Statement Regarding Southern Nevada Water Authority Water Right Applications in Spring, Cave, Dry Lake and Delamar Valleys.



Mark Ward