

**BEFORE THE STATE ENGINEER, STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

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.)

OPENING STATEMENT

RECEIVED
 2011 SEP 19 PM 4:00
 STATE ENGINEER'S OFFICE

Protestants Great Basin Water Network,¹ 2nd Big Springs Irrigation Company, Keith Anderson, Craig Baker, Dean Baker, Thomas Baker, Baker GID, Baker Ranches, James and Donna Bath, Bath Lumber Company, Govert Bassett, Walter Benoit, Border Inn, Carter-Griffin, Inc. Max & Diane Chipman, Citizens Education Project, Louis Cole, Defenders of Wildlife, Kristine Fillman, Patrick Fillman, Gardner's Quarter Circle 5 Ranch, Jo Anne Garrett, Kena Gloeckner, Patrick Gloeckner, Great Basin Business and Tourism Council, Kathy Hiatt, County of Inyo, Abigail Johnson, Linda Johnson, League of Women Voters of Salt Lake City, Robert Lewis, Lund Irrigation & Water Company, Orvan Maynard, Roderick McKenzie, Nevada Farm Bureau, Panaca Irrigation Company, Gary and Jo Ann Perea, Preston Irrigation Company, Launce Rake, William and Kathy Rountree, Toiyabe Chapter of the Sierra Club, Amelia Sonnenberg, Sportsworld, Terrance and Debra Steadman, Utah Audubon Council, Mildred Valencia, David Von Seggern, Mark Wadsworth, Lois Weaver, County of White Pine and City of Ely, and Debra Whipple ("GBWN et al."), by and through their attorneys, Advocates for Community and Environment, and pursuant to the State Engineer's Amended Third Informational Statement Regarding Southern Nevada Water Authority Water Right Applications

¹ An additional 251 individuals and entities signed onto the Great Basin Water Network's protest.

in Spring, Cave, Dry Lake, and Delamar Valleys (“Amended Third Informational Statement”), hereby submit their written opening statement, which will be accompanied by an oral opening statement on the first day of the Hearing on September 26, 2011.

INTRODUCTION

In this hearing on remand the State Engineer has an opportunity to reconsider the Southern Nevada Water Authority’s (“SNWA’s”) groundwater rights applications in Spring, Cave, Dry Lake, and Delamar Valleys, taking into account significant new evidence and dramatically changed circumstances. The applications at issue in this hearing all have been filed to extract groundwater from the four targeted valleys, and the interbasin flow systems of which they are a part, and feed that water into SNWA’s massive proposed groundwater pumping and pipeline project which would export the water down to the greater Las Vegas area (the “Pipeline Project”). The new evidence and information that will be presented to the State Engineer during this hearing on remand, together with a considerable amount of the evidence from the previous hearings on these applications, make it clear that SNWA’s applications cannot be approved under Nevada’s water law.

1. There Is No Genuine Need for this Water Export Project and SNWA Has Failed To Achieve a Reasonable Level of Water Conservation, Which Would Eliminate the Apparent Need for the Project (NRS § 533.370(6)(a), (b))

To begin with, the radically and persistently deflated socioeconomic landscape of southern Nevada, together with the ready availability of more cost-effective and reliable alternative means of satisfying reasonably foreseeable potential future water demand, make it clear that there is no genuine, legitimate need for the water that SNWA seeks to export from the targeted valleys.

In addition, the record will show that SNWA has an unreasonable and inadequate water conservation program, given SNWA’s position and available options. In particular, the evidence

will show that SNWA and the Las Vegas area are not keeping up with the times or with many other cities in the West, and have failed to implement a number of readily available low-cost water conservation measures and policies that would achieve water savings substantial enough to satisfy most or all of the supposed future demand for additional water that SNWA seeks to use as justification for the Pipeline Project. Thus, even on the beginning threshold issues of need and conservation, there is not a valid basis for approving SNWA's applications.

2. SNWA Has Not Demonstrated a Good Faith Intention or the Ability to Construct or Finance the Proposed Pipeline Project (NRS § 533.370(1)(c)(1), (2))

The evidence will demonstrate that SNWA has failed to reveal or reasonably account for the actual cost of building, operating, and financing the Pipeline Project. SNWA's unrealistic and unreasonable depiction of the Project's astronomical costs and the difficulty of financing the Pipeline Project in the current or reasonably foreseeable fiscal climate combined with SNWA's current financial picture show that SNWA lacks the financial ability and good faith intent to actually build the Pipeline Project and put the water to the proposed use.

3. The Hydrology Evidence, Especially the Ground Water Modeling Efforts, Overwhelmingly Shows That There Is Not Adequate Water in the Proposed Source of Supply To Support SNWA's Ground Water Applications and That SNWA's Proposed Ground Water Pumping Would Cause Impermissible Widespread Impacts (NRS § 533.370(5))

The evidence in this hearing on remand will reveal a picture of the hydrology pertaining to SNWA's applications and proposed Pipeline Project that is starkly at odds with the hydrologic legerdemain that SNWA has offered in the previous hearings. In the previous hearings SNWA did its best to avoid serious modeling evidence, instead offering transparently self-serving inflated water budgets for the targeted valleys and refusing to acknowledge impacts to hydrologically connected valleys within the same flow systems as the targeted valleys. In this hearing, however, there will be no plausible way for SNWA to ignore the consensus of modeling

evidence from several sources, including the model that SNWA developed for the Draft Environmental Impact Statement on the Pipeline Project. That evidence all confirms the fact that SNWA's proposed ground water pumping would cause widespread significant drawdown, not only in the targeted valleys but also in hydrologically connected valleys in the same flow systems.

The result of the drawdown caused by SNWA's ground water pumping would be the reduction and elimination of spring flow from numerous springs in the affected valleys, the drying up of wetlands, wet meadows, playas, and riparian areas in those valleys, and grave impairment of existing water rights and uses in those valleys. In some areas the groundwater table and spring flows would drop significantly in only a few decades; in other areas problematic drawdown would take longer to manifest. But the evidence in this hearing will establish that SNWA's applications, added to existing water rights and uses, grossly exceed any reasonable estimate of the perennial yield in these valleys. Consequently, severe, impermissible impacts on the local and regional groundwater systems and everything that depends on those systems is a certainty if SNWA's applications are approved. The manifestation of those effects is only a matter of time.

What is more, the evidence will demonstrate that the monitoring and mitigation plans SNWA is proposing are inadequate and doomed to be ineffectual. Thus, the proposed monitoring and mitigation plans cannot be relied on as a basis for approving SNWA's applications. As the evidence in this hearing will show, there simply is not sufficient water in either the local groundwater systems of the targeted valleys or the interbasin flow systems of which they are a part to support SNWA's applications or to sustain SNWA's proposed ground water pumping and export.

4. SNWA's Applications And Proposed Use Would Conflict Impermissibly With Existing Water Rights And Uses That Are Protected By Nevada Law (NRS § 533.370(5))

Although SNWA will try again, as it has in the previous hearings, to argue that its proposed ground water pumping and export would not conflict with existing water rights or protectible interests, the evidence in this hearing on remand will show that approving SNWA's applications and permitting SNWA's proposed pumping would have a dramatic impact on and conflict with many such rights and interests in both the targeted valleys and the hydrologically connected valleys within the same flow systems. In the previous hearings SNWA has simply ignored the entire issue of potential conflict with existing rights and interests in hydrologically connected basins, but in this hearing on remand a consensus of modeling evidence will show that SNWA's proposed use definitely would conflict with such rights and interests and it will no longer be credible to ignore such impermissible conflicts. Further, the evidence will expose the inadequacy and ineffectualness of the monitoring and mitigation approach that SNWA offers as a bulwark against such conflicts.

5. SNWA's Proposed Use Would Be Detrimental to the Public Interest Because It Would Cause Severe Environmental and Economic Harm to the Targeted and Hydrologically Connected Basins (NRS § 533.370(5))

A. Environmental Harm

The evidence in this hearing on remand will show that the proposed use would be detrimental to the public interest because it would be environmentally unsound with regard to the targeted and hydrologically connected basins and would cause unreasonable and impermissible environmental damage within those basins. The proposed use would cause severe impacts to the water table, springs, and wetlands, which would result in direct and devastating impacts to a large number of protected and other water dependent species, including fish, snail, bird, mammal, and plant species. Some of Nevada's most treasured parks and wildlife refuges would

be directly impacted and permanently degraded by the proposed water withdrawals. The desiccation of numerous areas that currently are kept moist by the groundwater systems in these basins will create a significant risk of dramatically increased dust emissions, which would severely degrade visibility and air quality in the affected basins and downwind locations. The evidence will show further that the monitoring and mitigation plans advanced by SNWA as a means of avoiding such biological devastation are patently inadequate and ineffectual. Given the severity of these environmental harms and the ineffectualness of SNWA's proposed monitoring and mitigation approach, SNWA's water rights applications and proposed Pipeline Project constitute a clear threat to prove detrimental to the public interest on environmental grounds.

B. Economic Harm

In addition to the environmental impacts to the targeted and hydrologically connected basins, the evidence in this hearing on remand will show that the proposed use will devastate the economies of the targeted and hydrologically connected basins as well as the economies that depend on the targeted and hydrologically connected basins. Specifically, the proposed withdrawals would undermine most of the existing economic activity in White Pine and Lincoln counties in perpetuity, and would stifle investment in the region precluding future growth and development. Just as the environmental impacts of the proposed project are not capable of mitigation, the economic impacts and devastation would be permanent and the water-dependent economies of these communities could not be restored. Nevada's future depends on the economic viability and diversity of the state as a whole, not southern Nevada alone. Thus, SNWA's proposed Pipeline Project would threaten to prove detrimental to the public interest on economic grounds, as well.

6. SNWA's Applications Should Be Denied Because the Proposed Use Would Be Environmentally Unsound With Regard to the Targeted Basins (NRS § 533.370(6)(c))

The evidence in this hearing on remand will show that the proposed use would be environmentally unsound with regard to the targeted basins because it would cause unreasonable and impermissible environmental damage within the targeted basins. The proposed use would cause severe impacts to the water table, springs, and wetlands in the targeted basins, which would result in direct and devastating impacts to a variety of water-dependent species, including fish, snail, bird, mammal, and plant species. The desiccation of areas that currently are kept moist by the groundwater systems in these basins will create a significant risk of dramatically increased dust emissions, which would severely degrade visibility and air quality in these basins and downwind locations. The evidence will show that the monitoring and mitigation plans advanced by SNWA as a means of avoiding such biological devastation are inadequate and ineffectual. Given the severity of these environmental harms and the ineffectualness of SNWA's proposed monitoring and mitigation approach, SNWA's water rights applications and proposed Pipeline Project would be environmentally unsound with regard to the targeted basins.

7. SNWA's Applications Should Be Denied Because the Proposed Use Is an Inappropriate Long Term Use of Water That Would Unreasonably Limit Potential Economic Growth and Development in the Economies of the Targeted Basins (NRS § 533.370(6)(d))

In addition to the environmental impacts to the targeted basins, the evidence in this hearing on remand will show that the proposed use will devastate the existing economies of the targeted basins and those economies that depend on the targeted basins. Specifically, the proposed withdrawals would undermine most of the economic activity in White Pine and Lincoln counties in perpetuity, and would stifle investment in the region precluding future growth and development. Further SNWA's proposed export of water away from the basins of origin would prevent all future growth and development in those basins, including recreational

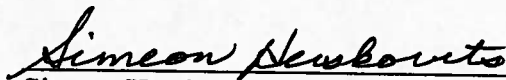
and residential economic development as well as alternative energy and other natural resource dependent development. Just as the environmental impacts of the proposed project are not capable of mitigation, the economic impacts and devastation would be permanent and the water dependent economies of these communities could not be restored.

CONCLUSION

In sum, the evidence in this hearing on remand will show that SNWA's groundwater applications in these four valleys and its proposed Pipeline Project are inconsistent with numerous requirements of Nevada's water law, and therefore should not be approved.

DATED: September 19, 2011.

Respectfully Submitted,



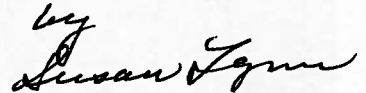
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this **OPENING STATEMENT** was served on the following, on this 19th day of September, 2011.

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