

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

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STATE ENGINEERS OFFICE

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

**REPLY IN SUPPORT OF MOTION REGARDING
DISCOVERY AND MANDATORY
PRESENTATIONS OF PROPOSED WRITTEN TESTIMONY**

Cleveland Ranch’s motion to permit prehearing discovery and the presentation of expert direct testimony by written submittal as authorized by NAC 533.160 and NAC 533.250 was intended to assist the State Engineer in fulfilling his obligations to “secure the just, speedy and economical determination” of the pending issues and not to impede his ability to question the experts, probe their reports, gauge their credibility or enable the public to understand the technical reports as SNWA argues. SNWA Opposition, p. 2:3-9. In fact, NAC 533.160 and 533.250 were adopted by the State Engineer under the authority of NRS 532.120, which at subsection (2) authorizes him to adopt “regulations... to ensure the proper and orderly exercise of the powers granted by law, and the speedy accomplishment of the purposes of chapters 533, 534, 535 and 536 of NRS.”¹

¹ NAC 533.160 and 533.250 were both originally adopted in 1995 and amended in 2009, by Nevada State Engineers who preceded Mr. King’s appointment in April 2010: R. Michael Turnipseed, who received the original protests to SNWA’s applications, and then Tracy Taylor, who was still dealing with the same applications and protests.

Authorization of prehearing discovery and written submittal of expert reports in this matter will not impose any additional burden on SNWA. Indeed, as it points out at p. 2:19 of its Opposition, “[e]xperts are already required to submit a written report to the State Engineer before the hearing.”² Neither the use of prehearing discovery under NAC 533.160 nor expert written submittals under NAC 533.250 would impair any of the State Engineer’s duties or functions. Instead, use of those authorized pre-hearing tools would promote efficiency and save time by allowing counsel to hone their respective cross-examinations to protect the positions of the parties they represent. Given the highly technical material to be presented, counsel’s pre-hearing preparation should be encouraged to best “secure the just, speedy and economical determination” of SNWA’s unprecedented applications to appropriate the State’s most precious resource.

Finally, while SNWA concedes that the public benefits from presentation of the experts’ live testimonies (Opposition, p. 2:23-24), it is Cleveland Ranch’s position that the public - as well as the State Engineer and Nevada’s future generations - would benefit most from the Protestants’ ability to best prepare for the live examination of the experts presented through the most precise examinations possible presented in the shortest amounts of time.

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² Oddly, SNWA supports this statement with its fn. 4, citing NAC 625.613 (governing documents prepared in the practice of professional engineers) and to “Fed.R.Civ.P. 801(d),” “Fed.R.Civ.P. 802,” “Fed.R.Civ.P. 703,” and “Fed.R.Civ. P. 705,” none of which even exist, but presumably were intended to refer to various Federal Rules of Evidence addressing hearsay and expert reports. In addition, SNWA’s reference to “§ 4.7,4 &, at 170-71” of David H. Kaye et al, *The New Wigmore, A Treatise on Evidence: Expert Evidence*, cannot be accessed as cited. Finally, SNWA’s fn. 4 ends with reference to *U.S. v. Tran Trang Cuong*, 18 F.3d 1132 (4th Cir. 1994), for the proposition that the district court in that case had erred in allowing one physician to testify that another physician had made the same conclusion as the first physician.

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Respectfully submitted this 25th day of October, 2016.

KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION REGARDING DISCOVERY AND MANDATORY PRESENTATIONS OF PROPOSED WRITTEN TESTIMONY** was served on the following counsel of record by depositing the same for mailing, at Reno, Nevada, with the United States Postal Service, postage prepaid, addressed to the following:

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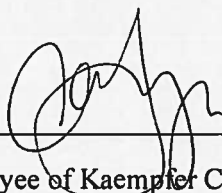
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DATED this 25th day of October, 2016.



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