

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

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)

**CONFEDERATED TRIBES OF
THE GOSHUTE RESERVATION**

State	'S EXHIBITS	88
DATE:	9/26/11	

**RESPONSE TO SOUTHERN NEVADA WATER AUTHORITY'S OBJECTION TO
EXPERT WITNESSES HEIL WEIL, HURLOW, JONES, MAYO AND ROUNDY AND
EXPERT REPORTS BY HEIL WEIL (MILL EX. 10), HURLOW (MILL EX. 11) MYERS
(CTGR EX. 14), AND JONES AND MAYO (CPB EX. 2011)**

The Southern Nevada Water Authority objects to the Confederated Tribes of the Goshute Reservation ("Tribes") expert witness report timely submitted by the Tribes' expert, Thomas Myers Ph.D., and entitled "Rebuttal Report: Prediction of Impacts to Tippet and Deep Creek Valley Caused by Southern Nevada Water Authority Pumping Groundwater from Distributed Pumping Options for Spring Valley (August 25, 2011)." *Southern Nevada Water Authority's Objection to Expert Witnesses Heil Weil, Hurlow, Jones, Mayo, and Roundy and Expert Reports by Heil Weil (Mill Ex. 10), Hurlow (Mill Ex.11), Myers (CTGR Ex.14), and Jones and Mayo (CPB Ex. 2011, September 1, 2011 ("Objection")*. The Water Authority "objects" that the content of the expert witness report is not truly "rebuttal" testimony and that they have had "inadequate time" to complete a "comprehensive" review of the exhibit. *Objection* at 1 & 8. The Water Authority seeks no relief. *Objection* at 9 ("At this time, SNWA is making no specific remedy request.")

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Given that this “objection” seeks no relief, the Tribes could justifiably ignore it. But in an exercise of caution, the Tribes timely note their response. Dr. Myers’ testimony is well within the State Engineer’s definition of rebuttal testimony.

First, there is a procedural defect in SNWA’s “objection.” The parties were authorized to file by September 2, 2011, motions challenging any matters that arose during the preceding weeks’ exchange of witness and expert witness information. *Third Informational Statement Regarding Southern Nevada Water Authority Water Right Applications in Spring, Cave, Dry Lake and Delamar Valleys*, June 2, 2011. SNWA’s objection is not a motion. The SNWA filing seeks no relief. Therefore, it is not an authorized filing.

Second, Dr. Myers fully complied with the orders governing this hearing in submitting a report which is “meant only to provide evidence that becomes necessary in rebuttal to the original exchange.” *Notice of Pre-Hearing Conference and Hearing*, at 4 (April 1, 2011). This report is “necessary” because, following the “original exchange” of witness and expert witness information, the Bureau of Land Management, which is considering a right of way application for the pipeline, issued its Draft Environmental Impact Statement (DEIS). The DEIS set forth distributed pumping within Snake Valley as an option. U.S. Bureau of Land Management, *Clark, Lincoln and White Pine Counties Groundwater Development Project Draft Environmental Impact Statement*, June 2011. The SNWA application requests pumping amounts for specific sites within Spring Valley. See, Figure 1 to Myers, *Hydrogeology of Spring Valley and Surrounding Areas, Part C: Impacts of Pumping Underground Water Right Applications #54003 through 54021* (June 2011). (Attached as Exhibit A). Dr. Myers’ analysis in June of this year analyzed the SNWA application for those specific sites. Dr. Myers found that pumping from the specific sites produced profound adverse impacts within Spring Valley and neighboring

areas (pumping in excess of natural recharge will draw water from Steptoe Valley and decrease flow to Snake Valley, and will dry up wetlands and springs). Dr. Myers also concluded that the site-specific pumping “would by necessity draw groundwater from discharge locations (springs and wetlands) in adjoining valleys, including Tippet and Snake Valley.” *Id.* at 28.

Upon reviewing the Draft EIS with its “distributed pumping” sites, i.e. pumping locations not clustered on westerly and southerly portions of Spring Valley, but spread throughout, Dr. Myers concluded that it was “necessary” to analyze the impacts of this potential change. His rebuttal report contains that analysis. This constitutes rebuttal testimony as defined by the State Engineer, evidence which “explains, counteracts or disproves” facts offered by other parties. LCB File No. 129-08 (2/11/09).

The objective of this hearing is to “develop[e] an adequate record upon which the state engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the office of the state engineer.” NAC 533.180 (1995). The Tribes submitted their rebuttal expert analysis to achieve that goal.

Additionally, CTGR Ex. 14 was received by August 26, 2011 by SNWA. *Objection* at 1. Even though CTGR filed its exhibit by the deadline, SNWA claims that there has been inadequate time to complete a comprehensive review of the exhibit. *Id.* However, SNWA goes on to claim that based upon a cursory review, they note that the exhibit includes content that is not a rebuttal of SNWA evidence. This is entirely incorrect.

Since the filing by CTGR of CTGR Ex. 14 was by the deadline, SNWA cannot claim that they were not provided adequate time to review the exhibit. Not only was the filing timely, CTGR Ex. 14 consists of five pages. As discussed above, CTGR Ex. 14 discusses the impacts from the “distributed pumping” option described in the DEIS on Tippet and Deep Creek Valley.

This is not the first mention of impacts on Tippet and Deep Creek Valley. SNWA stated in SNWA Ex. 258, “Therefore, it is concluded that there is no groundwater flow from Spring Valley to Snake Valley except for possibly some minor amount of flow from Tippet Valley passing through the northeastern part of Spring Valley to Western Snake Valley.” *SNWA Ex.258* at E-3. SNWA also states that there may be pathways for groundwater flow between Spring and Tippet Valley, but the direction of such flow is inconclusive due to lack of hydraulic-head data. *Id.* at 7-1. SNWA does not discuss possible drawdown in Tippet and Deep Creek Valleys. As required, Dr. Meyers presented rebuttal evidence of this in CTGR Ex. 14.

Dr. Myers had also presented evidence regarding flow from northern Spring to Tippet Valley and from Tippet to Deep Creek. *CTGR Ex. 7, Part A* at 5 & 24, and *CTGR Ex. 7, Part B* at 27. A specific conclusion presented by Dr. Myers in the Initial Evidentiary Exchange was that, “Developing more than the natural groundwater discharge rate would by necessity draw groundwater from discharge location (springs and wetlands) in adjoining valleys, including Tippet and Snake Valley.” *CTGR Ex. 7, Part C* at 28.

The Tribes see three possible options in response to this objection. If SNWA confines its case to the specific sites set forth in its Application and analyzed by Dr. Myers in his June 2011 report, the Myers Rebuttal report may be immaterial to these proceedings. If, however, the Water Authority produces evidence consistent with the “distributed pumping” option described in the DEIS, Dr. Myers’ testimony is relevant and essential as it demonstrates the adverse impacts of this option, in the form of significant drawdown of groundwater in both Tippet and Deep Creek Valleys. Myers, *Rebuttal Report: Prediction of Impacts to Tippet and Deep Creek Valley Caused by Southern Nevada Water Authority Pumping Groundwater from Distributed Pumping Options for Spring Valley* at 1-2. Third, if this SNWA “objection” was filed as a

courtesy to the Tribes, as advance notice of SNWA's concern, the Tribes will collaborate with SNWA over the next two months prior to presentation of the Tribes' testimony; the parties can surely devise a way to minimize SNWA's "surprise" that a change in points of withdrawal will change impacts on surrounding valleys. Because the Tribes are not scheduled to present their testimony until November 15, SNWA has ample time to prepare a response to Dr. Myers' rebuttal testimony. If SNWA nonetheless claims prejudice, the Tribes will cooperate to ensure it has a fair opportunity to respond.

Conclusion

SNWA's Objection is not procedurally proper and the Objection is to the timely filed rebuttal evidence submitted by CTGR. The rebuttal report provides important evidence that should be considered by the State Engineer. Due to the above reasons, the State Engineer should dismiss SNWA's Objection to CTGR Ex. 14.

Dated: September 12, 2011

By



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Reservation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2011, a true and correct copy of the foregoing RESPONSE TO SNWA OBJECTION, with listed documents, was served on the following counsel of record by depositing the same for mailing by overnight mail, postage prepaid, addressed to the following:

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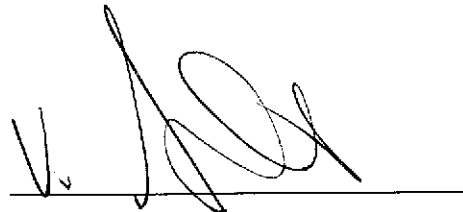
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Exhibit A

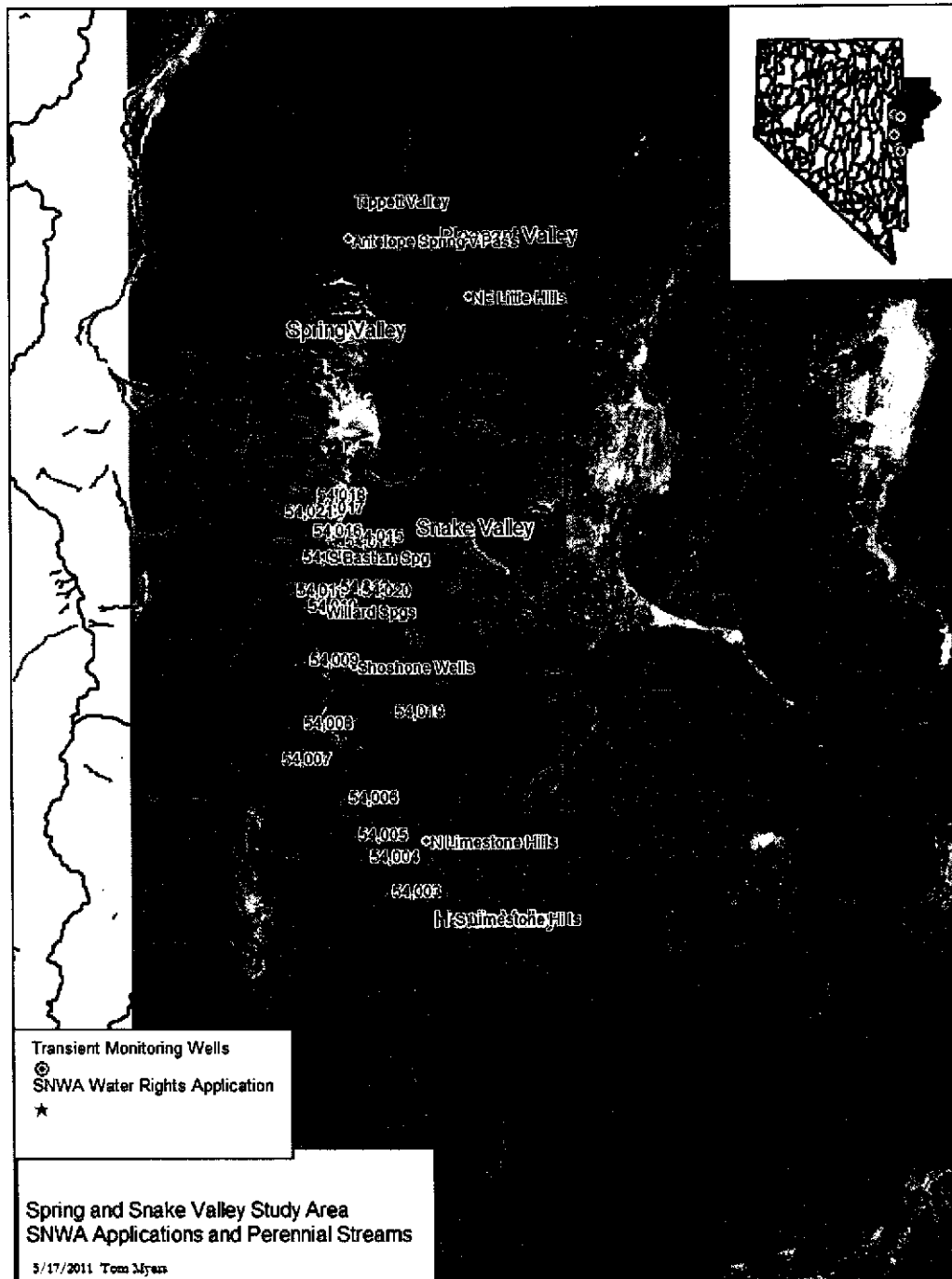


Figure 1: Spring and Snake Valley study area. The stars are the SNWA water right applications and the blue lines are perennial streams.