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, DRY LAKE VALLEY, (HYDROGRAPHIC BASINS 180, 181, 182 AND 184), LINCOLN COUNTY AND WHITE PINE COUNTY, NEVADA.

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MOTION TO DISMISS FOR FAILURE TO JOIN UNITED STATES DEPARTMENT OF INTERIOR BUREAUS

COME NOW, the Confederated Tribes of the Goshute Reservation ("CTGR"), the Duckwater Shoshone Tribe, and Ely Shoshone Tribe (together the "Tribes"), and in accordance with the October 3, 2016 Interim Order on Pre-Hearing Scheduling, hereby submits this Motion to Dismiss the matter of SNWA Applications 53987 through 53992, inclusive, and Applications 54003 through 54021, inclusive, for failure to join the United States Department of Interior Bureaus in the present proceeding. In the alternative, the Tribes request the State Engineer to stay the present proceeding and take no action on the above-referenced water right applications until such time as the United States Department of Interior Bureaus are joined in this proceeding. This motion is supported by the Declaration of Rupert Steele, filed contemporaneously herewith, and the following points and authorities.

I. INTRODUCTION

In the December 10, 2013 Decision reviewing the Nevada State Engineer's March 22, 2012 ruling approving SNWA water right applications, Nevada State District Court Judge Estes remanded the matter to the State Engineer in part "to establish standards for mitigation in the

event of a conflict with existing water rights or unreasonable effects to the environment or the public interest." (December 10, 2013 Decision at pp. 2-3.) Specifically, Judge Estes correctly concluded that the existing Monitoring, Management, and Mitigation Plans ("MMM Plans"), which are required as a condition for SNWA water appropriations, lack objective standards as to when the mitigation will be required and implemented. For example, the State Engineer's ruling noted that if pumping has an adverse impact on the Swamp Cedars site sacred to the Tribes, SNWA could mitigate but failed to require a standard or trigger when that mitigation would be required. Judge Estes rejected the MMM Plans as inadequate and remanded this matter in part for a determination of objective standards for when mitigation is necessary. Judge Estes further found the MMM Plans lacking in detail as to how monitoring will be accomplished.

The MMM Plans are exhibits to two Stipulations for Withdrawal of (federal) Protests executed in 2006 and 2008 between SNWA and United States Department of Interior Bureaus ("DOI Bureaus"). As outlined in the MMM Plans, the DOI Bureaus are key members of the Executive Committee, Technical Review Panel, and Biological Working Group established to execute the responsibilities and activities outlined in the Plans. The Stipulations were entered to protect Federal Water Rights and Federal Water Resources, including Indian reserved water rights. The Stipulations further provide: "The DOI Bureaus and SNWA shall jointly explain or defend this Stipulation and Exhibits A and B to the State Engineer." The Stipulations (which incorporate the MMM Plans) cannot be amended, altered, or varied except by mutual written agreement of SNWA and the DOI Bureaus.

Judge Estes' remand to determine objective standards as to when mitigation must occur cannot possibly be accomplished without amending, altering, or varying the MMM Plans. Because written consent of the DOI Bureaus is required to amend the Stipulations and Plans, the

participation of the DOI Bureaus in this proceeding is required and necessary. In the absence of the DOI Bureaus participation, any amendment to the MMM Plans incorporated into the Stipulations would be legally invalid, and any objective standards established without the participation of the DOI Bureaus would be arbitrary and capricious. Moreover, setting standards affecting Federal Water Rights in the absence of the DOI Bureaus would violate the due process rights of the Tribal Protestants.

Now that the MMM Plans have been found to be legally flawed, the Stipulations entered to protect Federal Water Rights and Federal Water Resources are also flawed and should be terminated. To adequately protect Federal and Tribal interests, the DOI Agencies should join this proceeding. In their absence, this proceeding should be dismissed because SNWA cannot possibly meet the purpose of the remand from Judge Estes without the direct participation of the DOI Bureaus.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

In 1989, the Las Vegas Valley Water District (LVVWD) filed water rights applications in the Nevada State Engineer's (NSE) Office to appropriate public groundwater from four basins in eastern Nevada: Spring, Cave, Dry Lake, and Delamar valleys. The Southern Nevada Water Authority (SNWA) was formed after 1989 as a political subdivision and later acquired those water applications from LVVWD. The 1989 applications were to appropriate over 125,000 acre-feet of groundwater annually (afa) from the four basins. The SNWA thereafter proposed to construct and operate a pipeline to export that groundwater to Las Vegas, Nevada.

The Department of Interior Bureaus (the Bureau of Indian Affairs, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service) (hereinafter "DOI Bureaus") filed timely protests to the granting of SNWA's water applications. The DOI Bureaus'

protests were filed to meet Federal obligations "to protect their state and federal water rights . . . and other water-dependent resources."

On September 8, 2006, DOI Bureaus and SNWA signed the "Stipulation for Withdrawal of Protests" (hereinafter "Spring Valley Stipulated Agreement"), withdrawing protests by the DOI Bureaus in exchange for SNWA's Hydrologic and Biologic "Monitoring, Management and Mitigation Plan for Development of Groundwater in the Spring Valley Hydrographic Basin Pursuant to the Application Nos. 54003 through 54021 by the Southern Nevada Water Authority" (the Spring Valley "3M Plan"). The 3M Plan (Exhibits A and B of the Spring Valley Stipulated Agreement) was an essential part of the Agreement. The Spring Valley Stipulated Agreement has been previously marked and admitted. For reference a copy is attached hereto as **Exhibit 1**.

The Goshute Tribal Chairman Rupert Steele found out about the Stipulated Agreement later during a meeting with the BLM. (Steele Decl. ¶ 12.) Neither the BIA nor any of the other DOI Bureaus had consulted with the Goshute Tribes regarding the Spring Valley Stipulated Agreement (Steele Decl. ¶ 12-16.)

From September 11 to 29, 2006, the NSE held the Spring Valley hearing for water applications 54003-54021. Following the hearing, the NSE approved applications in Spring Valley for 40,000 afa of groundwater, and the NSE approved an additional 20,000 afa for staged development over a ten-year period.

On January 7, 2008, DOI Bureaus and SNWA signed a "Stipulation for Withdrawal of Protests" for Delamar, Dry Lake and Cave Valley Hydrographic Basins (hereinafter "DDC Stipulated Agreement"), withdrawing protests by the DOI Bureaus in exchange for SNWA's "Hydrologic and Biological Monitoring, Management and Mitigation Plan for Development of

Groundwater in the Delamar, Dry Lake and Cave Valley Hydrographic Basins Pursuant to the Application Nos. 53987 through 53992 by the Southern Nevada Water Authority". The DDC Stipulated Agreement has been previously marked and admitted. For reference a copy is attached hereto as **Exhibit 2**. As with the Spring Valley Stipulated Agreement, the DOI Bureaus did not consult with the Goshute Tribes before signing the DDC Stipulated Agreement (Steele Decl. ¶ 6-12). In February of 2008, the State Engineer held a hearing on SNWA's water applications for Delamar, Dry Lake, and Cave Valley hydrographic basins. The NSE approved 18,755 afa to be pumped and exported from those three valleys.

Great Basin Water Network then challenged the NSE's grant of water rights to SNWA. On January 28, 2010, the Nevada Supreme Court in *Great Basin Water Network et al.*, v. *Nevada State Engineer and SNWA*, ruled that because "the 1989 water appropriation applications were not pending in 2003 . . . the State Engineer violated his statutory duty by failing to take action within one year after the final protest date."

On June 17, 2010, the Nevada Supreme Court issued an opinion that an equitable remedy was warranted. The Court determined that the "State Engineer must re-notice SNWA's 1989 applications and reopen the period during which appellants may file protests." The matter was remanded to the District Court with instructions to remand the matter further to the State Engineer to issue proceedings consistent with the Nevada Supreme Court's decision.

On October 18, 2010, the Nevada State Engineer issued a *Second Informational Statement Regarding Southern Nevada Water Authority Water Right Applications in Spring, Cave, Dry Lake, and Delamar Valleys*, identifying that republication of SNWA's applications were scheduled for February 2011, followed by a 30-day protest period and subsequent administrative hearings in October and November 2011.

Over the next eleven months and before the new 2011 hearing, the DOI Bureaus again failed to meet their legal obligation to consult with the Goshute Tribes regarding the Stipulated Agreements.

During October and November 2011, the NSE held a six-week hearing on SNWA's 1989 water rights applications. The CTGR participated in the administrative hearing along with the Ely Shoshone Tribe and the Duckwater Shoshone Tribe and numerous other protestants. Incredibly, the DOI Bureaus were completely absent from the hearing. Both the Spring Valley Stipulated Agreement and DDC Stipulated Agreement were entered as exhibits for the hearing (NSE's 2011 Exhibits 41 and 80.)

On March 22, 2012, the Nevada State Engineer issued a decision on the SNWA water applications. The State Engineer provided four separate rulings: (1) Spring Valley Ruling #6164 appropriated 61,127 afa; (2) Delamar Valley Ruling #6167 appropriated 6,042 afa; (3) Dry Lake Valley Ruling #6166 appropriated 11,584 afa; (4) Cave Valley Ruling #6165 appropriated 5,235 afa.

On April 19, 2012, the Tribes appealed alongside Great Basin Water Network and the LDS Church. In December 2013, the Nevada District Court reversed the State Engineer's decision, which concluded:

a. The addition of Millard and Juab counties, Utah in the mitigation plan so far as water basins in Utah are affected by pumping water from Spring Valley Basin, Nevada;

b. A recalculation of water available for appropriation from Spring Valley assuring that the basin will reach equilibrium between discharge and recharge in a reasonable time;

c. Define standards, thresholds or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious . . . and;

d. Recalculate the appropriations from Cave Valley, Dry Lake and Delamar Valley to avoid over appropriations or conflicts down-gradient, existing water rights.

(December 10, 2013 Decision at p. 23.) A copy of the Court's decision is attached as **Exhibit 3**.

In January 2014, the SNWA and the NSE appealed that decision to the Nevada Supreme Court. On February 6, 2015, the Nevada Supreme Court dismissed those appeals finding that it lacked jurisdiction over the lower court's order. "Insofar as the district court remanded this matter for the State Engineer to resolve the substantive issue," the Nevada Supreme Court ruled, "we conclude that the district court's order of remand was not an appealable, final judgment."

The current proceeding before the State Engineer is, in part, to address the Nevada District Court's ruling that the SNWA/DOI Bureaus MMM Plans are legally flawed and must have objective standards for determining when mitigation of adverse impacts is necessary.

III. ARGUMENT

A. Proceeding without the United States DOI Bureaus violates the plain terms of the Stipulations for Withdrawal of Federal protests.

In his December 10, 2013 Decision, Judge Estes explained at length his finding that the MMM Plans contain no objective standards as to when the mitigation part of the MMM Plans go into effect. (Decision at pp. 13-18.) The Court remanded the case back to the State Engineer to: "Define standards, thresholds or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley, Dry Lake Valley, Delamar Valley." (Decision at p. 23.) Moving forward to attempt to establish "objective standards" for the MMM Plans without the DOI Bureaus violates clear provisions of the Stipulated Agreements.

First, the Spring Valley Stipulated Agreement provides: "The DOU Bureaus and SNWA shall ***jointly*** explain or defend this Stipulation and Exhibits A and B [the MMM Plans] to the State Engineer." (Exhibit 1 at p. 9) (emphasis added). The Stipulated Agreement states clearly that a defense or explanation of the Stipulation requires both SNWA and the DOI Bureaus.

Proceeding in the present hearing process before the State Engineer without the DOI Bureaus is a violation of this provision of the Stipulated Agreement.

Second, paragraphs 17 and 18 of the Spring Valley Stipulated Agreement State:

> 17. This Stipulation may be amended by mutual written agreement of the Parties.
>
> 18. This Stipulation sets forth the entire agreement of the Parties and supersedes all prior discussions, negotiations, understandings or agreements. No alteration or variation of this Stipulation shall be valid or binding unless contained in an amendment in accordance with paragraph 17.

(Exibit 1 at p. 12.) Under the plain language of the Stipulation, any amendment, alteration, or variation of the MMM Plans will require the signed agreement of the DOI Bureaus. Establishing "objective standards" for the MMM Plans is an amendment, alteration, and variation of the terms of the MMM Plans, which are exhibits to the Stipulations and incorporated therein by reference. Accordingly, proceeding in this current hearing process without the DOI Bureaus is a violation of the plain terms of the Stipulated Agreements.

Paragraph 19 of the Spring Valley Stipulated Agreement provides: "the Parties agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other application or protest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce its terms." This current proceeding is a new proceeding not originally contemplated by the parties and the Stipulations should not be offered as evidence in support of the SNWA applications. In any case, the current proceeding is not to "interpret and/or enforce" the terms of the Stipulations. Rather, the purpose of the current proceeding is establish additional standards to amend the MMM Plans to conform to Judge Estes' December 10, 2013 Decision. Thus, use of the

Stipulated Agreements in this proceeding absent the consent of the DOI Bureaus is not permitted.

B. Where the DOI Bureaus play a central role in MMM Plan Executive Committee, TRP, and BWG, it is impossible to establish objective standards for mitigation or amend the MMM Plans in any reasonable way without the participation of the DOI Bureaus.

The remand order from Judge Estes requires amendment, alterations, and variations to the MMM Plans. The DOI Bureaus are a party to the Stipulations and primary members of the implementing mechanisms. Representatives from the DOI Bureaus are members of the Executive Committees, Technical Review Panels (TRP's), and Biological Working Groups (BWG's) established by the MMM Plans to implement their provisions. SNWA and the DOI Bureaus have competing interests. One party to an agreement cannot solely determine "objective" standards. Allowing SNWA to solely determine the objective standards for when mitigation will occur under the MMM Plans would be arbitrary and capricious. Judge Estes correctly observed that "even a cursory examination of the stipulation reveals that between SNWA, the Federal agencies and existing water right holders, the goals and motivations of each party will certainly conflict." (December 10, 2013 Decision at p. 17.). No other party can adequately represent the interests of the United Stated in protecting Federal Water Rights or Federal Resources threatened by SNWA's proposed groundwater pumping. The DOI Bureaus are indeed indispensable parties in the present proceeding to meet Judge Estes' order on remand.

C. Proceeding without the United States DOI Bureaus violates the due process rights of the Tribal Protestants and is inconsistent with the role of the federal government in fulfilling its trust responsibility to the Tribes.

Although the Nevada Rules of Evidence do not strictly apply in this proceeding, Nevada law dictates that the State Engineer's hearing rules must be reasonable. *See* N.R.S. 532.120. To be fair and reasonable, the process for amending the MMM Plans to establish objective

standards must include input from the DOI Bureaus, which are parties to the Stipulations and members of the Executive Committees, Technical Review Panels (TCP's), and Biological Working Groups (BWG's) established under each MMM Plan. Proceeding to establish "objective standards" under the MMM Plans without including the DOI Bureaus is a violation of the due process rights of the Tribes, which rely on the DOI Bureaus to protect Federal Water Rights, including the unadjudicated water rights of the Goshute Tribes.

It is also undisputed that the United States DOI Bureaus have a federal trust responsibility to safeguard the interests of the Tribal Protestants and unadjudicated Indian water rights within the Area of Interest impacted by the SNWA project. There is no dispute that the Goshute Reservation lies well within the Area of Interest for the proposed SNWA groundwater applications. If the United States agencies cannot be joined in this proceeding because of sovereign immunity, then this SNWA application review process should be dismissed or stayed until such time as the DOI Bureaus participate.

Although the Rules of Evidence do not strictly apply in this proceeding, constitutional principles of due process do governing this proceeding. *See United States v. Orr Ditch Co.*, 391 F.3d 1077 (9th Cir. 2004). The practice and procedure adopted by the State Engineer cannot conflict with basic due process protected by the United States and Nevada Constitutions. *Cf.* N.R.S. 532.120 ("The State Engineer may adopt regulations, not in conflict with law, governing the practice and procedure in all contests before the Office of the State Engineer.") The Nevada Supreme Court has recognized that judicial relief is available from a manifest abuse of discretion. *Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262, 265 (Nev. 1979). The applicable standard of review of the decisions of the State Engineer presupposes the fullness and fairness of the administrative proceedings. *Id.* All interested parties must have had a full opportunity to be

heard, and the State Engineer must have clearly resolved all the crucial issues presented. When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, the Nevada Supreme Court has stated it will not hesitate to intervene. *Id.*

Reviewing the present absence of the DOI Bureaus in light of Nevada Rule of *Civil* Procedure 19 is instructive. NRCP 19 provides:

> NRCP 19 – JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION
>
> **(a) Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.
>
> **(b) Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

NRCP 19.

Determining whether a party should be joined under Rule 19 is a three-step process. *See EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005); *Glancy v. Taubman Ctrs.*,

Inc., 373 F.3d 656, 666 (6th Cir. 2004).[1] First, a court must consider whether the absent party is subject to mandatory joinder as a required party under Rule 19(a). The DOI Bureaus are arguably required to be joined in this proceeding since they voluntarily entered the Stipulations, which require that SNWA and the DOI Bureaus "jointly explain or defend" the Stipulations. *See Stipulation, SE Exhibit 41* at pg. 9. Second, if the absent party is a required party, the court must assess whether it is feasible to join that party (i.e. whether joinder of the absent party will deprive the court of the ability to hear the case). The Tribal Protestants assert that joinder of the DOI Bureaus is feasible. The Bureaus entered a Stipulation stating that they would jointly explain or defend the Stipulation to the State Engineer with SNWA. The State Engineer should provide notice of the purpose of this proceeding to the DOI Bureaus and invite their participation. It should be the responsibility of the Bureaus to determine whether to join or assert sovereign immunity as a defense to participation. Third, if the absent party cannot be joined, the court must analyze the Rule 19(b) factors to determine whether the court should continue without the absent party or dismiss the case because the absent party is indispensable. *Id.* In this case, if the United States cannot be joined, this proceeding should be dismissed because without their participation amendment of the MMM Plans to establish objective standards for mitigation is legally impermissible and practically impossible. Without the participation of the United States DOI Bureaus, the State Engineer's present proceeding cannot

[1] In most cases the defendant will initiate the compulsory joinder analysis by motion. See FED. R. CIV. P. 12(b)(7) (allowing a party to move to dismiss for "failure to join a party under Rule 19"). The court, however, may raise the issue itself *sua sponte* ("of its own accord"). *Glancy*, 373 F.3d at 676; *see Citizens Against Casino Gambling in Erie Cnty. v. Kempthorne*, 471 F. Supp. 2d 295, 312 (W.D.N.Y. 2007) ("[T]he issue of indispensability . . . is one that courts have an independent duty to consider *sua sponte*, if there is reason to believe dismissal on such grounds may be warranted."). 47. *See Glancy*, 373 F.3d at 66.

accomplish the purpose of the remand order from Judge Estes. *Cf. Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 879 (9th Cir. 2004).

A central part of the Tribal Protestants argument in this motion is that Federal Water Rights and Federal Resources under the MMM Plans cannot be adequately protected without the direct participation of the United States DOI Bureaus. In their absence, who is representing their interests? SNWA does not represent those interests. And it is not the role of Tribal Protestants to protect those interests. Finding otherwise would turn the federal trust responsibility on its head and would result in the unprecedented scenario of forcing Indian tribes to attempt to protect Federal Water Rights and unadjudicated tribal water rights in a State forum.

The federal statute known as the McCarran Amendment, 43 U.S.C. § 666[2], has been interpreted to allow the United States to be joined as a party in a State water adjudication proceeding involving unadjudicated Indian water rights. *See Colorado River Water Conservation District v. United States*, 424 U.S. 800, 811-12 (1976). The joinder of the United States DOI Bureaus is necessary for a reasonable and fair proceeding to establish objective standards under the MMM Plans as ordered by Judge Estes.

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[2] **43 U.S.C. § 666 (a) Joinder of United States as defendant**

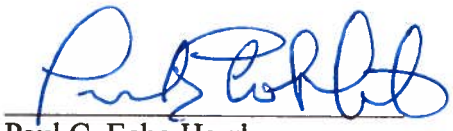
Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

IV. CONCLUSION

For the foregoing reasons, the Tribal Protestants assert that this proceeding should be dismissed for failure to join the United States DOI Bureaus. In the alternative, the State Engineer should stay the proceeding and invite the DOI Bureaus to participate.

DATED this 13th day of October 2016.

ECHO HAWK LAW OFFICE



Paul C. Echo Hawk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO DISMISS FOR FAILURE TO JOINT UNITED STATES DEPARTMENT OF INTERIOR BUREAUS was served on the following counsel of record by depositing the same for mailing, at Pocatello, Idaho, with the United States Postal Service and addressed to the following:

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DATED this 13th day of October 2016.

For ECHO HAWK LAW OFFICE

EXHIBIT 1

STIPULATION FOR WITHDRAWAL OF PROTESTS

This Stipulation is made and entered into between the Southern Nevada Water Authority (SNWA) and the United States Department of the Interior on behalf of the Bureau of Indian Affairs, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service (collectively the "DOI Bureaus"). Collectively, SNWA and each of the DOI Bureaus are referred to as the "Parties."

RECITALS

A. In October 1989, the Las Vegas Valley Water District (SNWA's predecessor-in-interest) filed Applications 54003 through 54021, inclusive, (hereinafter referred to as the "SNWA Applications") for a combined 126 cfs of groundwater withdrawals in the Spring Valley Hydrographic Basin ("Spring Valley HB"). SNWA intends to pump up to 91,224 acre-feet of groundwater annually from the Spring Valley HB for municipal purposes with concurrent monitoring, management, and mitigation as specified in Exhibits A and B. In the future, SNWA may seek to change the points of diversion within the Spring Valley HB for any quantities of groundwater permitted pursuant to the SNWA Applications.

B. The DOI Bureaus filed timely protests to the granting of the SNWA Applications pursuant to the DOI Bureaus' responsibilities to protect their state and federal water rights ("Federal Water Rights") and other water-dependent resources ("Federal Resources") of the DOI Bureaus in the Area of Interest (depicted in Figure 1). The DOI Bureaus are required by law to manage, protect, and preserve all Federal Water Rights and Federal Resources that fall under their jurisdiction. A number of these Federal Water Rights and Federal Resources occur within the Area of Interest. As of the date of this Stipulation, those Federal Water Rights that are based upon the application of federal law have not been quantified pursuant to an adjudication that complies with the requirements

of the McCarren Amendment, 43 U.S.C. § 666. SNWA expressly reserves the right to contest any and all claims of the DOI Bureaus to such Federal Water Rights as are based upon the application of federal law in any proceeding that conforms to the requirements of the McCarren Amendment, 43 U.S.C. § 666.

C. The DOI Bureaus are concerned that the proposed groundwater withdrawals from the Spring Valley HB may injure Federal Water Rights and and/or affect Federal Resources, including but not limited to those associated with the refugia located at the Shoshone Ponds, or may affect Federal Resources within the boundaries of Great Basin National Park and are desirous of working in a cooperative manner with the SNWA to protect these Federal Water Rights and Federal Resources.

D. The Parties acknowledge that Nevada Water Law provides pursuant to NRS 534.110(4) that "[i]t is a condition of each appropriation of groundwater acquired under this chapter [534] that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion." Further, pursuant to NRS 534.110(5), Nevada Water Law "does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing appropriations can be satisfied under such express conditions." It is the intent of the Parties that this Stipulation provides the initial "express conditions" to allow development of the SNWA Applications to proceed; however, such future conditions may be adjusted based on implementation of the monitoring, management, and mitigation plans specified in Exhibits A and B, which are attached to this Stipulation and made a part hereof.

E. The State Engineer has set an administrative hearing on the protests of the DOI Bureaus and other protestants commencing September 11, 2006.

F. The Parties acknowledge that other entities and individuals have lodged protests to the SNWA Applications, but such additional protestants are not Parties to or in any way bound or prejudiced by this Stipulation. Further, these protestants may enter into stipulations with SNWA concerning the SNWA Applications. Such stipulations shall not require the participation of the DOI Bureaus nor modify in any way the intent or content of this Stipulation, nor shall the DOI Bureaus be bound or prejudiced by such stipulations.

G. The common goals of the Parties are 1) manage the development of groundwater by SNWA in the Spring Valley HB without causing injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources in the Area of Interest, 2) accurately characterize the groundwater gradient from Spring Valley HB to Snake Valley HB via Hamlin Valley, and 3) to avoid any effect on Federal Resources located within the boundaries of Great Basin National Park from groundwater withdrawal by SNWA in the Spring Valley HB. The Parties agree that the preferred conceptual approach for protecting Federal Water Rights from injury and Federal Resources from unreasonable adverse effects within the Area of Interest and for avoiding any effect on Federal Resources located within the boundaries of Great Basin National Park that may be caused by groundwater withdrawals by SNWA in the Spring Valley HB is through the development of such groundwater in conjunction with the implementation of the monitoring, management, and mitigation plans described in Exhibits A and B. The effects of groundwater withdrawals pursuant to the development of any or all of the SNWA Applications and any future changes in points of diversion and/or rates of

withdrawal need to be properly monitored and managed to avoid any injury to Federal Water Rights and unreasonable adverse effects to Federal Resources within the Area of Interest and any effect on Federal Resources located within the boundaries of Great Basin National Park. There is a need to better understand the response of the aquifers and associated discharge points, such as artesian wells, springs, streams, wetlands, and playas, to pumping stresses from development of permitted quantities of groundwater in accordance with the monitoring, management, and mitigation plans set forth in Exhibits A and B to this Stipulation. The Parties have determined that it is in their best interests to cooperate in the collection and analysis of additional hydrologic, hydrogeologic, and water chemistry information. The Parties shall cooperate in the development of a regional groundwater-flow numerical model, for assessing the effects of groundwater withdrawals by SNWA in the Spring Valley HB.

H. The common goals of the Parties are 1) to manage the development of groundwater by SNWA in the Spring Valley HB in order to avoid unreasonable adverse effects to wetlands, wet meadow complexes, springs, streams, and riparian and phreatophytic communities (hereafter referred to as Water-dependent Ecosystems) and maintain the biological integrity and ecological health of the Area of Interest over the long term, and 2) to avoid any effects to Water-dependent Ecosystems within the boundaries of Great Basin National Park. The Parties agree that the preferred conceptual approach is development of groundwater by SNWA in conjunction with the implementation of the monitoring, management, and mitigation plans described in Exhibits A and B to this Stipulation. The Parties further agree that there is a need to better understand: 1) the response of aquifers and associated discharge areas, such as artesian wells, springs, streams, wetlands, playas, and riparian and phreatophytic communities to pumping

stresses, and 2) the response of aquatic and terrestrial organisms to changes in water-dependent habitats caused by groundwater withdrawals by SNWA in the Spring Valley HB. The Parties have determined that it is in their best interests to cooperate in data collection and analysis related to groundwater levels and the long-term maintenance of Water-dependent Ecosystems within the Area of Interest.

I. The common goal of the Parties is to manage the development of groundwater by SNWA in the Spring Valley HB to avoid an unreasonable degradation of the scenic values of, and visibility from Great Basin National Park due to a potential increase in airborne particulates and loss of surface vegetation which may result from groundwater withdrawals by SNWA in the Spring Valley HB. The Parties agree that the preferred conceptual approach for protecting existing visibility from unreasonable degradation is through the implementation of appropriate monitoring, management, and mitigation activities in conjunction with SNWA's groundwater development. The purpose of this goal is to support the "significant ... scenic values" of Great Basin National Park, as recognized by Congress in establishing the park. 16 U.S.C. § 410mm(a). The NPS has interpreted this mandate in its Great Basin National Park General Management Plan to be "the ability to view broad areas of basin and range topography and distant mountains is central to interpreting the entire Great Basin region." Additionally, a goal of the Parties for SNWA's Clark/Lincoln/White Pine Counties Ground-water Development Project also includes managing the construction and operation activities related to any wells and water delivery pipelines and support structures associated with the use of water under the SNWA Applications to avoid unreasonable degradation of the scenic values of and the visibility from Great Basin National Park. Further, it is in the Parties' best interests to cooperate in the collection and analysis of additional information regarding the

relationship between the development of groundwater resources, loss of surface vegetation, drying of surface soils, increased susceptibility of land surfaces to wind erosion, and the long-term avoidance of unreasonable degradation of the scenic values of, and visibility from, Great Basin National Park.

J. The Parties desire to resolve the issues raised by the protests according to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. The DOI Bureaus hereby expressly agree to withdraw their protests to the SNWA Applications and agree that the Nevada State Engineer may rule on the SNWA Applications based upon the terms and conditions set forth herein. It is expressly understood that this Stipulation is binding only upon the Parties hereto and their successors, transferees and assignees, and shall not bind or seek to bind or prejudice any other Parties or protestants, including any Indian Tribe.

2. The Parties agree to implement the Monitoring, Management and Mitigation Plans, attached hereto "Exhibits A and B," which are expressly incorporated into this Stipulation as if set forth in full herein, if and only if the Nevada State Engineer grants any of the SNWA Applications in total or in part; however, at any future date if all of the permits issued by the Nevada State Engineer pursuant to the SNWA Applications are cancelled, then this Stipulation shall be of no further force and effect among the Parties. To facilitate the implementation of the Monitoring, Management, and Mitigation Plans, the Parties shall establish a Technical Review Panel (TRP), a Biological Working Group (BWG), and an Executive Committee. The establishment, membership, conduct,

obligations and responsibilities of the TRP, BWG, and Executive Committee shall be as set forth in Exhibits A and B of this Stipulation.

3. SNWA recognizes that the DOI Bureaus are concerned that groundwater withdrawals from the existing point of diversion for Application No. 54019 may unreasonably adversely affect Shoshone Ponds. Prior to withdrawing any quantity of water for beneficial use at this point of diversion, SNWA shall in good faith work with the TRP to evaluate reasonable alternative point(s) of diversion for any water rights permitted pursuant to Application No. 54019. If the TRP and Executive Committee unanimously recommend that any such point(s) of diversion be pursued, then SNWA will file applications with the Nevada State Engineer to change the point of diversion as recommended by the TRP and Executive Committee.

4. SNWA may seek to change the points of diversion and rates of withdrawal within the Spring Valley HB for any quantities of groundwater permitted pursuant to the SNWA Applications. Prior to filing such change applications, SNWA shall consult with the TRP and the BWG about the potential effects of any proposed changes on Federal Water Rights and Federal Resources. If the consensus of the TRP and the BWG is that the proposed change(s) will not 1) increase the risk of injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources, 2) have any effect on Federal Resources and/or Water-dependent Ecosystems located within the boundaries of Great Basin National Park, 3) have unreasonable adverse effects on the biological integrity and ecological health of Water-dependent Ecosystems in the Area of Interest, or 4) cause unreasonable degradation of scenic values of, and the existing visibility from, Great Basin National Park, then the TRP and the BWG will recommend to the Executive Committee that protests not be filed to the proposed change(s). If there is no such

consensus between the TRP and the BWG, or within the Executive Committee, then the DOI Bureaus shall be free to file such protests as they deem necessary.

5. To meet the common goal specified in Recital I above, the Parties agree to 1) assess the potential impacts of both groundwater withdrawals and construction and operation activities on the scenic values of, and visibility from, Great Basin National Park in the Environmental Impact Statement for the Clark/Lincoln/White Pine Counties Groundwater Development Project ("Groundwater Development Project"); and 2) implement appropriate monitoring, management, and mitigation actions needed to avoid unreasonable degradation of scenic resources, including maintaining visibility. The Parties agree to cooperate in good faith in the right-of-way permitting process associated with the Groundwater Development Project to produce monitoring, management, and mitigation requirements consistent with the above stated goal.

6. This Stipulation does not waive any authorities of the DOI Bureaus or the United States, including any other agency or bureau not specified in this Stipulation. Further, this Stipulation does not override or relieve the Parties from complying with applicable federal laws, including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Federal Land Policy and Management Act, and any and all rules and regulations thereunder.

7. It is the expressed intention of the Parties that by entering into this Stipulation, the DOI Bureaus, the United States, and SNWA are not waiving legal rights of any kind, except as expressly provided herein. Nor is this Stipulation intended to modify any legal standard by which Federal Water Rights, Federal Resources, and Water-dependent Ecosystems are protected.

8. The Parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

9. The Parties agree that a copy of this Stipulation shall be submitted to the Nevada State Engineer at the commencement of the administrative proceedings scheduled to begin on September 11, 2006. At that time, the Parties shall request on the record at the beginning of the scheduled proceeding that the State Engineer include this Stipulation and Exhibits A and B as part of the permit terms and conditions in the event that he grants any of the SNWA Applications in total or in part. Following the submission of this Stipulation and Exhibits A and B to the State Engineer, then the DOI Bureaus, at their option, may attend the hearing, but shall not present a case, witnesses, exhibits, or statements, nor assist any other party or protestant in presenting a case, witnesses, exhibits or statements, except as expressly provided herein. SNWA agrees that the DOI Bureaus may, without objection, introduce the exhibits identified in Attachment 1 to this Stipulation into evidence. The DOI Bureaus and SNWA shall jointly explain or defend this Stipulation and Exhibits A and B to the State Engineer. Furthermore, the National Park Service, during the public comment period for the hearing described above in Recital E, may have David Prudic of the U.S. Geological Survey comment for the record regarding the purpose, methodologies, and conclusions of a U.S.G.S. report entitled "Characterization of Surface-Water Resources in the Great Basin National Park Area and Their Susceptibility to Ground-Water Withdrawals in Adjacent Valleys, White Pine County, Nevada" (Scientific Investigations Report 2006-5099) and any testimony that was presented regarding said report during the hearing.

10. SNWA shall submit a copy of this Stipulation and Exhibits A and B to the Bureau of Land Management and request that it be included in any Environmental Impact Statement prepared for the "Clark/Lincoln/White Pine Counties Groundwater Development Project", or any other project related to the development of the SNWA Applications.

11. Notices. If notice is required to be sent by the Parties, the addresses are as follows:

If to DOI Bureaus:

Regional Director
Western Regional Office
Bureau of Indian Affairs
400 North 5th Street
Phoenix, AZ 85004

State Director
Nevada State Office
Bureau of Land Management
1340 Financial Blvd.
Reno, NV 89502

Field Supervisor
Nevada Field Office
Fish and Wildlife Service
1340 Financial Blvd., #234
Reno, NV 89502

Branch Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

If to SNWA:

General Manager
Southern Nevada Water Authority
1900 E. Flamingo Road
Las Vegas, NV 89153

12. Any Party hereto may transfer or assign its interest, if any, in the water rights here involved. Any and all transferees and assignees shall be bound by the terms and conditions of this Stipulation. As a condition to any such transfer or assignment, the

transferee and/or assignee shall execute a stipulation expressly stating it is bound to all of the terms and conditions of this Stipulation.

13. This Stipulation shall be governed in accordance with the laws of the State of Nevada to the extent not inconsistent with federal law.

14. Copies of all correspondence between and data gathered by the Parties pertinent to the SNWA Applications and the Area of Interest shall be submitted to the Nevada State Engineer. It is the intentions of the Parties hereto that the Nevada State Engineer shall be kept informed of all activities in the same fashion as are the Parties hereto; however, the Executive Committee, in consultation with the Nevada State Engineer, may specify the types of data and documents that shall be submitted to the Nevada State Engineer.

15. By entering into this Stipulation, the DOI Bureaus do not become a party to any proceeding other than the protest proceeding referenced above or waive its immunity from suit or consent to or acknowledge the jurisdiction of any court or tribunal. Nothing in the Stipulation shall affect any federal reserved water rights of the DOI Bureaus or the United States on behalf of any Indian Tribe and the DOI Bureaus by entering into this Stipulation do not waive or prejudice any such rights. The DOI Bureaus reserve all legal rights, of any kind, they possess pursuant to or derived from Executive Orders, acts of Congress, judicial decisions, or regulations promulgated pursuant thereto. The Parties do not waive their rights to seek relief in any appropriate forum not expressly prohibited by this Stipulation.

16. Any commitment of funding by the DOI Bureaus or the SNWA in this Stipulation, including specifically any monitoring, management, and mitigation actions provided for in Exhibits A and B is subject to appropriations by Congress or the governing body of the SNWA as appropriate.

17. This Stipulation may be amended by mutual written agreement of the Parties.

18. This Stipulation sets forth the entire agreement of the Parties and supercedes all prior discussions, negotiations, understandings or agreements. No alteration of variation of this Stipulation shall be valid or binding unless contained in an amendment in accordance with paragraph 17.

19. This Stipulation is entered into for the purpose of resolving a disputed claim and establishing the monitoring, management, and mitigation plans contained in Exhibits A and B. Except as expressly provided herein, the Parties agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other application or protest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce its terms. Further, the Parties agree that neither the Stipulation nor any of its terms shall be used to establish precedent with respect to any other application or protest in any water rights adjudication or water rights permitting proceeding, including but not limited to any hearing regarding the SNWA Applications in the Snake Valley HB, before the Nevada State Engineer or in any other administrative or judicial proceeding.

20. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, officers, employees, personal representatives, successors, transferees and assigns.

21. Each Party agrees to bear its own costs and attorney fees.

22. This Stipulation shall become effective as between the Parties upon all Parties signing this Stipulation. The Parties may execute this Stipulation in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original as against any Party who has signed it.

23. Other entities may become Parties to this Stipulation by mutual assent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates written below.

Date: 9/8/06

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

By Catherine Wilson

Acting Regional Director

Title: _____

Date: SEP 0 8 2006

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Land Management

By Ron Wenker

Title: State Director

Date: 9-8-2006

UNITED STATES DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

By _____

Title: Deputy Manager, CWO

Date: 9/8/06

UNITED STATES DEPARTMENT OF THE INTERIOR

National Park Service

By Jonathan B. Jarvis

Title: Regional Director

Date: 9-8-2006

SOUTHERN NEVADA WATER AUTHORITY

By P Murray

Title: General Manager

ATTEST:

John J. Entsminger

Deputy General Counsel

Attachment 1- Exhibits Offered into Evidence by the DOI Bureaus in the Matter of Protested Applications 54003-54021, Before the State Engineer of the State of Nevada, September 11-29, 2006

NPS-2501 Written report for Tod Williams, Chief of Resources Management, Great Basin National Park (*This Exhibit is submitted without Attachments 1, 2, and 3)*

FWS-2035 Hershler, R. 1998. A systematic review of the Hydrobiid snails (Gastropoda: Rissooidea) of the Great Basin, western United States. Part I. Genus *Pyrgulopsis*. The Veliger 41, pages 1-3, 11-14, 56-57, 99-132.

FWS-2036 Hershler, R. and D.W. Sada. 2002. Biogeography of Great Basin aquatic snails of the Genus *Pyrgulopsis*. Pages 255-276 *in* R. Hershler, D.B. Madsen, and D.R. Curvey, eds. Great Basin Aquatic Systems History. Smithsonian Contributions to the Earth Sciences, Number 33.

FWS-2049 *Attachment 2:* Bailey, C., K. W. Wilson and M. E. Andersen. 2005. Conservation Agreement and Strategy for Least Chub (*Iotichthys phlegethontis*) in the State of Utah. Utah Division of Wildlife Resources Pub No. 05-24.

FWS-2049 *Attachment 3:* Bailey, C., K. W. Wilson and M. E. Andersen. 2006. Conservation Agreement and Strategy for Columbia Spotted Frog (*Rana luteiventris*) in the State of Utah. Utah Division of Wildlife Resources Pub No. 06-01.

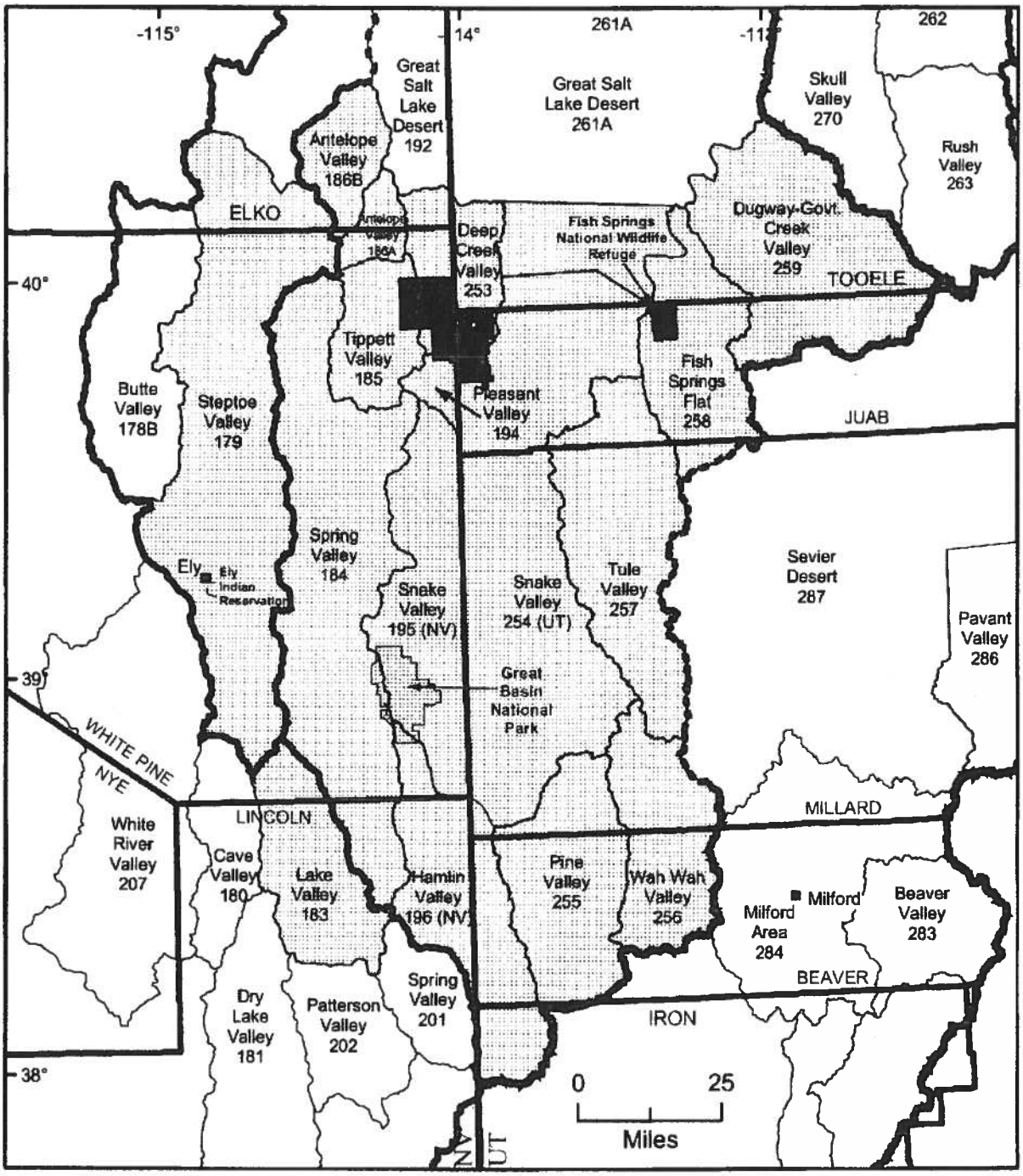
FWS-2060 Sage Grouse Conservation Team. 2004. Greater Sage-Grouse Conservation Plan for Nevada and Eastern California. First Edition. Prepared for Nevada Governor Kenny C. Guinn. Nevada. Title page, table of contents, Executive Summary, acknowledgements, Pages 1-108, Appendix Q- White Pine County Sage-Grouse Conservation Plan, Appendix R- Lincoln County Sage-Grouse Conservation Plan.

FWS-2063 Mr. Shawn Goodchild's factual witness report entitled "Witness Report: Pahrump poolfish and Shoshone Ponds."

FWS-2086 Mr. Shawn Goodchild's factual witness report entitled "Witness Report: Relict dace and Shoshone Ponds."

FWS-2106 Skudlarek, E., ed. 2006. Nevada wetlands priority conservation plan, technical review draft. Nevada Natural Heritage Program, Department of Conservation and Natural Resources, Title Page and pages 1-11, 1-20, 1-22, 1-25, 3-3, 3-7, 3-8, 3-9, 4-26, 4-31, 4-32, 4-34, 4-35.

FWS-2111 Bat Field Survey Reports at Shoshone Ponds, 1997 and 2003, Nevada Division of Wildlife.



Flow systems modified from Harrill and Prudic (1998).

Base modified from USGS digital data, and other sources.

EXPLANATION

- Boundary of major flow system --Dashed where uncertain
- Hydrographic Areas
- County Boundaries
- Area of Interest (Upper Great Salt Lake Desert Flow System and vicinity)

N

Figure 1.—Map showing the location of the Area of Interest.

EXHIBIT A

HYDROLOGIC MONITORING, MANAGEMENT AND MITIGATION PLAN FOR DEVELOPMENT OF GROUNDWATER IN THE SPRING VALLEY HYDROGRAPHIC BASIN PURSUANT TO APPLICATION NOS. 54003 THROUGH 54021 BY THE SOUTHERN NEVADA WATER AUTHORITY

1. Introduction

This hydrologic monitoring, management and mitigation plan (Plan) is a component of a Stipulation between the Southern Nevada Water Authority (hereinafter referred to as "SNWA") and the U.S. Department of the Interior bureaus, including the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service (hereinafter referred to as the "DOI Bureaus"). Collectively, SNWA and each of the DOI Bureaus are hereinafter referred to as the "Parties."

This Plan describes the Parties' obligations regarding the development, monitoring, management, and mitigation related to SNWA's applications 54003 through 54021 ("SNWA Applications") to withdraw groundwater from points of diversion in the Spring Valley Hydrographic Basin ("Spring Valley HB"). The Plan consists of three principal components:

Monitoring Requirements - including, but not limited to monitoring wells, spring flow measurements, water chemistry analyses, quality control procedures, and reporting requirements; and

Management Requirements – including, but not limited to the creation of a Technical Review Panel ("TRP") to review information collected under this Plan and advise the Executive Committee (a group consisting of one management-level person from each Party, as described below in Management Requirements), the use of an agreed-upon regional groundwater flow system numerical model(s) to predict effects of groundwater withdrawals by SNWA in the Spring Valley HB, and the establishment of a consensus-based decision-making process; and

Mitigation Requirements – including, but not limited to the modification, relocation or reduction in points of diversion and/or rates and quantities of groundwater withdrawals or the augmentation of Federal Water Rights and/or Federal Resources as well as measures designed and calculated to rehabilitate, repair or replace any and all Federal Water Rights and Resources if necessary to achieve the goals set forth in Recital G of the Stipulation.

A. *Common Goals*

The common goals of the Parties are 1) manage the development of groundwater by SNWA in the Spring Valley HB without causing injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources in the Area of Interest as defined in Recital B of the

Stipulation that this Exhibit A is attached to and incorporated therein, 2) accurately characterize the groundwater gradient from Spring Valley HB to Snake Valley HB via Hamlin Valley, and 3) to avoid any effect on Federal Resources within the boundaries of Great Basin National Park from groundwater withdrawals by SNWA in the Spring Valley HB. The Parties, through the TRP and BWG (as described in Exhibit B that is attached to and incorporated in the Stipulation), shall collaborate on data collection and technical analysis and shall rely on the best scientific information available in making determinations and recommendations required by the Plan.

2. Monitoring Requirements

A. General

The Parties agree to cooperatively implement a monitoring plan sufficient to collect and analyze data to assess the effects, if any, of SNWA's proposed groundwater withdrawals in the Spring Valley HB on Federal Water Rights and Federal Resources. The monitoring network shall be comprised of SNWA exploratory wells, SNWA production wells, existing monitoring wells selected by the TRP, new monitoring wells, the springs selected by the TRP and the BWG listed in Table 1, and certain selected stream discharge sites. Some of the wells within the monitoring network shall be designed and constructed to detect any potential change in the groundwater gradient from Spring Valley HB to Snake Valley HB via Hamlin Valley HB. Other wells in the monitoring network shall be located throughout Spring Valley to provide early warning of the spread of drawdown toward Federal Water Rights and Federal Resources as well as data for future groundwater model calibration. Shallow piezometers and wells shall be used to evaluate the effects of groundwater withdrawals near discharge areas that are within areas the Parties are seeking to protect and preserve.

The cost of the monitoring plan shall be borne primarily by SNWA. The DOI Bureaus shall provide staffing to the TRP and shall seek funding to contribute to monitoring efforts. Except as otherwise provided in this Plan, each DOI Bureau is responsible for monitoring its own Federal Water Rights and Federal Resources, and for sharing this information with the other Parties within 90 days of its collection.

Any requirement of SNWA to continuously monitor wells, piezometers, and surface water sites pursuant to the Plan shall require SNWA to install all equipment necessary to continuously record discharge and/or water levels at all monitoring sites and shall, unless prevented by circumstances beyond its control, ensure that all such discharge and/or water level data is recorded on a continuous basis.

B. Exploratory and Production Well Monitoring

SNWA shall record discharge and water levels in all SNWA production wells on a continuous basis.

SNWA shall record water levels in all SNWA exploratory wells at least quarterly. Following the beginning of the groundwater withdrawals pursuant to any permits issued for the SNWA

Applications, the TRP shall select a representative number of exploratory wells for which SNWA shall thereafter continuously record water levels.

C. Existing Monitoring Wells

SNWA shall monitor groundwater levels quarterly in 10 representative monitoring wells and continuously monitor groundwater levels in 15 representative monitoring wells in the Spring Valley HB and the Hamlin Valley HB. These wells shall be selected by the TRP from the wells listed in Table D.1-1 in SNWA exhibit 509 ("Water Resources Assessment for Spring Valley, June 2006"), which was submitted to the Nevada State Engineer on June 30, 2006. The wells shall include as many existing carbonate wells as is possible and the wells shall be selected to: (1) serve as monitoring points between SNWA's pumping and Federal Water Rights and Federal Resources; and (2) obtain hydrologic information throughout the Spring Valley HB in order to produce annual groundwater level contour and water-level change maps, calibrate the groundwater flow model(s), and evaluate the effects of SNWA's groundwater withdrawals.

Modification of this monitoring requirement, including any addition, subtraction or replacement of the wells initially selected by the TRP or the frequency of monitoring for these wells may be made through consensus recommendations from the TRP as set forth in Section 3 of this Plan.

D. New Monitoring Wells

The DOI Bureaus agree to expedite NEPA and other clearances, within the limits of applicable laws, to help meet the monitoring requirement of this Plan. The construction of the new monitoring wells is contingent upon accessibility and issuance of appropriate rights-of-way by various Federal and State agencies.

SNWA shall begin continuous measurement of water levels at all new monitoring wells upon their completion, contingent upon accessibility and issuance of appropriate rights-of-way by various Federal and State agencies. SNWA shall purchase and install all necessary water-level measuring equipment.

I. New Monitoring Wells located within the Interbasin Groundwater Monitoring Zone ("Zone")

The Parties agree to collect data to accurately characterize the groundwater gradient from Spring Valley HB to Snake Valley HB via Hamlin Valley. In doing so, the Parties agree to establish an Interbasin Groundwater Monitoring Zone ("Zone") having the initial boundaries as depicted on Figure A1 which is attached hereto.

SNWA, in consultation with the TRP, shall construct and equip four monitoring wells in the carbonate-rock aquifer and two monitoring wells in the basin-fill aquifer within the Zone. SNWA may substitute existing wells for the monitoring wells required to be constructed pursuant to this paragraph if agreed upon by the TRP. The Parties, through the TRP, shall work together on the design and location of the wells to be constructed to monitor potential changes in the groundwater gradient in the Zone. Such wells shall be located, designed, and constructed to achieve the monitoring goals and requirements of this Plan.

SNWA shall not file any applications with the Nevada State Engineer to change the points of diversion of any permits granted pursuant to the SNWA Applications to a point of diversion within the Zone for a period of five years following the completion of the six (6) monitoring wells within the Zone or ten (10) years from the date of the execution of this Stipulation, whichever is shorter.

II. New Monitoring Wells located outside the Zone that are adjacent to SNWA Production Wells

SNWA, in consultation with the TRP, shall construct and equip two monitoring wells in conjunction with the two SNWA production wells in the Spring Valley HB proposed to be constructed closest to the boundary of the Zone, unless alternative monitoring sites are recommended by the TRP and approved by the Executive Committee. The TRP shall determine the location and aquifer in which these wells will be completed. Both these near-field monitoring wells shall have their water levels monitored continuously. To ensure baseline aquifer conditions are established, SNWA shall use its best efforts to construct, begin monitoring, and make available for sampling the two monitoring well described in this paragraph at least two years prior to any groundwater withdrawals, other than for aquifer tests and construction water, from the two SNWA production wells described in this paragraph.

III. New Monitoring Wells located outside the Zone that are in the vicinity of Shoshone Ponds

SNWA, in consultation with the TRP, shall construct and equip two monitoring wells in the vicinity of Shoshone Ponds. One of these shall be located in the basin-fill aquifer near the SNWA carbonate-rock aquifer production well that is closest to Shoshone Ponds. The other monitoring well shall be located in the carbonate-rock aquifer near the SNWA carbonate-rock aquifer production well closest to the Shoshone Ponds. The Parties, through the TRP, shall work together on the design and location of the wells to be constructed to monitor potential changes in the basin-fill and carbonate-rock aquifers near Shoshone Ponds. Such wells shall be located, designed, and constructed to achieve the monitoring goals and requirements of this Plan. SNWA shall continuously monitor the water levels in each of the wells. SNWA may substitute existing wells for the monitoring wells required to be constructed pursuant to this paragraph if agreed upon by the TRP. SNWA shall not withdraw any quantity of groundwater for beneficial use in accordance with any permit issued pursuant to SNWA Application No. 54019 for a period of three years from the completion of the last of the two monitoring wells referred to in this paragraph or four years from the issuance of the permit for the SNWA carbonate-rock aquifer production well constructed closest to the Shoshone Ponds.

IV. New Monitoring Wells located outside the Zone that are adjacent to Federal Water Rights and Federal Resources

SNWA shall install, equip, and maintain at least one shallow well or piezometer near twelve (12) of the springs listed in Table 1 in order to measure water-level changes nearby. While the TRP, in coordination with the BWG, shall determine which sites are to be monitored, and may increase or decrease the total number of sites, the following seven (7) sites should be monitored because of their location and/or the habitat or species associated with the site

unless the TRP determines other sites are better suited. The basis for the selection of any site and the total number of sites selected shall be to meet the goals and objectives of this Plan.

Number	Latitude	Longitude	Name	Township/Range/Sec
58134	38.936493	-114418228	Shoshone Ponds	12N 67E 02 SW NE
54109	38.842444	-114.366388	Swallow Spring	11N 68E 5 SE NW
R05276	38.611113	-114.429845	Deer Spring	09N 67E 26 NE SW
	39.159833	-114.352416	Turnley Spring	15N 68E 16 SW SW
	39.1075	-114.453305	Layton Spring	14N 67E 04 NW SE
R05289	39.22918	-114.543761	Unnamed	16N 66E 22 SW SW
R05294	39.204746	-114.462256	Unnamed	16N 67E 32 NE SW

Table 1 – List of Springs to be Monitored

Number	Latitude	Longitude	Name	Township/Range/Sec
R05269	38.878515	-114.495421	4WD Spring	15N 67E 30 SE NW
R05272	38.878053	-114.496272	Unnamed	15N 67E 30 SE NW
R05273	38.957224	-114.488871	Spring Creek Springs	13N 67E 30 SE SE
R05274	38.979402	-114.404312	Unnamed	13N 67E 24 SE NW
R05276	38.611113	-114.429845	Deer Spring	09N 67E 26 NE SW
R05278	39.139732	-114.496816	Unnamed	15N 67E 30 NW NW
R05279	39.195582	-114.457849	Unnamed	15N 67E 04 SE NW
R05280	39.187502	-114.464393	Unnamed	15N 67E 04 SW SW
R05281	39.181658	-114.37323	Rock Spring	15N 68E 08 SW NW
R05282	39.178682	-114.358414	Unnamed	15N 68E 08 NW SE
R05283	39.183993	-114.35807	Unnamed	15N 68E 08 NE NE
R05284	39.1852	-114.3563	Unnamed	15N 68E 08 SE NE
R05285	39.177372	-114.37053	Unnamed	15N 68E 08 NW SW
R05286	39.171858	-114.368555	Unnamed	15N 68E 17 NW NW
R05287	39.243687	-114.535882	Unnamed	16N 66E 22 NE NW
R05288	39.244052	-114.542418	Unnamed	16N 66E 22 NW NW
R05289	39.22918	-114.543761	Unnamed	16N 66E 22 SW SW
R05290	39.246442	-114.522184	Indian Spring	16N 66E 14 SW SW
R05291	39.255056	-114.430904	Unnamed	16N 67E 15 NW NW
R05292	39.203392	-114.461555	Unnamed	16N 67E 32 SE SW
R05293	39.214819	-114.45982	Unnamed	16N 67E 32 NE NW
R05294	39.204746	-114.462256	Unnamed	16N 67E 32 NE SW
R05295	39.228372	-114.38669	Unnamed	16N 67E 25 NE NW
58134	38.936493	-114418228	Shoshone Ponds	12N 67E 02 SW NE
	39.159833	-114.352416	Turnley Spring	15N 68E 16 SW SW
	39.1075	-114.453305	Layton Spring	14N 67E 04 NW SE
	39.135611	-114.473305	South Bastian Spring	15N 67E 29 NW SE
	38.801888	-114.411388	Blind Spring	11N 67E 23 NE SE
	38.842444	-114.366388	Swallow Spring	11N 68E 5 SE NW

SNWA shall continuously monitor the water level in each well or piezometer using a pressure transducer/data logger. SNWA shall use its best efforts to construct, begin monitoring, and make available for sampling the 12 shallow wells and piezometers selected by the TRP and the BWG as described in this paragraph at least two years prior to the withdrawal of any groundwater permitted by the State Engineer pursuant to the SNWA Applications for beneficial use, other than for aquifer tests and construction.

E. Constant Rate Aquifer Tests

An understanding of aquifer properties is necessary in order to make predictions regarding changes in groundwater levels and flows and facilitate the modeling of the groundwater flow systems. Furthermore, constant-rate aquifer tests are needed to help determine such aquifer properties. As such, two constant-rate aquifer tests shall be performed. The TRP shall examine the distribution of aquifer property data and determine the need for specific parameters, such as duration, depth, and monitoring points, for such tests. One constant-rate aquifer test shall be performed by pumping the SNWA basin-fill aquifer production well located closest to the boundary between the Spring Valley HB and the Hamlin Valley HB. Similarly, one constant-rate aquifer test shall be performed by pumping the SNWA carbonate production well located closest to the boundary between the Spring Valley HB and the Hamlin Valley HB. In the event that SNWA constructs a production well at the point of diversion specified in Application No. 54019, SNWA shall perform one constant-rate aquifer test pursuant to the parameters determined by the TRP.

F. Water Chemistry Sampling Program

SNWA shall collect and analyze water chemistry for the parameters set forth in Table 2 for the wells, piezometers, and surface water sites in the monitoring network. An initial sampling of 40 wells, piezometers, and surface water sites selected by the TRP from the monitoring network, excluding however all SNWA production wells, shall be conducted three times at six-month intervals pursuant to a schedule determined by the TRP, but completed by no later than five years from the date of the execution of the Stipulation, unless prevented by circumstances beyond SNWA's control. Thereafter, sampling of the 40 wells, piezometers, and surface water sites selected by the TRP shall be conducted once every five years following the start of groundwater withdrawals by SNWA. The TRP, in consultation with the BWG, may change any aspect of this water chemistry sampling program, including but not limited to the addition and/or deletion of sampling sites, the addition and/or deletion of water chemistry parameters, and an increase or decrease in sampling frequency, if deemed appropriate by the TRP. SNWA may subcontract this obligation to a third party, such as but not limited to the U.S. Geological Survey (USGS), the Desert Research Institute (DRI), etc., if approved by the TRP.

Table 2 - Water Chemistry Parameters

Field Parameters	**Major Ions**	**Isotopes**	**Metals**
Water temperature	TDS	Oxygen-18	Arsenic
Air temperature	Calcium	Deuterium	Barium
pH	Sodium	Tritium	Cadmium
Electrical conductivity	Potassium	Chlorine-36	Chromium
Dissolved oxygen	Chloride	Carbon-14	Lead
	Bromide	Carbon-13	Mercury
	Fluoride		Selenium
	Nitrate		Silver
	Phosphate		
	Sulfate		

	Carbonate alkalinity Alkalinity Silica Manganese Magnesium Aluminum Iron		

All analyses shall be conducted and reported in accordance with standard EPA listed methods.

SNWA shall make the monitoring wells available to the DOI Bureaus for additional data collection.

G. Spring and Stream Discharge Measurements

SNWA shall either directly or through funding of the USGS, DRI or another mutually agreed to third party operate and maintain a discharge monitoring site on Big Springs Creek and report such measurements over the Internet via the USGS NWIS or other appropriate publicly available website throughout the duration of this Plan.

SNWA shall either collect or fund the collection of at least two sets of synoptic-discharge measurements (a/k/a "gain/loss runs") for the Big Springs Creek surface water system from the spring orifice to Preuss Lake. These data shall be collected during the irrigation and non-irrigation seasons at least one year prior to the start of groundwater withdrawals by SNWA and again during the irrigation and non-irrigation seasons every five years following the start of groundwater withdrawals by SNWA. Through consensus, the TRP shall recommend the number of measurement sites during the discharge study. Measurements at each site shall include discharge, water temperature, and electrical conductivity.

SNWA shall work with the TRP to collect data in order to investigate the relationship between discharge at Big Springs and hydraulic head in the basin-fill and regional carbonate-rock aquifers, including but not limited to the installation, equipping, and maintenance of one or more monitoring wells located in the immediate vicinity of Big Springs.

SNWA shall either directly or through funding of the USGS, DRI, or another mutually agreed to third party continue to operate and maintain a discharge monitoring site on Cleve Creek and report such measurements over the Internet via the USGS NWIS or other appropriate website throughout the duration of this Plan.

H. Precipitation Stations

The coverage of existing precipitation stations shall be reviewed by the TRP, and, if necessary, the TRP may recommend that additional precipitation stations be established. SNWA shall fund the construction, operation, and maintenance of any such additional stations.

I. Elevation Control

SNWA shall conduct a detailed elevation survey of all production wells and monitoring sites that are used in this Plan.

J. Quality of Data

SNWA and the DOI Bureaus shall ensure that all measurement and data collection is done according to USGS established protocols, unless otherwise agreed-upon by the TRP.

K. Reporting

All data collected pursuant to this Plan shall be fully and cooperatively shared among the Parties.

Using data derived from groundwater level measurements of all production and monitoring wells used in this Plan, SNWA shall produce groundwater contour maps and water-level change maps for both the basin-fill and carbonate-rock aquifers at the end of baseline data collection, and annually thereafter at the end of each year of groundwater withdrawals by SNWA, or at a frequency agreed-upon by the TRP.

Water level and water production data shall be made available to the other Parties within 90 calendar days of collection using a shared data-repository website administered by SNWA. Water quality laboratory reports shall be made available to the other Parties within 90 calendar days of receipt using a shared data-repository website administered by SNWA.

SNWA shall report the results of all monitoring and sampling pursuant to this Plan in an annual monitoring report that shall be submitted to the TRP and the Nevada State Engineer's Office by no later than March 31 of each year that this Plan is in effect. SNWA shall submit as part of its annual report a proposed schedule of groundwater withdrawals (testing and production) for the immediately succeeding two calendar years. The DOI Bureaus may, at their option, provide comments to the Nevada State Engineer's Office on the annual report.

3. Management Requirements

A. General

Through the TRP, described below, the Parties shall collaborate on data collection and technical analysis to ensure decisions are consistent with the common goals as stated in Section 1.A. of this Exhibit A. Decisions must be based on the best scientific information

available and the Parties shall collaborate on technical data collection and analysis. The Parties shall use existing data, data collected under this Plan, and an agreed-upon regional groundwater flow system numerical model(s) as tools to evaluate the effects of groundwater development on Federal Water Rights and Federal Resources in the Area of Interest. The Parties agree that a model(s) shall be used to inform the Executive Committee about the potential for effects of groundwater withdrawals to spread through the basin-fill and the regional carbonate-rock aquifers, as well as the effectiveness of the potential mitigation actions.

B. Executive Committee

The Parties shall create and convene an Executive Committee, to include one manager from each of the Parties, within 30 days of a State Engineer Office decision granting any of the SNWA Applications in total or in part. The purpose of the Executive Committee is to: 1) review agreed-upon TRP recommendations for actions to reduce or eliminate an injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources in the Area of Interest and/or any effect on Federal Resources within the boundaries of Great Basin National Park from groundwater withdrawals by SNWA in the Spring Valley HB and 2) negotiate a resolution in the event that the TRP cannot reach consensus on monitoring requirements/research needs, technical aspects of study design, interpretation of results, and/or appropriate actions to minimize or mitigate unreasonable adverse effects or to avoid any effects on Federal Resources located within the boundaries of Great Basin National Park from groundwater withdrawals by SNWA in the Spring Valley HB.

The Executive Committee shall meet within 21 calendar days of being notified by the TRP of a need for action. The Executive Committee shall strive for consensus in all decisions and work to begin implementation of TRP recommendations or other mutually acceptable course(s) of action as negotiated by the Executive Committee within 60 calendar days of TRP notification. If any Party disagrees on recommended courses of action, then the Executive Committee shall refer the issue to a neutral third party, as described below in Section E.II.

C. Technical Review Panel (TRP)

The Parties shall create and convene a Technical Review Panel within 30 days of a State Engineer Office decision granting any of the SNWA Applications in total or in part, or at such earlier date as mutually agreed-upon by the Parties. The purpose of the TRP is to carry out the functions required of it under this Plan, including reviewing, analyzing, and interpreting information collected under this Plan, evaluating the results of the model(s), and making recommendations to the Executive Committee. Membership shall include one representative from SNWA and one representative from each of the DOI Bureaus. Each Party at its sole discretion may invite such additional staff or consultants to attend, as each deems necessary. To assist the TRP, the Parties mutually agree to invite a representative of the State Engineer's Office to participate in the TRP. Furthermore, the Parties may mutually agree to invite other non-Party entities to assist and participate in the TRP as deemed necessary or appropriate.

The TRP shall meet annually through the first ten years of SNWA production pumping in the Spring Valley HB and then as often as mutually agreed upon by the Parties.

The TRP shall:

1. strive for consensus in all determinations and recommendations;
2. disseminate data and provide a scientific and technical forum to evaluate data and analyses, including hydrologic parameters of a model(s) and model(s) results;
3. review data collection and quality assurance procedures;
4. identify needs for additional data collection and scientific investigations;
5. review and consider any and all data and analysis resulting from the ongoing USGS "Basin and Range Carbonate Aquifer System Study";
6. consider from time to time whether the modification of the initial boundaries of the Interbasin Groundwater Monitoring Zone is warranted as new data become available;
7. review SNWA proposed or ongoing pumping schedules (testing and production);
8. provide a forum for discussion to help develop agreement for prescribed courses of action on technical issues and make recommendations to the Executive Committee; and,
9. form recommendations about monitoring, modeling, groundwater management, and mitigation, including but not limited to the addition, deletion, or replacement of monitoring wells, the frequency of data collection, and the types of monitoring, sampling, and testing to be conducted; and,
10. other responsibilities as delegated by the Executive Committee.

D. Regional Groundwater Flow Numerical Modeling

The Parties agree that regional groundwater flow system numerical modeling is a useful tool in the prudent management of basin-fill and regional carbonate-rock aquifer systems. Therefore, the Parties agree that this Plan must include a well calibrated regional groundwater flow system numerical model(s). The Parties acknowledge that model results must be qualified based on a comparison of the accuracy of the model(s) and the capability of the model(s) to predict actual conditions. As the effects of SNWA's groundwater withdrawals in the Spring Valley HB on groundwater levels and spring flows are measured, refinement of the model(s) shall be necessary to achieve better agreement with the actual field measurements. Furthermore, the collection of additional hydrologic, geologic, geophysical, and/or geochemical data may indicate that modification of the conceptual and numerical model(s) of the regional groundwater flow system is warranted.

The Parties shall share all geologic, geophysical, hydrologic, and geochemical information collected in the Spring Valley HB and adjacent hydrographic basins. This data shall be evaluated by the TRP for inclusion into the regional groundwater flow system numerical model(s).

SNWA shall maintain, update, and operate an agreed-upon regional groundwater flow system numerical model(s), in cooperation with the TRP. SNWA may subcontract this obligation to a third party, such as but not limited to the USGS or DRI, if approved by the TRP. The cost of all modeling described herein shall be borne by SNWA.

SNWA shall provide model output in cooperation with the TRP for evaluation by the TRP in the form of input files, output files, drawdown maps, tabular data summaries, and plots of simulated water levels through time for the aquifer system, unless otherwise recommended by the TRP.

E. Criteria Initiating TRP Consultation and Management or Mitigation Actions

The Parties recognize that the establishment of accurate early-warning indicators to meet the goals stated in Section 1.A. of this Exhibit A is difficult until adequate monitoring data are developed during a period of groundwater withdrawals by SNWA and the model is calibrated to actual pumping effects. The TRP shall be responsible for determining the sufficiency of monitoring data and recommending changes to established specific early warning indicators, based on actual hydrologic effects of groundwater withdrawals, to the Executive Committee. The TRP shall review water-level responses and model results to determine if potential injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and if any effect on Federal Resources within the boundaries of Great Basin National Park are occurring or are predicted to occur due to ongoing or proposed groundwater withdrawals by SNWA in the Spring Valley HB. Criteria for the initiation of consultation, management, and/or mitigation actions are as follows:

I. TRP Consultation Initiation Criteria

Any Party may initiate a TRP consultation when that Party is concerned that there may be 1) an injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources, and 2) any effect on Federal Resources within the boundaries of Great Basin National Park as the result of:

a) a change in surface water and/or groundwater level and/or discharge measured by one or more of the monitoring wells included in this Plan, or
b) a change in groundwater level predicted by the agreed-upon regional groundwater flow system model(s),

that is due to groundwater withdrawals by SNWA in the Spring Valley HB.

Any Party may also initiate a TRP consultation when that Party is concerned about a possible change in a regional groundwater gradient as the result of:

c) change in surface water and/or groundwater level and/or discharge measured by one or more of the monitoring wells included in this Plan, or
d) a change in groundwater level predicted by the agreed-upon regional groundwater flow system model(s),

that is due to groundwater withdrawals by SNWA in the Spring Valley HB.

If TRP consultation is initiated pursuant to Section E. I.a) or c) above, the following TRP consultation process shall apply:

1) Parties shall notify each other and the TRP shall confer by teleconference or in person within 30 calendar days;

2) The TRP shall evaluate the water level and/or discharge measurement data. The TRP objective for the consultation is to determine if the change in water level and/or discharge may be due to groundwater withdrawals by SNWA in the Spring Valley HB.

i. The TRP shall compare the observed field data with model predictions to evaluate how well the model predictions match observed drawdown and shall discuss potential changes to the model(s) as agreed to by consensus of the TRP.

ii. Based on observed data, the model(s) shall be recalibrated and sensitivity analysis applied if necessary, and the model(s) shall be rerun to evaluate the effects of groundwater withdrawals by SNWA in the Spring Valley HB on Federal Water Rights and Federal Resources and on regional groundwater gradients.

iii. If the TRP agrees the measured change in water level and/or discharge is not attributable to groundwater withdrawals by SNWA in the Spring Valley HB, no further management actions shall be taken at that time. The TRP may conduct further investigation into the cause(s) of such changes.

iv. If any member of the TRP is concerned that the measured change in water level and/or discharge is attributable to groundwater withdrawals by SNWA in Spring Valley HB and is causing or has the potential to cause injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or an effect on Federal Resources within the boundaries of Great Basin National Park, then the TRP shall work to develop consensus-based courses of action to address the concern and/or that manage or mitigate any injury or unreasonable adverse effect(s) or affect on Federal Resources within the boundaries of Great Basin National Park. The TRP may use the model(s) to evaluate the effects of various courses of action outlined in the Section 4 to manage or mitigate such injury, unreasonable adverse effect(s) and/or effects on Federal Resources within the boundaries of Great Basin National Park. The TRP shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section E.II.1.

v. If the water level and/or discharge measurement data indicates that there is injury or the potential for injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or effect Federal Resources within the boundaries of Great Basin National Park, and the TRP is unable to develop a consensus-based course of action, the TRP shall notify the Executive Committee, and the Parties shall proceed to Section E.II.2.

If TRP consultation is initiated pursuant to Section E.I.b) or d) above, the following TRP consultation process shall apply:

1) Parties shall notify each other and the TRP shall confer by teleconference or in person within 30 calendar days;

2) The TRP shall evaluate the modeling parameters, variances to water level changes relative to modeling predictions, the translation of modeling variances to areas of interest and variables influencing the model results. The TRP objective for the consultation is to determine if the response may be due to groundwater withdrawals by SNWA in the Spring Valley HB.

i. The TRP shall compare the observed field data with model predictions to evaluate how well the model predictions match observed drawdown and shall discuss potential changes to the model(s) as agreed to by consensus of the TRP. All Parties recognize that future modeling of predicted effects for the verification of the model(s) shall be a necessary component to determine the validity of the modeling results and any course of action.

ii. Based on observed data, the model(s) shall be recalibrated as necessary, and shall be rerun to evaluate the effects of groundwater withdrawals by SNWA in the Spring Valley HB on Federal Water Rights and Federal Resources and on regional groundwater gradients.

iii. If the TRP agrees the recalibrated model(s) does not predict a potential injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or an effect on Federal Resources within the boundaries of Great Basin National Park, no further management actions shall be taken at that time.

iv. If any member of the TRP is concerned that the recalibrated model(s) predicts a potential injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or an effect on Federal Resources within the boundaries of Great Basin National Park, then the TRP shall develop consensus-based actions to address the concern and/or that manage or mitigate those effect(s). The TRP shall also use the model(s) to evaluate the effects of different courses of action to manage or mitigate those effect(s) outlined in the Section 4. The TRP shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section E.II.1.

v. If the recalibrated model(s) predicts a potential injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or an effect on Federal Resources within the boundaries of Great Basin National Park, and the TRP is unable to develop a consensus-based course of action, the TRP shall notify the Executive Committee, and the Parties shall proceed to Section E.II.2.

II. <u>Actions to Manage or Mitigate Injury, Unreasonable Adverse Effects, and/or Effects to Federal Resources within the boundaries of Great Basin National Park</u>

1) If the TRP determines, by consensus, that a predicted or measured change in groundwater levels would result in injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or an effect on Federal Resources within the boundaries of Great Basin National Park, the Executive Committee shall consider the TRP's recommended courses of action. Upon receiving any consensus-based TRP recommendation, the Parties, through the Executive Committee (with input from the TRP as necessary), may seek a negotiated resolution of a course of action to reduce or eliminate the injury, unreasonable adverse effect, and/or effects to Federal Resources within the boundaries of Great Basin National Park, through the management of

groundwater withdrawals and/or the mitigation of the injury, unreasonable adverse effect, or effects. If the Executive Committee cannot reach consensus, any Party may refer the issue to the Nevada State Engineer or other agreed-upon third party after notifying all other Parties of its intent to refer the matter to the Nevada State Engineer or other agreed-upon third party.

2) If the TRP notifies the Executive Committee that it is unable to make a determination by consensus that a predicted or measured change in groundwater levels would result in injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or effects to Federal Resources within the boundaries of Great Basin National Park, or that the TRP is unable to obtain consensus on a recommended course of action, the Executive Committee shall attempt to negotiate a mutually acceptable course(s) of action. If that is not successful, any Party may refer the issue to the Nevada State Engineer or other agreed-upon third party after notifying all other Parties of such actions.

4. Mitigation Requirements

SNWA shall mitigate any injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or effects to Federal Resources within the boundaries of Great Basin National Park agreed upon by the Parties as determined through the process described in Section 3.E.II. above or after the Nevada State Engineer determines whether there are any such effects due to groundwater withdrawals by SNWA in the Spring Valley HB. The Parties shall take all necessary steps to ensure that mitigation actions are feasible and are timely implemented. Mitigation measures may include, but are not limited to one or more of the following:

1. Geographic redistribution of groundwater withdrawals;
2. Reduction or cessation in groundwater withdrawals;
3. Provision of consumptive water supply requirements using surface and groundwater sources;
4. Augmentation of water supply for Federal Water Rights and Federal Resources using surface and groundwater sources; and
5. Other measures as agreed to by the Parties and/or required by the State Engineer that are consistent with the Stipulation

5. Modification of the Plan

The Parties may modify this Plan by mutual written agreement.

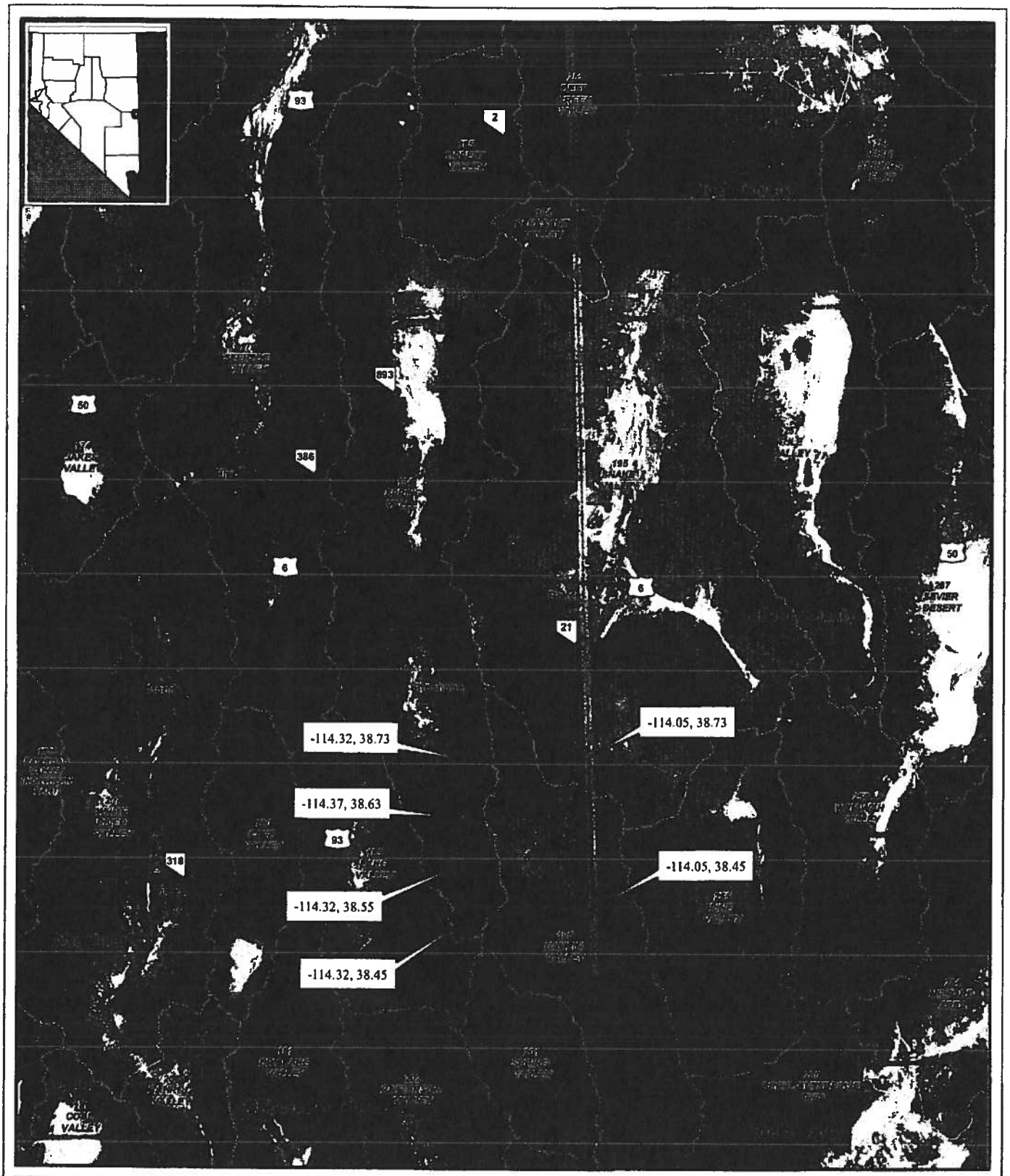


Figure A1. Interbasin Groundwater Monitoring Zone

EXHIBIT B

BIOLOGIC MONITORING, MANAGEMENT AND MITIGATION PLAN FOR DEVELOPMENT OF GROUNDWATER IN SPRING VALLEY HYDROGRAPHIC BASIN PURSUANT TO APPLICATION NOS. 54003 THROUGH 54021 BY THE SOUTHERN NEVADA WATER AUTHORITY

1. Introduction

This biologic monitoring, management, and mitigation plan (Plan) is a component of a stipulation between the Southern Nevada Water Authority (hereinafter referred to as "SNWA") and the U.S. Department of the Interior bureaus, including the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service (hereinafter referred to as the "DOI Bureaus"). Collectively, SNWA and each of the DOI Bureaus are hereinafter referred to as the "Parties".

This Plan describes the Parties' obligations regarding biologic monitoring, management, and mitigation related to SNWA's applications 54003 through 54021, inclusive, ("SNWA Applications") to withdraw groundwater from points of diversion in the Spring Valley Hydrographic Basin ("Spring Valley HB"). The Plan consists of three principal components:

Management Requirements – including, but not limited to the creation of a Biological Work Group ("BWG") and an Executive Committee to review information collected under this Plan; coordinate with the hydrology Technical Review Panel (TRP), as described in Exhibit A attached to the Stipulation and made a part thereof; determine the appropriate course of action to avoid and/or mitigate any effects to Water-dependent Ecosystems, as defined in Recital H of the Stipulation, within the boundaries of Great Basin National Park and unreasonable adverse effects to Water-dependent Ecosystems, also as defined in Recital H of the Stipulation, within the Area of Interest, as defined in Recital B to the Stipulation, resulting from SNWA's withdrawal of groundwater from the Spring Valley HB; and the establishment of a consensus-based decision-making process.

Monitoring Requirements - including, but not limited to assembling known (baseline) information on biological resources; identifying baseline data gaps and implementing supplemental baseline data collection; identifying research needs and implementing studies to determine potential indicator species and appropriate parameters to monitor for early warning of unreasonable adverse effects and of any effect within the boundaries of Great Basin National Park; developing and implementing a plan that monitors the response of Water-dependent Ecosystems in the Area of Interest to hydrological changes resulting from SNWA's withdrawal of groundwater from the Spring Valley HB; identifying research needs related to understanding this response; and monitoring the success of mitigation actions; and

Mitigation Requirements – including, but not limited to the modification, relocation or reduction in points of diversion and/or rates and quantities of groundwater withdrawals to

achieve the goals set forth in Recital H of the Stipulation.[1] Mitigation may also include the restoration of degraded Water-dependent Ecosystems adversely affected by groundwater withdrawals, grazing, or other factors, and/or establishment of new habitat in a mutually agreed upon location that is comparable in ecological function to that which was affected or lost.

A. Common Goal

The common goals of the Parties are to 1) manage the development of groundwater by SNWA in the Spring Valley HB in order to avoid unreasonable adverse effects caused by such groundwater development to Water-dependent Ecosystems and maintain and/or enhance the baseline biological integrity and ecological health of the Area of Interest over the long term and 2) avoid any effects to Water-dependent Ecosystems within the boundaries of Great Basin National Park from groundwater withdrawals by SNWA in the Spring Valley HB. The terms "unreasonable adverse effect(s) to Water-dependent Ecosystems within the Area of Interest" and "any effect(s) to Water-dependent Ecosystems within the boundaries of Great Basin National Park" are hereinafter collectively referred to as "Water-dependent Ecosystem Effects" or "a Water-dependent Ecosystem Effect" in this Exhibit B. The Parties agree that the preferred conceptual approach is the development of groundwater by SNWA in conjunction with the implementation of the monitoring, management, and mitigation plans described in Exhibits A and B to this Stipulation. The Parties further agree that there is a need to better understand: 1) the response of aquifers and associated discharge areas, such as artesian wells, springs, streams, wetlands, playas, riparian and phreatophytic communities to pumping stresses, and 2) the response of aquatic and terrestrial organisms to changes in Water-dependent Ecosystems due to pumping-induced groundwater declines through the preferred conceptual approach described above. The Parties have determined that it is in their best interests to cooperate in data collection and analysis related to groundwater levels and the long-term maintenance of Water-dependent Ecosystems within the Area of Interest.

Determination of what constitutes a Water-dependent Ecosystem Effect that requires an action as described in Section 4. B shall be made by the Executive Committee with recommendations from the BWG, as described below.

2. Management Requirements

A. General

Through the BWG, described below, the Parties shall collaborate on data collection and technical analysis to ensure decisions meet the common goals as defined in Section 1.A. above. Decisions must be based on the best scientific information available. The Parties shall use existing data, data collected under this Plan, and modeling and/or other management tools, to evaluate the effects of groundwater development by SNWA in the Spring Valley HB upon Water-dependent Ecosystems in the Area of Interest.

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[1] Included in Karr (1991), these terms were defined as the ability to support and maintain "a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of natural habitat of the region;" and "a biological system... can be considered healthy when its inherent potential is realized, its condition is stable, its capacity for self-repair when perturbed is preserved, and minimal external support for management is needed."

B. Executive Committee

The Parties shall create and convene an Executive Committee, to include one manager from SNWA and from each of the DOI Bureaus, within 30 days of a State Engineer Office decision granting any of the SNWA Applications in total or in part. The purpose of the Executive Committee is to: 1) review agreed-upon BWG recommendations for actions to avoid Water-dependent Ecosystem Effects from groundwater development by SNWA in the Spring Valley HB, seek a negotiated resolution of a course of action, and implement the action, and 2) negotiate a resolution in the event that the BWG cannot reach consensus as to any of the BWG's responsibilities as set forth in this Exhibit B.

The Executive Committee shall meet within 21 calendar days of being notified by the BWG of a need for action. The Executive Committee shall strive for consensus in all decisions and work to begin implementation of BWG recommendations or other mutually acceptable course(s) of action as negotiated by the Executive Committee within 60 calendar days of BWG notification. If any Party disagrees on recommended courses of action, then the Executive Committee shall refer the issue to a neutral third party, as described below in Section 4. B.

C. Biological Work Group

The Parties shall create and convene a BWG within 30 days of a State Engineer Office decision granting any of the SNWA Applications in total or in part, or at such earlier date as mutually agreed upon by the Parties. The purpose of the BWG is to carry out the management, monitoring, and mitigation requirements of the Plan. Membership in the BWG shall include one representative of SNWA and one representative of each of the DOI Bureaus; these members shall have responsibility for providing recommendations to the Executive Committee. Each Party at its sole discretion may invite such additional staff or consultants to attend as each deems necessary. To assist the BWG, the Parties shall invite a representative of the Nevada Department of Wildlife and the Utah Division of Wildlife Resources, and, upon mutual agreement of the Parties, shall invite the participation of other non-Party entities, to assist the BWG by providing technical expertise. These entities, as well as any additional staff or consultants, shall not be members of the BWG and shall not be involved in formulating final recommendations to the Executive Committee.

The BWG shall strive for consensus in all determination and recommendations. If any Party disagrees on the need for a particular study or disagrees on technical aspects of ecological monitoring/studies (e.g., study design, analyses, etc.), then the BWG shall submit the studies in question to one or more mutually acceptable, disinterested parties for scientific or technical opinion. The cost of this review shall be borne by the requesting Party or Parties. The BWG shall consider the recommendation(s) of the neutral reviewer and determine whether to adopt the recommendation(s) in full or in part. If the BWG is still unable to reach consensus on the technical aspect(s) in question, then the concern will be elevated to the Executive Committee.

If the BWG determines that a Water-dependent Ecosystem Effect is occurring or will occur as a result of SNWA's groundwater development in the Spring Valley HB, the BWG shall develop a recommended course of action and refer this to the Executive Committee, as described below in Section 4. B.

The BWG's responsibilities shall include the following:

1. Within 12 months of the Nevada State Engineer's decision granting any of the SNWA Applications, in total or in part, the BWG shall develop and recommend to the Executive Committee a monitoring plan, to include baseline condition assessment (i.e., assembling and reviewing existing baseline data and collecting additional baseline data as appropriate); collection of data at appropriate regional reference sites; species and parameters to monitor; and protocols and techniques to use (i.e., spatial analyses, ecosystem modeling, etc.). The monitoring plan will be for specified Water-dependent Ecosystems within the following area, hereafter referred to as the Initial Biologic Monitoring Area (IBMA): Spring Valley HB, northern Hamlin Valley HB north of the southern boundary of the Zone as defined in Exhibit A, and the Big Springs Creek sub-watershed in southern Snake Valley HB, as depicted on figure 2, attached to this Exhibit B.
2. oversee implementation of the monitoring plan;
3. review and recommend revisions to the Executive Committee on the monitoring plan as needed, including additional baseline data collection and/or monitoring to sites outside the IBMA but within the Area of Interest;
4. discuss values for particular parameters (e.g., *composition, diversity, density, vigor, invasive species, soil stability*, etc.) that may be of concern to the Parties and make recommendations to the Executive Committee on what constitutes a Water-dependent Ecosystem Effect in any particular circumstance;
5. identify indicators that can best predict Water-dependent Ecosystem Effects and periodically review and revise as needed;
6. review data collection (Quality Assurance/Quality Control);
7. identify and recommend to the Executive Committee data collection and scientific research needs for investigating the response of Water-dependent Ecosystems to hydrologic changes resulting from SNWA's withdrawal of groundwater from the Spring Valley HB;
8. disseminate data and provide a scientific and technical forum to evaluate data and analyses and review models and model results, as may be deemed necessary;
9. meet with the TRP at least annually or as needed to exchange information and discuss monitoring of potential impacts and courses of action;
10. review annual activity report;
11. develop criteria and make recommendations to the Executive Committee on when a course of action shall be taken to avoid Water-dependent Ecosystem Effects and on the success of such actions;
12. oversee implementation of management and mitigation actions as approved by the Executive Committee;
13. solicit the scientific or technical opinion of one or more mutually acceptable, disinterested parties if consensus cannot be reached;
14. meet at least annually through the first ten years of SNWA groundwater withdrawals in the Spring Valley HB, and then as mutually agreed upon by the Parties, to evaluate monitoring/research progress, needs, results, and mitigation, if required; and
15. other responsibilities as delegated by the Executive Committee.

3. Monitoring Requirements

A. General

SNWA, in coordination and collaboration with the BWG, shall implement the monitoring plan for the IBMA prior to SNWA's proposed groundwater production in the Spring Valley HB. Within twelve months from the date that the Nevada State Engineer issues any water rights pursuant to the SNWA Applications, the BWG shall recommend the monitoring plan for the IBMA to the Executive Committee. Notwithstanding any other provisions of this Exhibit B, if the BWG is unable to recommend a consensus-monitoring plan within this timeframe, then the BWG shall submit to the Executive Committee any alternative monitoring plans for the IBMA. If the Executive Committee cannot agree by consensus to one alternative or a combination of alternatives recommended by the BWG within 90 days, then the Parties agree that each of the alternatives submitted to the Executive Committee by the BWG shall be submitted to a mutually-agreeable third party for final selection among the submitted alternatives or a combination thereof. The alternatives selected by the third party shall be binding on the Parties. In the event that the third party does not make a final selection within twelve months of submittal, then SNWA shall select and implement a monitoring plan from among the alternatives proposed by the BWG.

The cost of the monitoring plan shall be primarily borne by SNWA. The DOI Bureaus shall provide staffing to the BWG and shall seek funding to contribute to monitoring efforts.

B. Determining Monitoring Parameters and Techniques

The monitoring plan shall be designed to determine the response of Water-dependent Ecosystems to hydrologic changes resulting from SNWA's withdrawal and export of groundwater from the Spring Valley HB. Development of the monitoring plan and subsequent modifications shall be coordinated with hydrologic monitoring by the Technical Review Panel (TRP) established in Exhibit A. The BWG shall choose species and parameters for monitoring that will be the best indicators of biologic and hydrologic change resulting from pumping. This process may require the design and implementation of research projects to determine the most appropriate early-warning indicators of Water-dependent Ecosystem Effects.

Monitoring may include both landscape-scale ecological monitoring and site-specific monitoring, as recommended by the BWG. The overall monitoring plan and any site-specific monitoring plans shall be designed to detect and track changes in Water-dependent Ecosystems resulting from SNWA's groundwater pumping in Spring Valley HB, monitor the effectiveness of mitigation measures, and differentiate the effects of other sources of ecosystem stress.

The BWG shall consider whether to include monitoring and research on the following parameters in its recommendations to the Executive Committee:

1. vegetation community extent and composition, diversity, density, structure, and/or vigor, including tracking non-native, invasive species;
2. faunal community composition, diversity, density, health (body condition, disease, parasitism, reproductive success, etc.), potentially including monitoring of the following taxonomic groups: invertebrates; migratory, wintering, and breeding birds; bats; rodents; medium and large mammals; amphibians; and/or fish;

3. forage and prey base extent and condition;
4. nesting, wintering, and migratory area extent and condition;
5. competition and predation;
6. aquatic habitat structure (water depth and velocity; substrate; spawning, nursery, and hiding places; stream cover and shading; stream diversity, i.e., pools, runs, and riffles; woody debris input; etc.)
7. soil stability, erosion, sedimentation; and
8. physical and chemical water quality parameters.

The BWG shall recommend techniques for monitoring, and shall include a spatial analysis using remote-sensing (multi-spectral or hyper-spectral image analysis) and/or high resolution aerial surveys such as Very Large Scale Aerial (VLSA) imaging, with ground-truthing and/or the collection of complementary ground data as appropriate. Collection and interpretation of these images shall be used in order to track changes in Water-dependent Ecosystems caused by groundwater withdrawals by SNWA in the Spring Valley HB. Determination of techniques to use will take into account compatibility with on-going and/or planned monitoring of the Parties or any other entity in the Area of Interest.

C. Ecological Models

As mentioned above, developing a landscape-scale ecological model is one of several potential methods that the BWG may use to evaluate the effects of SNWA groundwater development upon Water-dependent Ecosystems in the IBMA and/or Area of Interest if data collected during monitoring in comparison to baseline conditions is not sufficient to understand the effects of groundwater development by SNWA in the Spring Valley HB. The Parties agree that modeling is a useful tool in understanding the potential for such groundwater withdrawals to adversely affect Water-dependent Ecosystems in the IBMA and/or Area of Interest, informing management decisions, and evaluating the effectiveness of potential mitigation action.

If the BWG determines that ecological modeling is a necessary and appropriate tool for monitoring, SNWA shall maintain, update, and operate a BWG agreed-upon ecosystem model, in cooperation with the BWG. The cost of this work shall be borne primarily by SNWA. SNWA may subcontract this obligation to a third party, if approved by the BWG. The actual domain of the model, data input, and timeframe for model development shall be recommended by the BWG. The Parties acknowledge that such models are not static and that their accuracy would be improved by refinement and modification as additional biological data is collected and the effects of groundwater withdrawals by SNWA in the Spring Valley HB on Water-dependent Ecosystems in the IBMA and/or Area of Interest are measured.

D. Quality of Data

All data collection shall be according to established, standardized protocols, unless otherwise recommended by the BWG. All data will undergo Quality Assurance/Quality Control.

E. Reporting

All information collected or described in this plan shall be fully and cooperatively shared among the Parties. SNWA shall report the results of all activities pursuant to this Plan in an annual report that shall be submitted to the BWG by no later than March 31 of each year that this Plan is in effect.

Biological monitoring data shall be made available to the other Parties within 60 calendar days of collection using a shared data-repository website administered by SNWA. Annual reports and monitoring data that have undergone Quality Assurance/Quality Control shall be made available to the general public through the website or another mutually agreed upon manner.

4. Criteria Initiating BWG Consultation and Management or Mitigation Actions

The Parties recognize that establishing early-warning indicators to predict and avoid Water-dependent Ecosystem Effects may not be possible until sufficient monitoring data has been obtained to document the effects of such groundwater withdrawals in the Spring Valley HB, and/or an agreed-upon model is calibrated to the actual changes in Water-dependent Ecosystems caused by such ground water withdrawals. The BWG shall be responsible for evaluating the sufficiency of monitoring data and determining specific early-warning indicators, based on the responses of Water-dependent Ecosystems to changes in groundwater levels due to groundwater development by SNWA in the Spring Valley HB. Until the BWG agrees on specific indicators, the BWG shall review water-level data and landscape-scale floral and faunal responses as revealed through spectral imaging and other BWG-recommended tools (e.g., ecosystem modeling) to determine if Water-dependent Ecosystem Effects are occurring due to groundwater withdrawals by SNWA in the Spring Valley HB.

Criteria for initiation of consultation, management, and/or mitigation actions are as follows:

A. BWG Consultation Initiation Criteria

Any Party may initiate a BWG consultation if that Party is concerned that there may be a Water-dependent Ecosystem Effect as the result of:

1) a change in a measured biological parameter in a Water-dependent Ecosystem in the Area of Interest, or
2) a predicted change in a biological parameter in a Water-dependent Ecosystem in the Area of Interest

that can be ascribed to the withdrawal of groundwater pursuant to one or more of the permitted SNWA Applications in the Spring Valley HB.

If BWG consultation is initiated pursuant to Section 4. A. 1) above, then the following BWG consultation process shall apply:

a) Parties shall notify each other and the BWG shall confer by teleconference or in person within 30 calendar days;

b) The BWG shall evaluate the biological data and confer with the TRP regarding measured hydrological data and predicted hydrological changes. The BWG

objective for the consultation is to determine if the change in the measured biological parameter may be due to groundwater withdrawals by SNWA in the Spring Valley HB.

i. The BWG shall compare observed changes in biological parameters to changes in hydrologic conditions evaluated by the TRP and/or predicted by a TRP model and ascribed to groundwater withdrawal by SNWA in the Spring Valley HB.

ii. If a landscape-scale ecological model is available, the BWG shall compare how well observed field data fit model predictions and shall discuss potential changes to the ecological model as agreed to by consensus of the BWG. Should such consensus be obtained, the model shall be recalibrated based on observed data and the model shall be rerun to evaluate the effects of groundwater withdrawals of any of the SNWA Applications in the Spring Valley HB on Water-dependent Ecosystems in the Area of Interest.

iii. If the BWG agrees the change in a measured biological parameter is not attributable to the withdrawal of groundwater by SNWA in the Spring Valley HB, no further management actions shall be taken at that time. The BWG may conduct further investigation into the cause(s) of such changes.

iv. If any member of the BWG is concerned that the change in a measured biological parameter is attributable to the withdrawal of groundwater by SNWA in Spring Valley HB and is causing or has the potential to cause a Water-dependent Ecosystem Effect, then the BWG shall work to develop consensus-based courses of action to address the concern and/or manage or mitigate Water-dependent Ecosystem Effect(s), as appropriate. The BWG may use an ecological model to evaluate the effects of various courses of action outlined in Section 5 of this Exhibit B to manage or mitigate such adverse effect(s). The BWG shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section 4. B. 1).

v. If the biological data indicate that there is, or is a potential for, a Water-dependent Ecosystem Effect attributable to the withdrawal of groundwater by SNWA in Spring Valley HB and the BWG is unable to develop a consensus-based course of action, the BWG shall notify the Executive Committee, and the Parties shall proceed to Section 4. B. 2).

If an ecological model has been developed, and BWG consultation is initiated pursuant to Section 4. A. 2) above, then the following BWG consultation process shall apply:

1) Parties shall notify each other and the BWG shall confer by teleconference or in person within 30 calendar days;

2) The BWG shall evaluate the Ecological modeling parameters, variances in biological parameters relative to modeling predictions, and variables influencing the ecosystem model results. The BWG objective for the consultation is to determine if the response may be due to groundwater withdrawals by SNWA in the Spring Valley HB.

i. The BWG shall compare how well observed field data fit model predictions and shall discuss potential changes to the ecological model as agreed to by consensus of the BWG. All Parties recognize that should a model be used to predict effects, future modeling for the verification of the ecosystem model is a necessary component to determine the validity of the modeling results.

ii. Based on observed data, the Ecological model shall be recalibrated as necessary, and shall be rerun to evaluate the effects of groundwater withdrawals pursuant to any of the SNWA Applications in the Spring Valley HB on Water-dependent Ecosystems in the Area of Interest.

iii. If the BWG agrees the recalibrated Ecological model does not predict a Water-dependent Ecosystem Effect as a result of SNWA groundwater withdrawals in the Spring Valley HB, no further management actions shall be taken at that time.

iv. If any member of the BWG is concerned that the recalibrated Ecological model predicts a Water-dependent Ecosystem Effect as a result of SNWA groundwater withdrawals in the Spring Valley HB, then the BWG shall work to develop consensus-based recommendations for courses of action to address the concern and/or manage or mitigate those effect(s), as appropriate. The BWG shall also use the ecosystem model to evaluate the effects of various courses of action to manage or mitigate those effect(s) outlined in Section 5. The BWG shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section 4. B. 1.

v. If the recalibrated Ecological model predicts a Water-dependent Ecosystem Effect as a result of SNWA groundwater withdrawals in the Spring Valley HB and the BWG is unable to develop a consensus-based course of action, the BWG shall notify the Executive Committee, and the Parties shall proceed to Section 4. B. 2.

B. <u>Actions to Manage or Mitigate Water-dependent Ecosystem Effects</u>.

1) If the BWG determines, by consensus, that a predicted or measured change in a biological parameter would result in a Water-dependent Ecosystem Effect as a result of SNWA groundwater withdrawals in the Spring Valley HB, it shall forward its concerns and agreed-upon recommendations for action to the Executive Committee for consideration. Upon receiving any consensus-based BWG recommendation, the Executive Committee shall seek a negotiated resolution of a course of action to eliminate or reduce the Water-dependent Ecosystem Effect through the management of SNWA's groundwater

withdrawals in the Spring Valley HB and/or the mitigation of the Water-dependent Ecosystem Effect. If the Executive Committee cannot reach consensus, then the matter will be elevated to a neutral third-party to provide advice on a course of action. If, upon considering the neutral party's advice, the Executive Committee is still unable to come to resolution, then any Party may refer the issue to the Nevada State Engineer or an appropriate forum after notifying all other Parties of its intent to do so.

2) If the BWG notifies the Executive Committee that it is unable to make a determination by consensus that a predicted or measured change in a biological parameter would result in a Water-dependent Ecosystem Effect as a result of SNWA groundwater withdrawals in the Spring Valley HB or that it is unable to obtain consensus on a recommended course of action, the Executive Committee shall attempt to negotiate a mutually acceptable determination and/or course(s) of action. If that is not successful, then the matter will be elevated to a neutral third-party to provide advice on any such determination and/or a course of action. If, upon considering the neutral party's advice, the Executive Committee is still unable to come to resolution, then any Party may refer the issue to the Nevada State Engineer or an appropriate forum after notifying all other Parties of its intent to do so.

The Executive Committee shall act within the timeframes stated above in Section 2.B.

5. Mitigation Requirements

The goal of the Parties shall be to avoid Water-dependent Ecosystem Effects. The Parties shall make all reasonable efforts to achieve this goal. In the event that this goal is not achieved, SNWA shall mitigate any Water-dependent Ecosystem Effects so as to ensure that the baseline biological integrity and ecological health of Water-dependent Ecosystems are maintained and/or enhanced over the long term, either as agreed upon by the Parties as determined through the process described in Section 4.B. above or after the State Engineer determines that there are any such effects due to groundwater withdrawals by SNWA in the Spring Valley HB. The Parties shall take the necessary steps to ensure that such mitigation actions are feasible and are implemented in a timely manner. Avoidance and/or mitigation measures may include, but are not limited to one or more of the following:

1. Geographic redistribution of pumpage;
2. Reduction or cessation in pumpage;
3. Restoration/modification of existing habitat;
4. Acquiring and/or using alternative surface and/or groundwater for the purposes of augmenting existing water resources and protecting/restoring habitat;
5. Establishment of new habitat in a mutually agreed upon location that is comparable in ecological function to that which was affected or lost; and
6. Other measures as agreed to by the Parties and/or required by the State Engineer, to the extent not inconsistent with this agreement.

Clearly defined and measurable criteria will be developed by the BWG to evaluate the success of these actions.

6. Modification of the Plan

The Parties may modify this Plan by mutual written agreement.

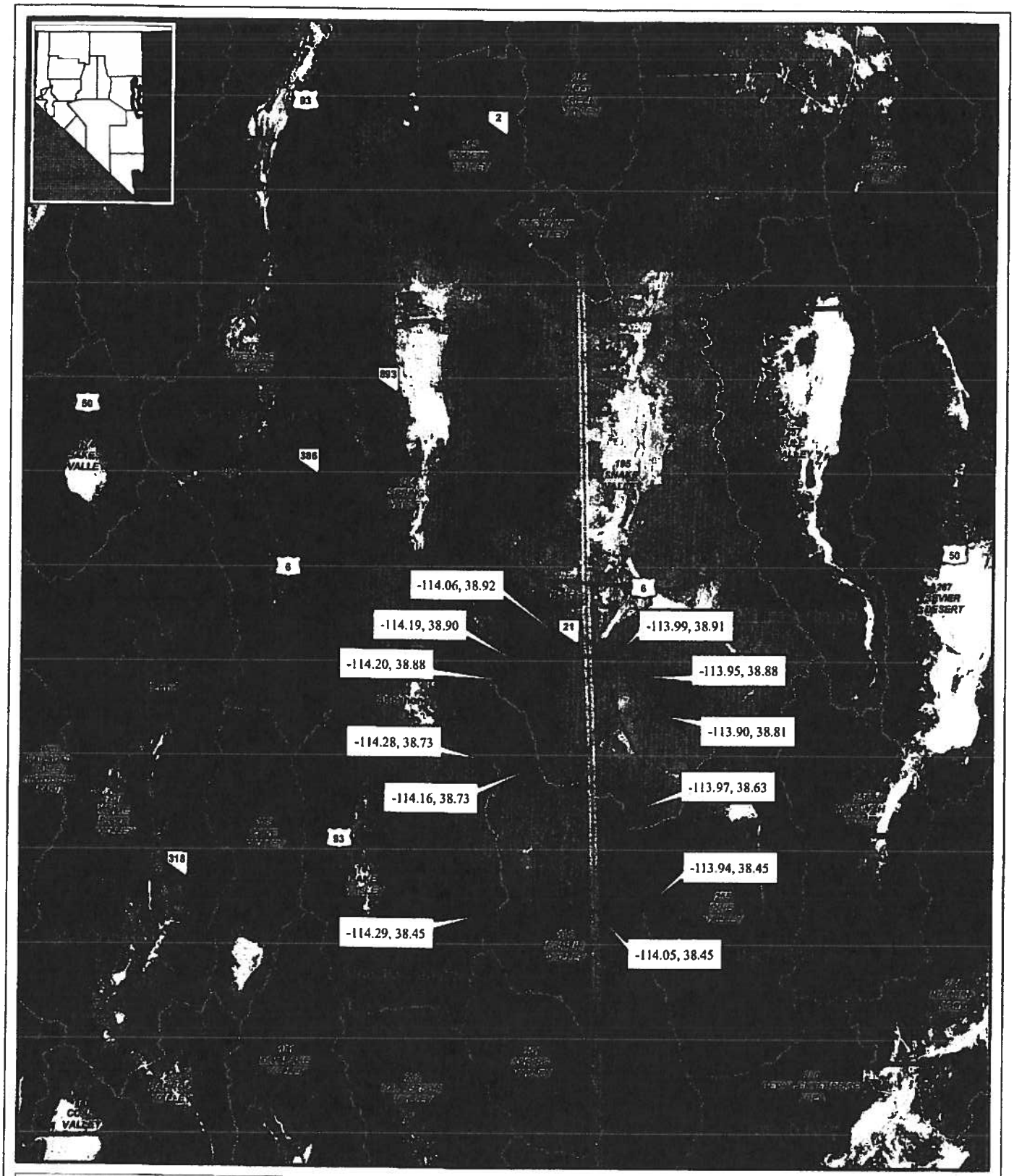

Figure 2. Initial Biologic Monitoring Area

EXHIBIT 2

SOUTHERN NEVADA WATER AUTHORITY

2008 JAN 25 PM 2:45

January 24, 2008

Tracy Taylor, State Engineer
Department of Conservation and Natural Resources
Nevada Division of Water Resources
Richard H. Bryan Building
901 S. Stewart Street, 2nd Floor
Carson City, Nevada 89701-5245

Re: Stipulation for Withdrawal of Protests between the Federal Bureaus and SNWA for Applications in the Cave, Dry Lake, and Delamar Valley Hydrographic Basins

Dear Mr. Taylor:

Enclosed please find an executed Stipulation for Withdrawal of Protests (Stipulation), signed by the U.S. Fish and Wildlife, Bureau of Land Management, Bureau of Indian Affairs, the National Park Service, (Federal Bureaus) and the Southern Nevada Water Authority (SNWA). The Stipulation provides that the Federal Bureaus agree to withdraw their protests against SNWA's water right applications in the Cave, Dry Lake, and Delamar Valley hydrographic basins (Application Nos. 53987 through 53992, inclusive). In exchange, SNWA agrees to implement a monitoring, management and mitigation plan, in cooperation with the Federal Bureaus.

Based on the Stipulation, the Federal Bureaus will not participate as protestants in the upcoming hearing on SNWA's applications in the Cave, Dry Lake, and Delamar Valleys, currently scheduled to begin on February 4, 2008. However, the Federal Bureaus and SNWA plan on presenting a panel of witnesses to briefly describe the nature and scope of the Stipulation and answer any questions the State Engineer may have regarding the Stipulation. The Federal Bureaus also intend to formally withdraw their protests to the subject applications at the beginning of the administrative hearing. For planning and scheduling purposes, the Federal Bureaus and SNWA request that the Hearing Officer reserve time on February 4, 2008 for this panel of witnesses. Additionally, it is requested that a copy of the Stipulation be included as an administrative exhibit identified by the State Engineer for the upcoming hearing.

SE 'S EXHIBITS 80
DATE: 9/26/11

State 'S EXHIBIT 19
DATE: 2-4-08

The Federal Bureaus and SNWA believe that this Stipulation is a positive step forward in planning for the management of any water rights granted to SNWA in the Cave, Dry Lake, and Delamar Valleys and encourage the State Engineer to consider the provisions of the Stipulation in his deliberations regarding these applications.

Sincerely,

Dana Smith
Deputy Counsel

Dana Smith FOR
Stephen Palmer
U.S. Department of Interior

Enclosure

cc: George N. Benesch, Esq., George N. Benesch Law Firm
Robert Coache, Deputy State Engineer, Nevada Division of Water Resources
Simeon Herskovits, Attorney, Advocates for Community & Environment

STIPULATION FOR WITHDRAWAL OF PROTESTS

This Stipulation is made and entered into on this 7th day of January, 2008 between the Southern Nevada Water Authority ("SNWA") and the United States Department of the Interior on behalf of the Bureau of Indian Affairs, the Bureau of Land Management, the National Park Service, and the Fish and Wildlife Service (collectively the "DOI Bureaus"). Collectively, SNWA and each of the DOI Bureaus are referred to as the "Parties."

RECITALS

A. In October 1989, the Las Vegas Valley Water District (SNWA's predecessor-in-interest) filed Applications 53987 through 53992, inclusive, (hereinafter referred to as the "SNWA Applications") for a combined 48 cubic feet per second ("cfs") of groundwater withdrawals in the Delamar, Dry Lake and Cave Valley Hydrographic Basins ("the Hydrographic Basins"). SNWA intends to pump up to 34,752 acre-feet of groundwater annually from the Hydrographic Basins for municipal purposes with concurrent monitoring, management, and mitigation as specified in Exhibit A to this Stipulation. In the future, SNWA may seek to change the points of diversion within the Hydrographic Basins for any quantities of groundwater permitted pursuant to the SNWA Applications.

B. The DOI Bureaus filed timely protests to the granting of the SNWA Applications pursuant to the DOI Bureaus' responsibilities to protect their state and federal water rights ("Federal Water Rights") and other water-dependent resources ("Federal Resources") of the DOI Bureaus in 1) the Hydrographic Basins; 2) that portion of the Whiter River Valley Hydrographic Basin that is south of Hardy Springs; and 3) the Pahranagat Valley Hydrographic Basin, including the Pahranagat National Wildlife Refuge ("Area of Interest") (depicted in Figure 1). The DOI Bureaus are required by law to manage, protect, and preserve all Federal Water Rights and Federal Resources that fall

under their jurisdiction. A number of these Federal Water Rights and Federal Resources occur within the Area of Interest. As of the date of this Stipulation, those Federal Water Rights that are based upon the application of federal law have not been quantified pursuant to an adjudication that complies with the requirements of the McCarran Amendment, 43 U.S.C. § 666. SNWA expressly reserves the right to contest any and all claims of the DOI Bureaus to such Federal Water Rights as are based upon the application of federal law in any proceeding that conforms to the requirements of the McCarran Amendment, 43 U.S.C. § 666.

C. The DOI Bureaus are concerned that the proposed groundwater withdrawals from the Hydrographic Basins may injure Federal Water Rights and/or affect Federal Resources in the Area of Interest and certain other areas outside the Area of Interest, and are desirous of working in a cooperative manner with the SNWA to protect these Federal Water Rights and Federal Resources.

D. On September 8, 2006, the Parties entered into a Stipulation for the Withdrawal of Protests related to Applications 54003 through 54021 for the appropriation of Nevada state groundwater from the Spring Valley Hydrographic Basin ("Spring Valley Stipulation"). The Spring Valley Stipulation established a number of cooperative processes among the Parties for the management of SNWA's groundwater development project in Spring Valley. Rather than duplicate the processes established by the Spring Valley Stipulation, the Parties desire to expand certain of the processes, as contained in Exhibit A to this Stipulation, to efficiently accommodate an agreed upon Hydrologic Monitoring, Management and Mitigation Plan for SNWA groundwater development within the Delamar, Dry Lake and Cave Valleys Hydrographic Basins.

E. The Parties acknowledge that pursuant to Nevada Revised Statutes (NRS) 534.110(4), Nevada Water Law provides that "[i]t is a condition of each appropriation of groundwater acquired under this chapter [534] that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion." Further, pursuant to NRS 534.110(5), Nevada Water Law "does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing appropriations can be satisfied under such express conditions." It is the intent of the Parties that this Stipulation provides the initial "express conditions" to allow development of the SNWA Applications to proceed; however, such future conditions may be adjusted based on implementation of the monitoring, management, and mitigation plans specified in Exhibit A, which are attached to this Stipulation and made a part hereof.

F. The State Engineer has set an administrative hearing on the protests of the DOI Bureaus and other protestants to the SNWA Applications commencing February 4, 2008.

G. The Parties acknowledge that other entities and individuals have lodged protests to the SNWA Applications, but such additional protestants are not Parties to or in any way bound or prejudiced by this Stipulation. Further, these protestants may enter into stipulations with SNWA concerning the SNWA Applications. Such stipulations shall not require the participation of the DOI Bureaus nor modify in any way the intent or content of this Stipulation, nor shall the DOI Bureaus be bound or prejudiced by such stipulations.

H. The Common Goal of the Parties, as expressed in Exhibit A to this Stipulation, is to manage the development of groundwater by SNWA in the Hydrographic Basins without causing injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and Special Status Species within the Area of Interest as a result of groundwater withdrawals by SNWA in the Hydrographic Basins. The Parties agree that the preferred conceptual approach for protecting Federal Water Rights from injury and Federal Resources and Special Status Species from unreasonable adverse effects within the Area of Interest that may be caused by groundwater withdrawals by SNWA in the Hydrographic Basins is through the development of such groundwater in conjunction with the implementation of the monitoring, management, and mitigation plans described in Exhibit A. The effects of groundwater withdrawals pursuant to the development of any or all of the SNWA Applications and any future changes in points of diversion and/or rates of withdrawal need to be properly monitored and managed to avoid any injury to Federal Water Rights and unreasonable adverse effects to Federal Resources and Special Status Species within the Area of Interest. There is a need to better understand the response of the aquifers and associated discharge points, such as artesian wells, springs, streams, wetlands, and playas, to pumping stresses from development of permitted quantities of groundwater in accordance with the monitoring, management, and mitigation plans set forth in Exhibit A to this Stipulation.

I. The Parties have determined that it is in their best interests to cooperate in the collection and analysis of additional hydrologic, hydrogeologic, water chemistry, and biological information.

J. The Parties desire to resolve the issues raised by the DOI Bureaus' protests according to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do agree as follows:

1. **Intent of the Parties.** SNWA and the DOI Bureaus have entered into various stipulations and memorandums of agreement, and anticipate similar future agreements that outline activities to cooperate and collaborate to monitor, manage, and mitigate potential impacts from SNWA's development of various permits to appropriate groundwater in eastern and central Nevada. It is the intent of the Parties to integrate the various activities outlined in these existing and future stipulations and agreements into an overall process that will evaluate the cumulative effects of SNWA's groundwater development projects utilizing technical tools such as a transient groundwater flow model that has been calibrated and validated as a tool to predict future impacts. This process will outline how the Parties incorporate ongoing and future data collected into the transient groundwater flow model and use this tool and process to help SNWA make management decisions regarding the operation of the groundwater development projects based on the projected potential impacts to the groundwater and surface water systems. The process will also allow the Parties to refine the ongoing monitoring, management and mitigation plans. Therefore, no later than March 31, 2009, the Parties agree to negotiate a separate memorandum of understanding that will provide for such a process.

2. The DOI Bureaus hereby expressly agree to withdraw their protests to the SNWA Applications and agree that the Nevada State Engineer may rule on the SNWA Applications based upon the terms and conditions set forth herein. It is expressly understood that this Stipulation is binding only upon the Parties hereto and their successors, transferees and assignees, and shall not bind or seek to bind or prejudice any other parties or protestants, including any Indian Tribe.

3. Other entities with groundwater applications in and around the Hydrographic Basins may be invited to participate in the cooperative processes described in Exhibit A upon mutual written agreement between the Parties.

4. SNWA may seek to change the points of diversion and rates of withdrawal within the Hydrographic Basins for any quantities of groundwater permitted pursuant to the SNWA Applications. Prior to filing such change applications, SNWA shall consult with the TRP and the BRT about the potential effects of any proposed changes on Federal Water Rights, Federal Resources, and Special Status Species. If the consensus of the TRP and the BRT is that the proposed change(s) will not increase the risk of injury to Federal Water Rights and/or increase the risk of unreasonable adverse effects to Federal Resources and/or Special Status Species, then the TRP and the BRT will recommend to the Executive Committee that protests not be filed by the DOI Bureaus to the proposed change(s). If there is no such consensus between the TRP and the BRT, or within the Executive Committee, then the DOI Bureaus shall be free to file such protests as they deem necessary.

5. This Stipulation does not waive any authorities of the DOI Bureaus or the United States, including any other agency or bureau not specified in this Stipulation. Further, this Stipulation does not override or relieve the Parties from complying with applicable federal laws, including, but not limited to, the National Environmental Policy Act, the Endangered Species Act, the Federal Land Policy and Management Act, and any and all rules and regulations thereunder.

6. It is the expressed intention of the Parties that by entering into this Stipulation, the DOI Bureaus, the United States, and SNWA are not waiving legal rights of any kind, except as

expressly provided herein. Nor is this Stipulation intended to modify any legal standard by which Federal Water Rights or Federal Resources are protected.

7. The Parties expressly acknowledge that the Nevada State Engineer has, pursuant to both statutory and case law, broad authority to administer groundwater resources in the State of Nevada and, furthermore, that nothing contained in this Stipulation shall be construed as waiving or in any manner diminishing such authority.

8. The DOI Bureaus agree not to file rebuttal evidence with the State Engineer in response to the first evidentiary exchange for the hearings scheduled to begin February 4, 2008. The Parties agree that a copy of this Stipulation shall be submitted to the Nevada State Engineer at the commencement of the administrative proceedings scheduled to begin on February 4, 2008. At that time, the Parties shall request on the record at the beginning of the scheduled proceeding that the State Engineer include this Stipulation and Exhibit A as part of the permit terms and conditions in the event that he grants any of the SNWA Applications in total or in part. Following the submission of this Stipulation and Exhibit A to the State Engineer, then the DOI Bureaus, at their option, may attend the hearing, but shall not present a case, witnesses, exhibits, or statements, nor cross-examine any witnesses, nor assist any other party or protestant in presenting a case, witnesses, exhibits, statements, or cross examination.

9. SNWA shall submit a copy of this Stipulation and Exhibit A to the Bureau of Land Management and request that it be included in any Environmental Impact Statement prepared for the "Clark/Lincoln/White Pine Counties Groundwater Development Project," or any other project related to the development of the SNWA Applications.

10. Any notice given under this Stipulation shall be deemed properly given when actually received or three (3) days after such notice was deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed as follows:

If to DOI Bureaus:

Regional Director
Western Regional Office
Bureau of Indian Affairs
400 North 5th Street
Phoenix, AZ 85004

State Director
Nevada State Office
Bureau of Land Management
1340 Financial Blvd.
Reno, NV 89502

Field Supervisor
Nevada Field Office
Fish and Wildlife Service
1340 Financial Blvd., #234
Reno, NV 89502

Branch Chief
Water Rights Branch
National Park Service
1201 Oak Ridge Drive, Suite 250
Fort Collins, CO 80525

If to SNWA:

General Manager
Southern Nevada Water Authority
1001 S. Valley View Blvd
Las Vegas, NV 89153

11. Any Party hereto may transfer or assign its interest, if any, in the water rights here involved, without prior notice or permission from any of the other Parties. Any and all transferees and assignees shall be bound by the terms and conditions of this Stipulation. As a condition to any such transfer or assignment, the transferee and/or assignee shall

execute a stipulation expressly stating it is bound to all of the terms and conditions of this Stipulation.

12. This Stipulation shall be governed in accordance with the laws of the State of Nevada to the extent not inconsistent with federal law.

13. It is the intent of the Parties hereto that the Nevada State Engineer shall be kept informed of all activities and data gathered pursuant to this Stipulation in the same fashion as are the Parties hereto; however, the Executive Committee (described in Exhibit A), in consultation with the Nevada State Engineer, may specify the types of data and documents that shall be submitted to the Nevada State Engineer.

14. By entering into this Stipulation, the DOI Bureaus do not become a party to any proceeding other than the protest proceeding referenced above nor waive their immunity from suit nor consent to or acknowledge the jurisdiction of any court or tribunal. Nothing in the Stipulation shall affect any federal reserved water rights of the DOI Bureaus or the United States on behalf of any Indian Tribe and the DOI Bureaus by entering into this Stipulation do not waive or prejudice any such rights. The DOI Bureaus reserve all legal rights, of any kind, they possess pursuant to or derived from Executive Orders, acts of Congress, judicial decisions, or regulations promulgated pursuant thereto. The Parties do not waive their rights to seek relief in any appropriate forum not expressly prohibited by this Stipulation.

15. Any commitment of funding by the DOI Bureaus or the SNWA in this Stipulation, including specifically any monitoring, management, and mitigation actions provided for in Exhibit A is subject to appropriations by Congress or the governing body of the SNWA as appropriate.

16. No Party shall be considered to be in default in the performance of any of its obligations under this Stipulation when a failure of performance shall be due to an uncontrollable force, including but not limited to, denial of access to private property, denial of right-of-way permits, facilities failure, flood, earthquake, storm, lightning, fire, labor disturbance, sabotage and/or restraint by court or public authority. A Party rendered unable to fulfill any of its obligations under this Stipulation by reason of an uncontrollable force shall give prompt written notice of such act to the other Parties. The Parties shall meet and confer to determine if the affected performance can be completed by other means and to address future performance under this Stipulation that may be affected by such uncontrollable force in an attempt to obtain the Parties' full performance under this Stipulation.

17. This Stipulation may only be amended by mutual written agreement of the Parties. Other entities may become parties to this Stipulation by amending this Stipulation in writing.

18. This Stipulation sets forth the entire agreement of the Parties and supercedes all prior discussions, negotiations, understandings or agreements regarding the subject matter of this Stipulation. No alteration or variation of this Stipulation shall be valid or binding unless contained in a written amendment in accordance with Paragraph 17 of this Stipulation.

19. This Stipulation is entered into for the purpose of resolving a disputed claim and establishing the monitoring, management, and mitigation plans contained in Exhibit A. Except as expressly provided herein, the Parties agree that the Stipulation shall not be offered as evidence or treated as an admission regarding any matter herein and may not be used in proceedings on any other application or protest whatsoever, except that the Stipulation may be used in any future proceeding to interpret and/or enforce its terms.

Further, the Parties agree that neither the Stipulation nor any of its terms shall be used to establish precedent with respect to any other application or protest in any water rights adjudication or water rights permitting proceeding, including but not limited to any hearing regarding the SNWA applications to appropriate groundwater in the Snake Valley Hydrographic Basin, before the Nevada State Engineer or in any other administrative or judicial proceeding.

20. The terms and conditions of this Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective agents, officers, employees, personal representatives, successors, transferees and assigns. This Agreement is for the sole benefit of the Parties and does not create any right or benefit, substantive or procedural, enforceable by any third parties.

21. Each Party agrees to bear its own costs and attorney fees.

22. This Stipulation shall become effective as between the Parties upon all Parties signing this Stipulation. The Parties may execute this Stipulation in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original as against any Party who has signed it.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which is effective as of the date first written above.

Date: JAN 07 2008

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

By _____

Title: Regional Director

Date: January 3, 2008

UNITED STATES DEPARTMENT OF THE INTERIOR

Bureau of Land Management

By Lon Wenker

Title: Nevada State Director

Date: JAN 0 2 2007

UNITED STATES DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

By Steve Thompson

Title: Regional Director, Region 8

Date: 1/7/2008

UNITED STATES DEPARTMENT OF THE INTERIOR

National Park Service

By Jonathan B. Jarvis

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Date: 12-21-07

SOUTHERN NEVADA WATER AUTHORITY

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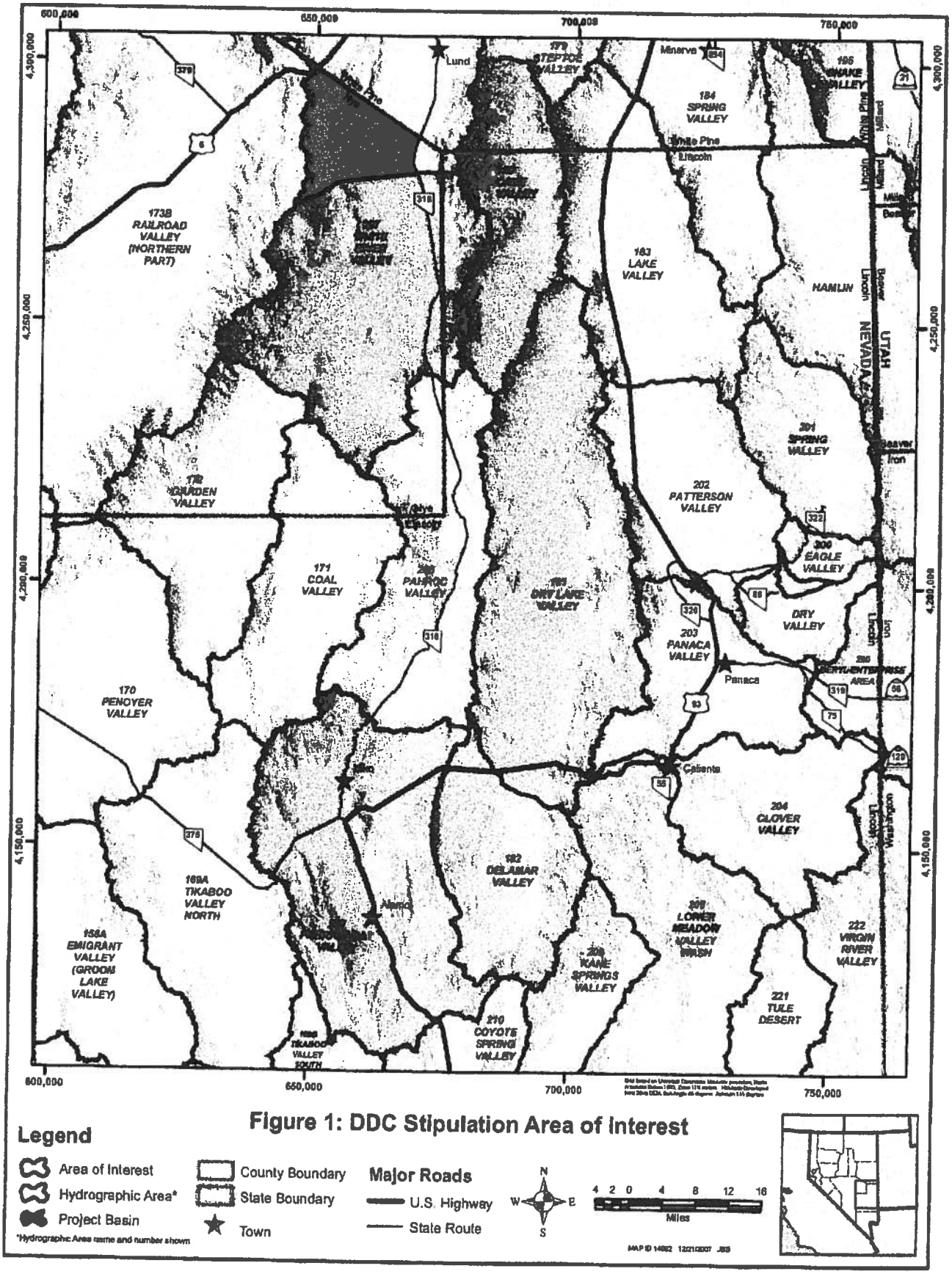

Figure 1: DDC Stipulation Area of Interest

Legend

- Area of Interest
- Hydrographic Area*
- Project Basin

*Hydrographic Area name and number shown

- County Boundary
- State Boundary
- Town

Major Roads

- U.S. Highway
- State Route

EXHIBIT A

HYDROLOGIC AND BIOLOGICAL MONITORING, MANAGEMENT AND MITIGATION PLAN FOR DEVELOPMENT OF GROUNDWATER IN THE DELAMAR, DRY LAKE AND CAVE VALLEY HYDROGRAPHIC BASINS PURSUANT TO APPLICATION NOS. 53987 THROUGH 53992 BY THE SOUTHERN NEVADA WATER AUTHORITY

1. Introduction

This hydrologic monitoring, management and mitigation plan ("Plan") is a component of a Stipulation between the Southern Nevada Water Authority (hereinafter referred to as "SNWA") and the U.S. Department of the Interior bureaus, including the Bureau of Indian Affairs, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service (hereinafter referred to as the "DOI Bureaus"). Collectively, SNWA and each of the DOI Bureaus are hereinafter referred to as the "Parties." Unless otherwise specifically defined in this Exhibit A, all defined terms used in this Exhibit A shall have the same definition that appears in the Stipulation to which this Exhibit A is attached.

This Plan describes the Parties' obligations regarding the development, monitoring, management, and mitigation related to SNWA's applications 53987 through 53992 to withdraw groundwater from points of diversion in the Delamar, Dry Lake, and Cave Valley Hydrographic Basins (hereinafter referred to as the "Hydrographic Basins"). The Plan consists of three principal components:

Monitoring Requirements - including, but not limited to, existing wells, new monitoring wells, water chemistry analyses, spring discharge measurements, quality control procedures, and reporting requirements;

Management Requirements – including, but not limited to, creation of a Biologic Resources Team ("BRT") to review biological information collected pursuant to this Plan and advise the Executive Committee (established pursuant to Paragraph 3(B) of Exhibit A of the Spring Valley Stipulation); the expansion of the duties of the Technical Review Panel ("TRP") (established pursuant to Paragraph 3(C) of Exhibit A of the Spring Valley Stipulation) to review information collected under this Plan and advise the Executive Committee; the use of an agreed upon transient groundwater flow system numerical model to help predict effects of groundwater withdrawals by SNWA in the Hydrographic Basins; and the use of the consensus-based decision making process established in the Spring Valley Stipulation as set forth in Appendix A to this Exhibit A; and,

Mitigation Requirements – including, but not limited to the: (1) modification, relocation or reduction in points of diversion and/or rates and quantities of groundwater withdrawals, the augmentation of Federal Water Rights, Federal

Resources, and/or Water Dependent Ecosystems; (2) acquisition of real property and/or water rights dedicated to the protection of Special Status Species; and (3) measures designed and calculated to rehabilitate, repair or replace any and all Federal Water Rights, Federal Resources and Water Dependent Ecosystems if necessary to achieve the Common Goals set forth in Paragraph 1.A. of this Exhibit A.

For purposes of this Exhibit A, "Area of Interest" shall consist of 1) the Hydrographic Basins, 2) that portion of the White River Valley Hydrographic Basin that is south of Hardy Springs, and 3) the Pahranagat Valley Hydrographic Basin, including the Pahranagat National Wildlife Refuge. The term "Special Status Species" is defined in Paragraph V.F. of this Exhibit A. The terms "Federal Water Rights" and "Federal Resources" as used in this Exhibit A shall have the same definition as in the Stipulation to which this Exhibit A is attached. The term "Water Dependent Ecosystem" is defined in Paragraph V.F. of this Exhibit A.

A. Common Goals

The Common Goals of the Parties are to manage the development of any water rights permitted to SNWA by the Nevada State Engineer in the Hydrographic Basins without causing: 1) any injury to the Federal Water Rights; and 2) any unreasonable adverse effects to Federal Resources and Special Status Species within the Area of Interest as a result of groundwater withdrawals by SNWA in the Hydrographic Basins ("Common Goals"). These Common Goals include taking actions that protect and recover those Special Status Species that are currently listed pursuant to the Endangered Species Act and avoid listing of currently non-listed Special Status Species. To accomplish these goals, the Parties will strive to improve existing Water Dependent Ecosystems within the Area of Interest for habitat areas that are within the current and historic habitat range of each of the Special Status Species. Such actions should be focused on habitat within the hydrographic basin(s) that is most likely to be affected by hydrologic changes that may result from SNWA groundwater withdrawals in the Hydrographic Basins.

To accomplish the Common Goals, the Parties agree that once the TRP has determined that an agreed-upon transient regional groundwater flow model has been adequately calibrated and validated by actual field measurements, it will be used as one tool to give an early warning of possible injury to Federal Water Rights or unreasonable adverse effects to Federal Resources and Special Status Species within the Area of Interest as a result of groundwater withdrawals by SNWA in the Hydrographic Basins. It is the intent of the Parties to take actions as provided for in this Exhibit A to the extent possible to prevent injury to Federal Water Rights or unreasonable adverse effects to Federal Resources and Special Status Species within the Area of Interest as a result of groundwater withdrawals by SNWA in the Hydrographic Basins.

Actions that SNWA may take in order to offset any unreasonable adverse effect to Federal Resources and/or Special Status Species within the Area of Interest or any injury to Federal Water Rights include, but are not necessarily limited to:

1. Reduction or cessation of groundwater withdrawals within the Hydrographic Basins;

2. Geographic redistribution of pumping within the Hydrographic Basins;

3. Acquisition of real property and/or water rights dedicated to the recovery of Special Status Species within the current and historic habitat range of each of the Special Status Species. The Parties anticipate that such acquisition of real property and/or water rights may be accomplished prospectively in order to offset future impacts, also known as mitigation banking. Such mitigation banking measures will be recommended by the BRT in advance of actual acquisition and/or dedication of real property and/or water rights and will be measured against existing baseline habitat conditions;

4. Augmentation of Federal Water Rights, Federal Resources, and/or Water Dependent Ecosystems;

5. Provision of resources to restore and enhance habitat on the Pahranagat National Wildlife Refuge; and

6. Other measures as agreed to by the Parties and/or required by the State Engineer that are consistent with this Stipulation.

The actions taken will be those which will best accomplish the Common Goals. Other Parties may also take actions, including but not limited to those listed above, to offset unreasonable adverse effects either individually or in coordination with SNWA.

2. Monitoring Requirements

I. GENERAL

The parties recognize that the establishment of accurate early-warning indicators and specific mitigation actions that are necessary to meet the Common Goals is difficult until monitoring data are developed prior to groundwater withdrawals by SNWA in the Hydrographic Basins. Additionally, the Parties recognize that additional monitoring data developed during groundwater withdrawals by SNWA in the Hydrographic Basins will further inform the development of early-warning indicators and specific mitigation actions. Data collected pre- and post- groundwater withdrawals shall be used to design and calibrate an agreed upon transient regional groundwater flow model that may assist in predicting actual pumping effects and changes caused by groundwater withdrawals by SNWA in the Hydrographic Basins.

The Parties agree that monitoring is necessary to accomplish the Common Goals and agree to cooperatively implement a monitoring plan sufficient to collect and analyze data to assess the effects, if any, from SNWA's proposed groundwater withdrawals in the Hydrographic Basins on Federal Water Rights, Federal Resources and Special Status Species in the Area of Interest. The monitoring network shall be comprised of existing SNWA wells, SNWA exploratory wells, SNWA production wells, new monitoring wells, existing monitoring wells, and spring discharge sites. These monitoring sites shall be selected by the TRP ("Monitoring Network").

Some wells in the Monitoring Network will be selected by the TRP to help characterize the movement of groundwater from the Hydrographic Basins to the White River, Pahroc, and

Pahranagat Valley Hydrographic Basins to the west ("Adjacent Hydrographic Basins"). Other wells in the Monitoring Network shall be located throughout the Hydrographic Basins and Adjacent Hydrographic Basins to provide early warning of the spread, if any, of drawdown toward Federal Water Rights and Federal Resources as well as data for future groundwater model calibration. Shallow piezometers and wells may be used to evaluate the effects of groundwater withdrawals near discharge areas as listed below in Paragraph 2.II.C.

To ensure baseline aquifer conditions are established, SNWA shall ensure that at least five (5) years of monitoring data exists for wells or spring discharge sites that are currently being monitored within the Monitoring Network as of the date of execution of this Stipulation prior to any groundwater withdrawals, other than for aquifer tests and construction. Pursuant to funding agreements with non-Parties, SNWA has already collected extensive monitoring data from existing monitoring wells. The Parties agree that this data shall be used by the TRP as part of baseline data collection.

The Parties recognize that substantial baseline hydrologic data for the Hydrographic Basins and Adjacent Hydrographic Basins is being collected as part of the BLM's ongoing compliance with the National Environmental Policy Act for SNWA's Clark, Lincoln, and White Pine County Groundwater Development Project ("EIS Process"). Each Party agrees to submit baseline hydrologic data collected by that Party in the Hydrographic Basins and Adjacent Hydrographic Basins for inclusion in the EIS Process. The Parties also recognize the need for continued baseline hydrologic data collection between issuance of the Final Environmental Impact Statement and the commencement of groundwater withdrawals by SNWA in the Hydrographic Basins. Therefore, baseline data will continue to be collected in the Hydrographic Basins and the Adjacent Hydrographic Basins in order to keep the data compiled in the Final Environmental Impact Statement current up to the commencement of groundwater withdrawals by SNWA in the Hydrographic Basins.

SNWA shall monitor all new wells in the Monitoring Network at least two (2) years prior to any groundwater withdrawals, other than for aquifer tests and construction. SNWA shall ensure that at least two (2) years of monitoring is done for the new spring discharge sites in the Monitoring Network before SNWA groundwater withdrawals, other than for aquifer tests and construction.

Notwithstanding anything to the contrary contained in this Stipulation or this Exhibit A, SNWA shall use its best efforts to complete baseline monitoring within these time frames. However, in the event SNWA is unable to perform the monitoring requirements set forth in this Exhibit A due to circumstances beyond SNWA's control, including but not limited to delays related to construction, private property access issues or other delays, then SNWA reserves the right to develop any water rights granted to SNWA by the Nevada State Engineer in accordance with Nevada water law and this Exhibit A.

The cost of the monitoring plan shall be borne primarily by SNWA. The DOI Bureaus shall provide staffing to the TRP and shall jointly seek funding through the TRP to contribute to monitoring efforts. Any funding requests for studies within the Area of Interest submitted through the Southern Nevada Public Lands Management Act shall be coordinated through the TRP, or BRT as appropriate. Except as otherwise provided in this Plan, each DOI Bureau is responsible for monitoring its own Federal Water Rights and Federal Resources, and for sharing this information with the other Parties within 90 days of its collection.

Any requirement for SNWA to continuously monitor wells, piezometers, and surface water sites pursuant to the Plan shall require SNWA to install all equipment necessary to continuously record discharge and/or water levels at all monitoring sites and shall, unless prevented by circumstances beyond its control, ensure that all such discharge and/or water level data is recorded on a continuous basis.

SNWA shall record discharge and water levels in all SNWA production wells within the Hydrographic Basins on a continuous basis.

Modification of the monitoring requirements in this Plan, including any addition, subtraction or replacement of the wells initially selected by the TRP or the frequency of monitoring for these wells may be made through consensus recommendations from the TRP as set forth in Appendix A of this Exhibit A.

II. HYDROLOGIC MONITORING

A. Existing Monitoring Wells

Pursuant to funding agreements with non-Parties, SNWA has collected extensive monitoring data from existing monitoring wells. The Parties agree that this data shall be used by the TRP as part of baseline data collection. Because the list of wells monitored under these funding agreements has changed over time, SNWA agrees to ensure continued monitoring of certain existing wells selected by the TRP pursuant to this Paragraph. SNWA shall monitor groundwater levels quarterly in a total of nine (9) existing monitoring wells and continuously in a total of six (6) existing monitoring wells in the Hydrographic Basins and Adjacent Hydrographic Basins, for a total of fifteen (15) existing wells to be monitored. These wells shall be selected by the TRP. The wells may be selected to provide early warning of the spread of drawdown toward Federal Water Rights and Federal Resources and obtain hydrologic information throughout the Hydrographic Basins and Adjacent Hydrographic Basins in order to produce annual groundwater level contour and water level change maps, calibrate the transient groundwater flow model, and evaluate the effects, if any, of SNWA's groundwater withdrawals within the Hydrographic Basins.

B. New Monitoring Wells

The DOI Bureaus agree to expedite NEPA and other permitting clearances, within the limits of applicable laws, to help meet the monitoring requirements of this Plan. The construction of the new monitoring wells is contingent upon accessibility and issuance of appropriate rights-of-way by various Federal and State agencies.

SNWA shall record water level data continuously at all new monitoring wells upon their completion, contingent upon accessibility and issuance of appropriate rights-of-way by various Federal and State agencies. SNWA shall purchase and install all necessary water-level measuring equipment.

SNWA shall make the new monitoring wells available to the DOI Bureaus for additional data collection.

SNWA shall construct and equip four (4) new monitoring wells in or around the Hydrographic Basins and Adjacent Hydrographic Basins that must be dedicated to long-term monitoring. The location of these new monitoring wells shall be selected in order to provide early warning of the spread of drawdown toward Federal Water Rights and Federal Resources; to help characterize interbasin groundwater flow between the Hydrographic Basins and the Adjacent Hydrographic Basins; and/or to help further the understanding of the relationship between the alluvial and bedrock aquifers. SNWA may substitute existing monitoring wells for some or all of the monitoring wells required to be constructed pursuant to this Paragraph, if agreed upon by the TRP. In order to install these new wells in a timely manner, within one (1) year after execution of this Stipulation the TRP shall select the location for these new wells. If the TRP has not selected the location for the new monitoring wells within one (1) year after execution of this Stipulation, SNWA shall select the location of these new wells and shall provide notice to the TRP of its selections.

C. Spring Discharge Measurements

Pursuant to a funding agreement with non-Parties, SNWA has collected extensive monitoring data from the existing spring discharge monitoring sites listed in Subsection (i) below. The Parties agree that this data shall be used by the TRP as part of baseline data collection. Because the list of spring discharge sites that are monitored under this funding agreement has changed over time, in the event that this funding agreement changes, terminates or expires, SNWA agrees to ensure continued monitoring of certain existing spring discharge sites selected by the TRP pursuant to this Paragraph.

The springs listed in Subsection (*i*) below are currently monitored through a funding agreement between SNWA, the Nevada Division of Water Resources, and the U.S. Geological Survey (USGS). SNWA shall make all data gathered pursuant to this funding agreement available to all Parties and shall include this data in baseline conditions. In the event this funding agreement changes, terminates or expires, the TRP, in coordination with the BRT, shall determine which sites are to be included in the Monitoring Network. The basis for the selection of any site and the total number of sites selected shall be to meet the Common Goals of this Plan. The TRP shall determine the method of spring discharge measurement and shall carefully consider the use of shallow wells to avoid damage to sensitive areas. In the event the funding agreement changes, terminates or expires, SNWA agrees to continue monitoring the springs selected by the TRP either directly or through funding of a third party. For those springs located on private land, SNWA shall use its best efforts to gain access for monitoring, but SNWA shall not be responsible for monitoring on private land to which it cannot gain access.

(i). Spring Discharge Measurements within Adjacent Hydrographic Basins that are Currently Being Monitored

Spring	*Owner*	*Measured By*	*Frequency*	*Location*
Flag Springs (3) Complex	NDOW	USGS	Biannual	WR
Hot Creek Spring	NDOW	USGS	Continuous	WR
Moorman Spring	Private	USGS	Biannual	WR
Ash Springs	BLM/Private	USGS	Continuous	Pah
Crystal Spring	Private	USGS	Continuous	Pah

*NDOW= Nevada Department of Wildlife; WR= White River Valley Hydrographic Basin; Pah= Pahranagat Valley Hydrographic Basin

Due to the modified nature of the spring discharge sites listed in Subsection (*ii*) below, the TRP shall determine whether monitoring of these springs can be accomplished in a manner such that the data collected is representative of actual hydrologic conditions, and if so, the TRP shall select which sites in Subsection (*ii*) to include in the Monitoring Network. SNWA shall ensure biannual monitoring of the sites in Subsection (*ii*) selected by the TRP either directly or through funding of a third party, but SNWA shall not be responsible for monitoring on private land to which it cannot gain access.

(ii). Spring Discharge Sites to be Evaluated for Monitoring by TRP

Spring	*Owner*	*Measured By*	*Frequency*	*Location*
Hiko Spring	Private	--	--	Pah
Maynard Spring	BLM	--	--	Pah
Hardy Springs (5) Complex	Private		--	WR

(iii). Cottonwood Spring

The U.S. Fish and Wildlife Service (USFWS) currently measures spring discharge at Cottonwood Spring on the Pahranagat National Wildlife Refuge and agrees to provide data from this site to all Parties.

(iv). Spring Discharge Measurements within the Hydrographic Basins

In addition, the TRP may identify a total of up to 8 springs to be monitored biannually within the Hydrographic Basins in which SNWA production wells are to be located, but SNWA shall not be responsible for monitoring on private land to which it cannot gain access. The springs selected by the TRP pursuant to this Subsection (*iv*) need not be evenly distributed throughout each of the Hydrographic Basins.

D. Aquifer Tests

An understanding of aquifer properties is necessary in order to make predictions regarding changes in groundwater levels and flows and facilitate the modeling of the groundwater flow systems. Furthermore, aquifer tests are needed to help determine such aquifer properties. As such, aquifer tests shall be performed. A well step drawdown test and 72 hour constant rate aquifer test shall be performed on all test wells and SNWA shall share the data from these tests with the TRP.

E. Water Chemistry Sampling Program

SNWA has extensive water chemistry data collected from existing monitoring wells and spring discharge sites. The Parties agree that this existing water chemistry data shall be included in baseline data and may be substituted for the sampling required pursuant to this Paragraph where such data exists. The TRP shall select 10 sites from the Monitoring Network for water chemistry sampling, excluding SNWA exploratory and production wells. These sites shall be sampled two (2) times at six (6)-month intervals pursuant to a schedule determined by the TRP, but completed by no later than three (3) years from the date of the execution of the Stipulation, unless prevented by circumstances beyond SNWA's control. After this first round of sampling the TRP shall review these data to determine if water

chemistry parameters in Table 1 need to be modified. Future sampling will use the TRP-revised list of water chemistry parameters. Thereafter, sampling of the selected sites identified in the Monitoring Network shall be conducted once every five (5) years following the start of groundwater withdrawals by SNWA, other than for aquifer tests and construction, unless prevented by circumstances beyond SNWA's control. The TRP, in consultation with the BRT, may change any aspect of this water chemistry sampling program, including but not limited to the addition and/or deletion of sampling sites, the addition and/or deletion of water chemistry parameters, and an increase or decrease in sampling frequency, if deemed appropriate by the TRP. SNWA may subcontract this obligation to a third party.

Table 1 - Water Chemistry Parameters

Field Parameters	**Major Ions**	**Isotopes**	**Minor and Trace Elements**
Water temperature	TDS	Oxygen-18	Arsenic
Air temperature	Calcium	Deuterium	Barium
pH	Sodium	Tritium	Cadmium
Electrical conductivity	Potassium	Chlorine-36*	Chromium
Dissolved oxygen	Chloride	Carbon-14*	Lead
	Bromide	Carbon-13*	Mercury
	Fluoride	Strontium-87*	Selenium
	Nitrate	Uranium-238*	Silver
	Phosphate		Manganese
	Sulfate		Aluminum
	Alkalinity		Iron
	Silica		Bromide
	Magnesium		Fluoride

*These parameters shall be included only in the first sampling event, and shall not be included in any further water chemistry sampling performed pursuant to this Exhibit.

All analyses shall be conducted and reported in accordance with standard Environmental Protection Agency (EPA) listed methods.

F. Precipitation Stations

The coverage of existing precipitation stations shall be reviewed by the TRP, and, if necessary, the TRP may recommend that additional precipitation stations be established. SNWA shall fund the construction, operation, and maintenance of any such additional stations.

G. Elevation Control

SNWA shall conduct a detailed elevation survey of all production wells and wells within the Monitoring Network.

H. Quality of Data

SNWA and the DOI Bureaus shall ensure that all measurement and data collection is done based on USGS established protocols, unless otherwise agreed upon by the TRP.

III. BIOLOGICAL MONITORING

A. General

Biological monitoring shall be conducted only to further the Common Goals and shall be focused on Special Status Species and their habitats within the Area of Interest that are most likely to be affected by any hydrologic changes that may result from SNWA's groundwater withdrawals in the Hydrographic Basins. The areas that are most likely to be affected by any hydrologic changes that may result from SNWA's groundwater withdrawals in the Hydrographic Basins shall be determined by the TRP. Biological monitoring will be developed and implemented by the Biologic Resources Team (defined in Paragraph V.F, "BRT") in coordination with the Nevada Department of Wildlife (NDOW). Other technical advisors may be consulted as deemed necessary by the BRT. The BRT will coordinate its monitoring effort with the Recovery Implementation Teams for Pahranagat and White River Valleys.

Biological monitoring may include these areas within the Hydrographic Basins, but only to the extent that access can be obtained:

1. Biological monitoring of valley floor and range-front springs where Special Status Species occur, to the extent that access can be obtained. The Parties will work to gain access to these areas to the maximum extent possible;
2. Monitoring of Water Dependent Ecosystems on the valley floors, to the extent that these exist;
3. Monitoring of sage grouse breeding/late brood-rearing habitat that is groundwater dependent.

Biological monitoring may include these areas within the Adjacent Hydrographic Basins, but only to the extent that access can be obtained:

4. Monitoring of selected areas to be determined by the BRT in consultation with the TRP, for those Special Status Species and their habitats that are most likely to be affected as a result of SNWA's groundwater withdrawals in the Hydrographic Basins. Monitoring locations will be determined by the BRT and may include the following areas:

    a. Pahranagat Valley: Pahranagat National Wildlife Refuge, Key Pittman Wildlife Management Area, and Ash, Crystal, and Hiko Springs;
    b. White River Valley: Hot Creek, Flag, Moorman, and Hardy Springs and phreatophytic habitats that support Special Status Species in Middle and Lower White River Valley, including the Kirch Wildlife Management Area.

IV. REPORTING

All data collected pursuant to this Plan shall be fully and cooperatively shared among the Parties.

Using data derived from groundwater level measurements of all production and Monitoring Network wells in this Plan, SNWA shall produce groundwater contour maps and water-level change maps at the end of baseline data collection, and annually thereafter at the end of each year of groundwater withdrawals by SNWA, or at a frequency agreed upon by the TRP.

Water level and water production data shall be made available to the Parties within 90 calendar days of collection using a shared data-repository website administered by SNWA. Water chemistry sampling reports shall be made available to the Parties within 90 calendar days of receipt using a shared data-repository website administered by SNWA.

SNWA shall report the results of all monitoring and sampling pursuant to this Plan in an annual monitoring report that shall be submitted to the TRP and the Nevada State Engineer's Office by no later than March 31 of each year that this Plan is in effect. The DOI Bureaus may, at their option, provide comments to the Nevada State Engineer's Office on the annual report.

V. MANAGEMENT REQUIREMENTS

A. General

Through the TRP and BRT the Parties shall collaborate on data collection and technical analysis to ensure decisions are consistent with the Common Goals. Decisions must be based on the best scientific information available and the Parties shall collaborate on technical data collection and analysis. The Parties shall use existing data, data collected under this Plan, and the agreed upon transient regional groundwater flow system model as tools to evaluate the effects, if any, of groundwater development on Federal Water Rights, Federal Resources, and Special Status Species in the Area of Interest. The Parties agree that the transient regional groundwater flow system model is one tool that shall be used to inform the Executive Committee about the potential for effects of groundwater withdrawals to spread through the basin-fill and the regional carbonate-rock aquifers, as well as the effectiveness of the potential mitigation actions.

B. Executive Committee

The Parties agree that the Executive Committee ("EC") created pursuant to the Spring Valley Stipulation shall also perform the functions related to the Hydrographic Basins that are the subject of this Stipulation and this monitoring, management and mitigation Plan as set forth in Appendix A to this Exhibit A. In addition to its duties specified in Appendix A, the EC shall 1) review agreed-upon TRP and/or BRT recommendations for actions to reduce or eliminate an injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources or Special Status Species in the Area of Interest from groundwater withdrawals by SNWA in the

Hydrographic Basins, and 2) negotiate a resolution in the event that the TRP and/or BRT cannot reach consensus on monitoring requirements/research needs, technical aspects of study design, interpretation of results, and/or appropriate actions to minimize or mitigate unreasonable adverse effects to Federal Resources or Special Status Species within the Area of Interest or injury to Federal Water Rights from groundwater withdrawals by SNWA in the Hydrographic Basins.

C. Technical Review Panel

The Parties agree that the TRP created pursuant to the Spring Valley Stipulation shall also perform the functions related to the Hydrographic Basins that are the subject of this Stipulation and this monitoring, management and mitigation Plan, as set forth in Appendix A to this Exhibit A.

The Parties agree that data and information gathered pursuant to other stipulations with the DOI Bureaus in the White River Flow System will be presented for review and analysis by the TRP. At a minimum, the TRP shall review, analyze and integrate the data and information gathered pursuant to the July 19, 2001 Stipulation for Dismissal of Protests to SNWA applications in Coyote Spring Valley; and the April 20, 2006 Memorandum of Agreement between SNWA, the U.S. Fish and Wildlife Service, Coyote Springs Investment LLC, the Moapa Band of Paiute Indians, and the Moapa Valley Water District. Additionally, data, reports and other analyses related to the Hydrographic Basins that is performed by the TRP shall be shared with the Moapa Band of Paiute Indians ("Tribe"), provided however, that the Tribe shall not be a voting member of the TRP unless otherwise agreed to by the Executive Committee.

D. Hydrologic Management and Mitigation Operation Plan

Prior to groundwater pumping for production from the Hydrographic Basins, SNWA, in cooperation with the DOI Bureaus, shall prepare a written Hydrologic Management and Mitigation Operation Plan ("Operation Plan"). The Operation Plan shall: 1) identify and define early warning indicators for injury to Federal Water Rights and unreasonable adverse effects to Federal Resources and Special Status Species; 2) define a range of specific mitigation actions that may be carried out if early warning indicators are reached; and 3) use collected baseline data to develop a plan to optimize groundwater development to allow for development of any water rights permitted to SNWA by the Nevada State Engineer in the Hydrographic Basins without causing injury to Federal Water Rights and unreasonable adverse effects to Federal Resources and Special Status Species, consistent with the Common Goals. Early warning indicators and the range of specific mitigation and conservation measures identified in the Operation Plan will be based on all relevant and available data. This Operation Plan shall be used by the Executive Committee during its decision-making process as outlined in Appendix A. The TRP, in coordination with the BRT, shall update the Operation Plan as necessary to ensure the early warning indicators and mitigation actions are consistent with the Common Goals. The Operation Plan, or any mitigation or conservation measures described in the Operation Plan, may also be submitted by SNWA to the Bureau of Land Management, the lead agency for the Clark, Lincoln, and White Pine Counties Groundwater Development Project EIS and the action agency for Endangered Species Act consultation, for consideration as part of the proposed action or alternatives in the EIS process

and as part of the proposed action for the Endangered Species Act consultation process for that Project.

E. Transient Regional Groundwater Flow System Modeling

Once groundwater pumping for production has begun, SNWA shall update and calibrate the steady-state regional groundwater flow model with the data collected during groundwater production in order to produce a transient regional groundwater flow system model ("Model"). The Parties agree that the Model is one tool that may be used to give an early warning of possible injury to Federal Water Rights or unreasonable adverse effects to Federal Resources or Special Status Species within the Area of Interest. However, the Parties recognize that a regional Model may not be an accurate predictor of site-specific effects and that Model results must be qualified based on a comparison of the accuracy of the Model and the capability of the Model to predict actual conditions.

The Parties shall share all geologic, geophysical, hydrologic, and geochemical information collected in the Area of Interest. All data collected pursuant to this Exhibit and data collected pursuant to the EIS Process that has passed QA/QC, as determined by the TRP, shall be included in the Model. The Parties may use the Model to, among other things, study the long term effects in the Area of Interest of removing water from storage, and to create embedded (child) models focused on the Pahranagat and White River Valley Hydrographic Basins.

SNWA shall maintain, update, calibrate, and operate the Model in cooperation with the TRP to include data collected pursuant to this Exhibit and data collected during groundwater production. SNWA may subcontract this obligation to a third party. The cost of all modeling described herein shall be borne by SNWA.

SNWA shall provide Model output for evaluation by the TRP in the form of input files, output files, drawdown maps, tabular data summaries, and plots of simulated water levels through time for the aquifer system, unless otherwise recommended by the TRP.

F. Biologic Resources Team

The Parties hereby establish a Biologic Resources Team ("BRT") to determine and recommend to the EC the appropriate course of action to avoid and/or mitigate unreasonable adverse effects to Federal Resources and Special Status Species in the Area of Interest resulting from SNWA's withdrawal of groundwater from the Hydrographic Basins, consistent with the Common Goals. However, in determining whether an unreasonable adverse effect has occurred, it is the intent of the Parties to give Special Status Species the same level of protection that would be afforded to them under applicable state and/or federal law, including but not limited to, the Federal Land Policy and Management Act and the Endangered Species Act. The term "Water Dependent Ecosystems" as used in this Exhibit A shall mean those Special Status Species habitat areas in the Area of Interest that are dependent upon groundwater levels and/or local and regional spring flows.

The membership of the BRT shall consist of one representative with biologic expertise of Special Status Species and Water Dependent Ecosystems in the Area of Interest from SNWA and each DOI Bureau that chooses to participate. At the discretion of the BRT, others with specific biologic expertise of the Special Status Species and Water Dependent Ecosystems in

the Area of Interest may be invited to consult with the BRT, but shall not be voting members of the BRT. All information considered by the BRT shall be made available to all Parties.

Members of the BRT shall be appointed no later than 30 days after a State Engineer decision granting any of SNWA's Applications in whole or in part. The BRT shall use the consensus-based decision making process as provided in Appendix A.

In furtherance of the Common Goals, the BRT shall strive to identify and monitor responses of Special Status Species within the Area of Interest with respect to changes in biologic resources resulting from SNWA's withdrawal of groundwater from the Hydrographic Basins. The Parties agree that the natural condition of the biologic resources in the Hydrographic Basins and the Adjacent Hydrographic Basins has been highly modified by agricultural practices and other activities, and that because of these existing conditions the BRT may consider whether a minor adverse effect to biologic resources coupled with mitigation measures may be more beneficial for proper ecological functioning than to avoid any adverse effects to biologic resources.

The BRT shall:

1. Work with the TRP to identify Special Status Species and Water Dependent Ecosystems within the Area of Interest and identify those areas that are most likely to be affected by potential hydrologic changes, as determined by the TRP, that may result from SNWA groundwater withdrawals in the Hydrographic Basins;
2. Assemble baseline information using data collected during the EIS Process on those Special Status Species that are most likely to be effected by potential hydrologic changes, as determined by the TRP, that may result from SNWA groundwater withdrawals within the Area of Interest;
3. Develop and implement a baseline monitoring program within the Area of Interest to collect information on those Special Status Species that are most likely to be effected by potential hydrologic changes, as determined by the TRP, that may result from SNWA groundwater withdrawals within the Hydrographic Basins for the time period between issuance of the Final Environmental Impact Statement to the commencement of groundwater withdrawals by SNWA in the Hydrographic Basins. The goal of this baseline monitoring program shall be to help establish natural variability in the Water Dependent Ecosystems;
4. Identify a representative sample of indicators to monitor to establish early warning of unreasonable adverse effects, if any, to Special Status Species in the Area of Interest;
5. Develop and implement a monitoring plan for detecting unreasonable adverse effects to Special Status Species in the Area of Interest that may result from SNWA groundwater withdrawals in the Hydrographic Basins. The BRT shall develop the monitoring plan within 18 months from the date of a State Engineer decision granting the SNWA Applications, in whole or in part;
6. Identify and seek funding to implement research projects, if determined to be necessary by the BRT, to help characterize the relationship between groundwater and Special Status Species habitats, including responses to changing groundwater elevations and spring flows;
7. Specify procedures for data management, sharing, analysis, and reporting;
8. Coordinate with the Pahranagat and White River Valley Recovery Implementation Teams;

9. Develop recommendations to mitigate unreasonable adverse effects to Special Status Species from SNWA groundwater withdrawals in the Hydrographic Basins; and
10. Monitor the success of mitigation actions.

Definition of Special Status Species
As used in this Exhibit, the term "Special Status Species" shall consist of species that are groundwater-dependent and that belong in any of the following categories:

Proposed Species - species that have been officially proposed for listing as threatened or endangered by the Secretary of the Interior under provisions of the Endangered Species Act ("ESA") and for which a proposed rule has been published in the Federal Register.

Listed Species - species officially listed as threatened or endangered by the Secretary of the Interior under ESA and for which a final rule for the listing has been published in the Federal Register.

Endangered Species – under provisions of the ESA, any species which is in danger of extinction throughout all or a significant portion of its range.

Threatened Species – under provisions of the ESA, any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Candidate Species - species designated as candidates for listing as threatened or endangered pursuant to the ESA by the Fish and Wildlife Service ("FWS"), and/or National Marine Fisheries Service ("NMFS").

State Listed Species - species listed by the state of Nevada in a category implying but not limited to potential endangerment or extinction. Listing is either by legislation or regulation.

BLM Sensitive Species - those designated by the Nevada State Director, in cooperation with the Nevada agency responsible for managing the species and Nevada Natural Heritage programs, as sensitive. They are those species that: (1) could easily become endangered or extinct in Nevada, (2) are under status review by the FWS and or NMFS, (3) are undergoing significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution, (4) are undergoing significant current or predicted downward trends in population or density such that Federal listed, proposed, or candidate status may become necessary, (5) typically have small and widely dispersed populations, (6) inhabit ecological refugia or other specialized or unique habitats, (7) are State Listed but which may be better conserved through application of BLM sensitive species status.

TNC G1/G2 Species - G1 Extremely rare; usually 5 or fewer occurrences in the overall range or very few remaining individuals; or because of some factor(s) making it especially vulnerable to extinction. G2 Very rare; usually between 5 and 20 occurrences in the overall range or with many individuals in fewer occurrences; or because of some factor(s) making it vulnerable to extinction.

VI. MITIGATION REQUIREMENTS

To further the Common Goals, SNWA shall mitigate any injury to Federal Water Rights, or unreasonable adverse effects to Federal Resources and/or Special Status Species within the Area of Interest agreed upon by the Parties as determined through the processes described in Appendix A, or after the Nevada State Engineer determines whether there are any such effects due to groundwater withdrawals by SNWA in the Hydrographic Basins. Provided, however, that if any member of the TRP or BRT provides data to the Executive Committee identifying an injury to Federal Water Rights related to the Pahranagat National Wildlife Refuge and also presents data that indicates a trend towards reaching an early warning indicator identified in the Operation Plan, then SNWA shall, within 30 days, identify appropriate mitigation action(s) from within the range of mitigation action(s) identified within the Operation Plan and implement such mitigation action(s). The TRP consultation process identified in Appendix A may be commenced upon identification of such injury by any Party, but will automatically begin no later than 30 days after notice of such injury is provided to the Executive Committee. Following completion of the consultation process identified in Appendix A, any mitigation action commenced by SNWA prior to the initiation of the TRP and/or BRT consultation process may be discontinued if the Executive Committee does not agree by consensus that such mitigation shall continue.

The Parties shall take all necessary steps to ensure that mitigation actions are feasible and are timely implemented. Mitigation measures may include, but are not limited to one or more of the following:

- Geographic redistribution of groundwater withdrawals;
- Reduction or cessation in groundwater withdrawals;
- Provision of consumptive water supply requirements using surface and groundwater sources;
- Acquisition of real property and/or water rights dedicated to the recovery of the Special Status Species within the current and historic habitat range within the Area of Interest of each of the Special Status Species.
- Augmentation of water supply and/or acquisition of water rights for Federal Water Rights and/or Federal Resources using surface and groundwater sources; and
- Other measures as agreed to by the Parties and/or required by the State Engineer that are consistent with this Stipulation.

VII. MODIFICATION OF THE PLAN

The Parties may modify this Plan by mutual written agreement.

APPENDIX A

Criteria Initiating TRP/BRT Consultation and Management or Mitigation Actions

A consultation initiated under this Appendix A shall be completed within 150 days from initiation. The TRP/BRT consultation process shall be completed within 90 days from initiation and the EC process shall be completed within 60 days from completion of the TRP/BRT process. These timelines may be modified or extended by mutual agreement of the EC. The consultation is deemed initiated when a member of the TRP and/or BRT notifies the other members of a concern as described below. Criteria for initiation of consultation, management, and/or mitigation actions are as follows:

I. TRP/BRT Consultation Initiation Criteria

Any party may initiate a TRP or BRT consultation when that Party is concerned that there may be an injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources and/or Special Status Species within the Area of Interest as the result of:

a) a change in surface water and/or groundwater level and/or discharge measured by one or more of the monitoring sites included in this Plan, or

b) a change in groundwater level predicted by the agreed-upon transient regional groundwater flow system Model, or

c) a change in a measured biological parameter in a Special Status Species or its Water Dependent Ecosystem,

that is due to, or may be reasonably attributed to, groundwater withdrawals by SNWA in the Hydrographic Basins.

If consultation is initiated pursuant to Section I a) or c) above, the following consultation process shall apply:

1) Parties shall notify each other and the TRP and BRT shall confer by teleconference or in person within 21 calendar days;

2) The TRP and BRT shall evaluate all relevant data including the water level, discharge measurement, and biological data. The objective for the consultation is to determine if the change in water level, discharge and/or biological parameter may be due to groundwater withdrawals by SNWA in the Hydrographic Basins.

   i. The TRP shall compare the observed field data with Model predictions to evaluate how well Model predictions match observed drawdown and shall discuss potential changes to the Model as agreed to by consensus of the TRP.

ii. The BRT shall compare observed changes in biological parameters to changes in hydrologic conditions evaluated by the TRP and/or predicted by the TRP Model.

iii. Based on observed data, the Model shall be recalibrated and sensitivity analysis applied if necessary, and the Model shall be rerun to evaluate the effects of groundwater withdrawals by SNWA in the Hydrographic Basins on Federal Water Rights, Federal Resources and Special Status Species within the Area of Interest and on regional groundwater gradients.

iv. If the TRP and/or BRT agree that the measured change in water level, discharge, and/or biological parameter is not attributable to groundwater withdrawals by SNWA in the Hydrographic Basins, no further management actions shall be taken at that time. The TRP and BRT may conduct further investigations into the cause(s) of such changes.

v. If any member of the TRP or BRT is concerned that the measured change in water level, discharge, and/or biological parameter is attributable to groundwater withdrawals by SNWA in the Hydrographic Basins and is causing or has the potential to cause injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or Special Status Species in the Area of Interest, then the TRP and/or BRT shall work to develop consensus-based courses of action to address the concern and/or that manage or mitigate any injury and/or unreasonable adverse effect(s). The TRP and BRT may use the Model to evaluate the effects of various courses of action outlined in the Paragraph VI of Exhibit A to manage or mitigate such unreasonable adverse effect(s). The TRP and BRT shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section II.1.

vi. If the water level, discharge measurement, or biological data indicates that there is an injury to Federal Water Rights and/or unreasonable adverse effects to Federal Resources and/or Special Status Species within the Area of Interest, and the TRP and/or BRT is unable to develop a consensus-based course of action, the TRP and/or BRT shall notify the Executive Committee, and the Parties shall proceed to Section II.2.

If a consultation is initiated pursuant to Section 1.b) above, the following consultation process shall apply:

1) Parties shall notify each other and the TRP and BRT shall confer by teleconference or in person within 21 calendar days;

2) The TRP shall evaluate the modeling parameters, variances to water level changes relative to modeling predictions, the translation of modeling variances to areas of concern and variables influencing Model results. The TRP objective for the consultation is to determine if the response may be due to groundwater withdrawals by SNWA in the Hydrographic Basins.

i. The TRP shall compare the observed field data with Model predictions to evaluate how well the Model predictions match observed drawdown and shall discuss potential changes to the Model as agreed to by consensus of the TRP. All Parties recognize that future modeling of predicted effects for the verification of the Model shall be a necessary component to determine the validity of the modeling results and any course of action.

ii. Based on observed data, the Model shall be recalibrated as necessary, and shall be rerun to evaluate the effects of groundwater withdrawals by SNWA in the Hydrographic Basins on Federal Water Rights, Federal Resources and/or Special Status Species in the Area of Interest.

iii. If the TRP agrees that the recalibrated Model does not predict a potential injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources or Special Status Species in the Area of Interest, no further management actions shall be taken at that time.

iv. If any member of the TRP is concerned that the recalibrated Model predicts a potential injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources and/or Special Status Species in the Area of Interest, then the TRP shall develop consensus-based actions to address the concern and/or that manage or mitigate those effect(s). The TRP shall also use the Model to evaluate the effects of different courses of action outlined in Paragraph VI of Exhibit A to manage or mitigate those effects. The TRP shall convey all recommended courses of action to the Executive Committee, and the Parties shall proceed to Section II.1.

v. If the recalibrated Model predicts a potential injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources and/or Special Status Species in the Area of Interest, and the TRP is unable to develop a consensus-based course of action, the TRP shall notify the Executive Committee, and the Parties shall proceed to Section II.2.

II. Actions to Manage or Mitigate

1) If the TRP and/or BRT determines, by consensus, that a predicted or measured change in groundwater levels or biological parameter would result in injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources and/or Special Status Species in the Area of Interest, the Executive Committee shall consider the TRP and/or BRT's recommended courses of action. Upon receiving any consensus-based TRP and/or BRT recommendations, the Parties, through the Executive Committee (with input from the TRP and BRT as necessary), may seek a negotiated resolution of a course of action to reduce or eliminate the injury to Federal Water Rights and/or the unreasonable adverse effect

to Federal Resources and/or Special Status Species in the Area of Interest, through management of groundwater withdrawals, and/or the mitigation of the injury or effects. If the Executive Committee cannot reach consensus, any Party may refer the issue to the Nevada State Engineer or other agreed-upon third party after notifying all other Parties of its intent to refer the matter to the Nevada State Engineer or other agreed upon third party.

2) If the TRP and/or BRT notifies the Executive Committee that it is unable to make a determination by consensus that a predicted or measured change in groundwater levels, and/or biological parameter would result in injury to Federal Water Rights and/or an unreasonable adverse effect to Federal Resources and/or Special Status Species in the Area of Interest, or that the TRP and/or BRT is unable to obtain consensus on a recommended course of action, the Executive Committee shall attempt to negotiate a mutually acceptable course(s) of action. If that is not successful, any Party may refer the issue to the Nevada State Engineer or other agreed-upon third party after notifying all other Parties of its intent to refer the matter to the Nevada State Engineer or other agreed upon third party.

3) The Executive Committee shall refer to the Operation Plan developed pursuant to Paragraph V.D. of Exhibit A when determining management or mitigation actions.

EXHIBIT 3

Case No. CV1204049
Dept. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

WHITE PINE COUNTY and CONSOLIDATED CASES, E.T.. al.,

Plaintiffs,

vs.

DECISION

JASON KING, P.E., NEVADA STATE ENGINEER, STATE OF NEVADA, DIVISION OF WATER RESOURCES,

Defendant.
_____/

This matter is an appeal from the Nevada State Engineer, Jason Kings' rulings 6164, 6165, 6166 and 6167 concerning the grant of water rights to Southern Nevada Water Authority in Spring Valley (Lincoln and White Pine Counties), Cave Valley, Dry Lake Valley and Delarmar Valley.

Petitioners include the Great Basin Water Network, (GBWN),[1] White Pine County, Nevada, Millard and Juab County, Utah, Ely Shoshone and Duckwater Shoshone Tribes, Confederate Tribe of the Goshute Reservation and the Presiding Bishop of the Churchill of Latter-Day Saints on behalf of the Cleveland Ranch.

As explained below, the State Engineer's rulings is remanded: for recalculation of water available from the respective basins; for additional hydrological study of Delamar, Dry

[1] GBWN is a non-profit corporation formed by over fifty individuals and related conservation groups.

Lake and Cave Valley; and to establish standards for mitigation in the event of a conflict with existing water rights or unreasonable effects to the environment or the public interest.

I
HISTORY

In 1989, Las Vegas Valley Water District applied for unappropriated water in hydrographic basins 180, 181, 182 and 184; Cave Valley, Dry Lake, Delamar Valley and Spring Valley respectively. In 1991, the current real party in interest, South Nevada Water Authority (SNWA) became the successor in interest to the Las Vegas Valley Water District.

Several protests were filed against the application in July of 1989. The Nevada State Engineer (Engineer) was required to rule on the application within one-year of the protest's filing date. NRS 533.370(2). The applications were not ruled on within one-year, however, hearings on the application were held in 2006. By 2006, the water rights had changed hands many times and few right holders received notice of the 2006 hearings. Great Basin Water Network v Nevada State Eng'r, 126 Nev. Adv. Op. 20, 234 P.3d 912 (2010).[2]

Prior to the 2006 hearings, The National Park Service, Bureau of Fish and Wildlife, Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) were actively protesting the orders granting water rights to SNWA: All of these entities are divisions of the Department of the Interior. ROA 000007. Each entity entered into an agreement with SNWA, withdrawing their protests in exchange for implementation of a hydrologic and biologic Monitoring, Management and Mitigation plan. ROA 000012; 020791; 020806; Ex. SE 041. This plan's stipulation was affirmed prior to the 2011 hearings, Id. and later revised to the current plan approved by the Engineer. Certain specifics of this agreement will be addressed later in this order. The Engineer is not a party to the stipulation, but has approved of the agreement and incorporated its terms into his rulings. ROA 000103-000106.

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[2] Subsequently, the Engineer's orders were vacated, new notices were sent, and the hearings rescheduled for September and November, 2011.

After the Fall 2011 hearings, the Engineer approved 61,127 acre-feet annually (afa) to SNWA from Spring Valley and reserving 4,000 afa for future growth in Order 6164 (March, 2012). ROA 000216. Other terms of the Order include:

A. First stage pumping is limited to 38,000 afa for eight years, data to be collected, modelled reported to the Engineer annually.

B. Stage two pumping shall be limited to 50,000 afa for a minimum of eight years with the data collection and modelling to be reported annually.

C. Stage three, SNWA will be allowed to pump the full 61,127 afa.

Id.

Further, the Enginner must approve each stage of pumping and SNWA must comply with the MMM plan prepared by SNWA and approved by the Engineer. ROA 000216-000217.

Orders 6165, 6166 and 6167 concern the water rights granted to SNWA in Cave Valley, Dry Lake Valley and Delamar Valley respectively. All three orders condition the water grants as Compliance with the Hydrologic MMM plan prepared by SNWA and the Biological Monitoring plan. ROA 00387-8; 000551; 00713-4. The MMM plan shall be subject to modification by the Engineer. SNWA must report annually and provide 10-25-100 year predictive models to the Engineer.

The Cave Valley appropriation is 5,235 afa with 50 afa reserved for future growth. Dry Lake Valley's appropriation is 11,584 afa, 50 afa for future growth. Delamar Valley's appropriation is 6,042 afa and 50 afa for future growth. Id.

The four rulings by the Engineer represent the largest water appropriations in Nevada history. The water basins concerned including Spring, Cave, Dry Lake and Delamar Valleys encompass 20,688 square miles of Nevada. ROA 000125.

The basins size has been compared to New England, encompassing great portions of Vermont, New Hampshire, Massachusetts, Connecticut and some of New York.

SNWA Ex. 339, ROA 020181. It is likely the largest interbasin transfer of water in U.S. history.

II
AUTHORITY AND OBLIGATIONS OF THE STATE ENGINEER

The Engineer "[s]hall approve an application submitted in proper form which contemplates the application to beneficial use if:"

(a) The application is accompanied by the prescribed fee;

(b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of the applicant's:

(1) Intention is good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and
(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

NRS 533.370 (1).

Additionally, the Engineer must determine;

1. Whether there is unappropriated water;

2. Whether the proposed use will conflict with existing rights and/or domestic wells; or
(a) If the appropriation threatens to prove detrimental to the public interest,

"The State Engineer shall reject the application" NRS 533.370 (2).

The Engineer must also consider:

(a) Whether the applicant has justified the need to import the water from another basin.

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development to the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant.

NRS 533.370(3).

III
STANDARD OF REVIEW

After the Engineer issues the rulings, an aggrieved party is entitled to have the order or decision reviewed by the District Court, in the nature of an appeal. NRS 533.450. On a petition for judicial review, the Court is confined to considering the administrative record. NRS 533.450 (1). The proceedings in every case must be heard by the Court, and must be informal and a summary, but a full opportunity to be heard must be had before judgment is pronounced. NRS 533.450 (2).

In reviewing the record, the Court must treat the State Engineer's decision as "prima facie correct, and the burden of proof shall be upon the party" challenging the decision. NRS 533.450 (9). The Court may not substitute its judgment for that of the State Engineer, but is limited to determining whether there is substantial evidence in the record to support the decision. Revert v. Ray, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). Substantial evidence is "that which a reasonable mind might accept as adequate to support a conclusion." Bacher v. Office of the State Eng'r of Nev., 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006).

> [A] conclusion that substantial evidence supports the findings of the State Engineer does not, however, dispose of the . . . appeal. The applicable standard of review of the decisions of the State Engineer, limited to an inquiry as to substantial evidence, presupposes the fullness and fairness of the administrative proceedings: all interested parties must have had a "full opportunity to be heard," *See* NRS 533.450 (2); the State Engineer must clearly resolve all the crucial issues presented, *see Nolan v. State Dep't of Commerce,* 86 Nev. 428, 470 P.2d 124 (1970) (on rehearing); the decision maker must prepare findings in sufficient detail to permit judicial review, *id.; Wright v State*

> *Insurance Commissioner, 449 P.2d 419 (Or. 1969)*; see also *NRS 233B.125*. When these procedures, grounded in basic notions of fairness and due process, are not followed, and the resulting administrative decision is arbitrary, oppressive, or accompanied by a manifest abuse of discretion, this court will not hesitate to intervene. *State ex rel. Johns v. Gragson, 85 Nev. 478, 515 P.2d 65 (1973)*.

Revert, 95 Nev. At 786, 603 P.2d at 264.

The Court is free to decide purely legal questions de novo. Town of Eureka v. Office of the State Eng'r of Nev., 108 Nev. 163, 165, 626 P.2d 948, 949 (1992). A purely legal question is one that is not dependant (sic) upon, and must necessarily be resolved without reference to, any fact in the case. Beavers v Department of Motor Vehicles & Pub. Safety, 109 Nev. 435, 438 n.1, 851 P.2d 432, 434 n.1 (1993). While the State Engineer's interpretation of law is persuasive, and the court should give it great deference when it is within the language of the applicable statutory provisions, it is not controlling. Town of Eureka, 108 Nev. at 165, 826 P.2d at 950; Andersen Family Assocs., v Ricci, 124 Nev. Adv. Rep. 17, 179 P.3d 1201, 1203 (2008).

IV

NEVADA ENGINEERS' RULINGS COMMON TO SPRING, DELAMAR, CAVE AND DRY LAKE VALLEY

"The State Engineer held a hearing on the Spring, Cave, Dry Lake and Delamar Valley application between September 26, 2011, and November 18, 2011." ROA 000010. NRS 533.370 (1) (c); (2) and (3) requires findings that water is available to be appropriated and that the statutory criteria for granting the water is satisfied by substantial evidence. "Both the Applicant [SNWA] and protestants submitted thousands of pages of scientific information, evidence and testimony for consideration during a record-long six-week hearing." ROA 000029.

The Engineer made the following findings of fact:

> That Southern Nevada provided substantial evidence of need for additional water "independent of the Colorado River," ROA 000037, and that "current available supplies [are] insufficient to meet projected future water demands under normal conditions." ROA 000038.
>
> That Southern Nevada provided substantial evidence that it "intends to construct the works necessary and put water from the applications to beneficial use . . . with reasonable diligence." ROA 000046.
>
> That Southern Nevada provided substantial evidence of financial ability and a "feasible conceptual plan of development. ROA 000047.

These findings were opposed by many of the Protestants and countered with expert opinions. However, there is no real question that the Engineer's findings above were not based on substantial evidence acceptable to a reasonable mind. Further, the Protestants had a full and fair opportunity to present their evidence. Thus, the Engineer's findings were not arbitrary or capricious.

V
OBJECTIONS MADE BY PROTESTANTS

Virtually all of the Protestants which include Cleveland Ranch (Corp. of the Church of Latter-Day Saints), White Pine, Eureka, Elko, and Nye counties, Nevada, The Confederate Tribes of the Goshute Reservation, Ely and Duckwater Shoshone Tribes and Millard and Juab counties, Utah, object to the Engineer's orders on the basis of the Monitor, Manage and Mitigate Plan (MMM). The Protestants allege that as the plan is currently written it cannot adequately protect existing rights or the environment.

Most of the Protestants object to the Orders alleging that any amount of water awarded to SNWA is excessive or should not be granted at all, citing to evidence and arguments presented to the Engineer at the 2011 hearings. Essentially, the objections are that the award is neither environmentally sound nor in the public interest, pursuant to NRS 533.370. The objections are either relating to the entire Spring Valley Basin and/or Delamar,

Cave or Dry Lake Valleys, or localized areas inhabited or used by the Ely, Duckwater and Goshute Native Americans.

Other, more specific objections are that NRS 533.3705 (which allows staged development of a water award) is inapplicable to the instant case because the statute is not retroactive to SNWA's 1989 application; and that hydrological knowledge of the respective basins is so incomplete that any water award is premature and; that the perennial yield of Delamar, Dry Lake, and Cave Valley, as part of the White Pine River Flow System is already appropriated in the lower parts of the flow system.

Some of the Protestants argue that SNWA failed to meet its burden of proving need, good faith intentions to construct the infrastructure, and financial ability to perform the construction. As stated above, this court finds the Engineer's ruling valid regarding need, good faith and financial ability.

Regarding the argument that NRS 533.3705, allowing staged development, does not apply retroactively, as interpretation is a matter of law, this court finds that NRS 533.3705 does apply in this case. Enacted in 2007 the law states "[u]pon approval of an application to appropriate water, the State Engineer may limit the initial use of water to a quantity that is less that the total amount approved for the application." The applications in question were approved in March, 2012, after the enactment of the statute. *See generally* PEBP v LVMPD, 124 Nev. 138 (2008).

Millard and Juab counties, Utah, object that Ruling 6164 does not specifically include Snake Valley, Utah in the mitigation process. Snake Valley is specifically to be monitored by six (6) wells and sixteen (16) monitoring sites. ROA 000114-115. Snake Valley, Utah is not specifically mentioned as a mitigation site. Whether the omission was inadvertent or not, Ruling 6164 is remanded to include Snake Valley, Utah in the mitigation plan.

The Confederated Tribes of the Goshute Reservation argue that pursuant to the Public Trust Doctrine, the Spring Valley awards must be vacated.

> If the current law governing the water Engineer does not clearly direct the Engineer to continuously consider in the course of his work the public's interest in Nevada's natural water resources, the law is deficient. It is then appropriate, if not our constitutional duty, to expressly reaffirm the Engineer's continuing responsibility as a public trustee to allocate and supervise water rights so that the appropriations do not substantially impair the public interest in the lands and waters remaining. [The public trust] is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands, and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust. Our dwindling natural resources deserve no less.

Lawrence v Clark County, 127 Nev. Adv. Op. 32, 254 P.2d. 606, 611 (2011).

The Goshute's argument is well taken, but whether Spring Valley groundwater is part of the Public Trust Doctrine or not, Nevada law requires the Engineer to oversee an environmentally sound stewardship of the water, the same goal as the doctrine.

VI
SPRING VALLEY APPROPRIATIONS

A. THE AWARD OF 61,127 AFA VIOLATES THE STATE ENGINEER'S RULES

The Engineer relied on substantial evidence, produced from numerous sources, when determining the amount of water available for the Spring Valley appropriation granted to SNWA. ROA 000057-000090. Considering the evidence of evapotranspiration, inter-basin flow and recharge, the Engineer found 84,000 afa available. ROA 000090. Further, he found, "there is no substantial evidence that the proposed use will conflict with protectable interests in existing domestic wells, or that the use will threaten to prove detrimental to the public interest." ROA 000215.

The Engineer began his calculation of the Spring Valley appropriation with the "estimated average groundwater evapotranspiration (E.T.)," at 84,100 afa. Thus, the perennial yield of Spring Valley is 84,000 afa. ROA 000214. Existing water rights are 18,873 afa and "an additional 4,000 afa is reserved for future growth and development for a total of

22,873 afa of water committed to the basin. Subtracting 22,873 afa from the perennial yield of 84,000 afa leaves 61,127 afa available for appropriation." ROA 000215.

Perennial yield has been for many years defined by the Engineer as:

> The perennial yield of a groundwater reservoir may be defined as the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less.

ROA 000056.

In theory, with enough time the water removed from the system equals the recharge of the system thereby reaching equilibrium. However, reaching equilibrium may take hundreds of years, and "always involves the depletion of water from transitional storage." Engineer Ans. Brief, p.54. If more water comes out of a reservoir than goes into the reservoir, equilibrium can never be reached. This is known as water mining and "[w]hile there is no statute that specifically prevents groundwater mining, the policy of the Engineer for over one hundred (100) years has been to disallow groundwater mining. This policy remains today. Id.

The Engineer defines groundwater mining as pumping exceeding the perennial yield over time such that the system never reaches equilibrium. ROA 56. Natural discharge in Spring Valley is almost exclusively E.T. ROA 000057. E.T. occurs by plants and phreatophytes discharging the groundwater from the basin through use. In Spring Valley, this is the water sought for beneficial use. Of course, to do so, the phreatophytes must be completely eliminated. Engineer Ans. Brief, p.53-54.

Obviously, any water-well cannot capture all of the E.T., and while pumping and E.T. are both occurring, the water table drops. A reasonable lowering of the water table and death of most of the phreatophytes is a trade-off for a beneficial use of the water. "It is a condition of each appropriation of groundwater acquired under this Chapter that the right of

the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion." NRS 534.110(4). The Engineer specifically found "there is no provision in Nevada water law that addresses time to capture, and no State Engineer has required that E.T. be captured within a specific period of time. It will often take a long time to reach near equilibrium in large basins . . . and this is no reason to deny water right applications." ROA 000090. The Engineer is correct that the time to reach equilibrium is not a valid reason to deny the grant of water, but it may very well be a reason to limit the appropriation below the calculated E.T.

Here, there is no valid evidence of when SNWA will capture E.T., if ever. Evidence was submitted at the hearing over many days, the Engineer stated that seventy-five (75) year models of groundwater pumping are appropriate due to "existing data." ROA 000146. However, over seventy-five (75) years becomes less certain. Id. Moreover, the Engineer did not require SNWA to prove that they could capture all of the E.T. SNWA did claim that after two hundred (200) years; their evidence showed that eighty-four (84%) percent of the E.T. would be captured and eighty four percent [is] close to a hundred percent." SNWA Ans. Brief p.288. Simple arithmetic shows that after two hundred (200) years, SNWA pumping and evapotranspiration removes 70,977 afa from the basin with no equilibrium in sight. That is 9,780 afa more than SNWA's grant.

Mr. Stockton, arguing on behalf of the Engineer stated that, "requiring these E.T. salvage projects . . . it's just not appropriate. It can't be done in most basins because the federal government owns the land. They're not going to allow it to be dotted with wells all over the place and the State Engineer found that it wasn't appropriate to require an E.T. salvage project." SE Ans. Brief, Vol. I, p.54. SNWA stated that "[t]he whole question of groundwater mining and E.T. capture and timed equilibrium are not part of the water law and they are not necessary." SNWA Ans. Brief, Vol. I, p.69.

The Engineer acknowledged that it is unlikely all of the E.T. in a basin will be captured. Additionally, "[i]t is unclear where [Cleveland Ranch] got the impression that groundwater development in Nevada is required to be an E.T. salvage project, which is certainly not contained in statutory law." Engineer Ans. Brief, p.54. Perhaps Cleveland Ranch and the other Protestants "got the impression" from the Engineer's definition: "Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use." ROA 000056. Moreover, in the Engineer's Ruling 5726 he defined perennial yield as an "assumption that water lost to natural E.T. can be captured by wells and placed to beneficial use." Cleveland Ranch Opening Brief, App. 1 at 27, citing Ruling 5726. The Nevada Supreme Court stated, "[t]he perennial yield of a hydrological basin is the equilibrium amount or maximum amount of water that can safely be used without depleting the source." *Pyramid Lake Paiute Tribe of Indians v Ricci*, 126 Nev. Adv. Op. 48; 245 P.3d 1146, 1147 (2010).

The Engineer 's finding that equilibrium in Spring Valley water basin will "take a long time" was not based on substantial or reliable evidence, and is incorrect. Indeed, by his own statements – and evidence – equilibrium will never be reached.

The Engineer has also said that "[d]rawdown of less than 50 feet over a seventy-five year period is generally a reasonable lowering of the static water table." ROA 000132. However, after two hundred (200) years of pumping the water table is losing 9,780 afa over and above the amount SNWA has been authorized to pump. SNWA's expert certified that uncaptured E.T. would have to be deducted from the perennial yield. ROA 34928. This, the Engineer did not do.

This Court finds that the Engineer's own calculations and findings, show that equilibrium, with SNWA's present award, will never be reached and that after two hundred (200) years, SNWA will likely capture but eighty-four (84%) of the E.T. Further, this court finds that losing 9,780 afa from the basin, over and above E.T. after 200 years is unfair to

following generations of Nevadans, and is not in the public interest. In violating the Engineer's own standards, the award of 61,127 afa is arbitrary and capricious.

This finding by the court requires that this matter be remanded to the State Engineer for an award less than the calculated E.T. for Spring Valley, Nevada, and that the amended award has some prospect of reaching equilibrium in the reservoir.

B. THERE ARE NO OBJECTIVE STANDARDS AS TO WHEN THE MITIGATION PART OF THE MONITOR, MANAGE AND MITIGATE PLAN GO INTO EFFECT

SNWA's expert reports make it clear that the hydrology of Spring Valley, as well as Delamar, Dry Lake and Cave Valley, is not completely understood. Much of the data collected over the years is analyzed by computer models and is "significantly" limited in accuracy concerning the hydrological framework, actual precipitation, recharge and other factors. ROA 010704; 010708-9. The experts recognize that inaccuracies exist because of a lack of data collection over vast areas of Spring Valley, Delamar, Dry Lake and Cave Valleys. ROA 010706. For example, 10 years of data collection generally means an accurate predictive model for the next 10 years. ROA 000146. Thus, the Engineer has stated that a 75 year model is a reasonable simulation because there are 75 years of existing data. "Over 75 years becomes less certain." Id. "[U]ncertainty is reduced overtime as more baseline and operational data become available." ROA 013244. "Much is not known about the groundwater-influenced ecosystems in the [initial biological monitoring area] (e.g., relationship, between groundwater levels and spring-flow: relative dependence of certain vegetation on groundwater versus other sources of water), and the response of these systems to groundwater withdrawal by SNWA." Biological Monitoring Plan Spring Valley Stipu. ROA 020648.

Recognizing that no one really knows what the impact of pumping water from Spring Valley on such a large scale will be (ROA 000135-6 and 020066), the Engineer found that staged pumping is environmentally sound and will insure no conflicts with existing rights.

ROA 000151. Additionally, the Engineer adopted the MMM Plan created by SNWA and the National Park Service, Bureau of Fish and Wildlife, and the Bureau of Indian Affairs. A description of the plan is contained in State Engineer's Order No. 6164. ROA 000103-120.

The MMM plan is a stipulation between SNWA and Federal agencies (supra). In summary, SNWA's pumping will be managed to avoid "unreasonable harm to scenic values" in the Great Basin National Park and the "loss of surface vegetation." ROA 020496. The three principal components are:

> *Monitoring Requirements* – including, but not limited to monitoring wells, spring flow measurements, water chemistry analyses, quality control procedures, and reporting requirements; and
>
> *Management Requirements* – including, but not limited to the creation of a Technical Review Panel ("TRP") to review information collected under this Plan and advise the Executive Committee (a group consisting of one management-level person from each Party, as described below in Management Requirements), the use of an agreed-upon regional groundwater flow system numerical model(s) to predict effects of groundwater withdrawals by SNWA in the Spring Valley HB, and the establishment of a consensus-based decision-making process; and
>
> *Mitigation Requirements* – including, but not limited to the modification relocation or reduction in points of diversion and/or rates and quantities of groundwater withdrawals or the augmentation of Federal Water Rights and/or Federal Resources as well as measures designed and calculated to rehabilitate, repair or replace any and all Federal Water Rights and Resources if necessary to achieve the goals set forth in Recital G of the Stipulation.

ROA 20791.

Similarly, the Biologic Monitoring, Management and Mitigation Plan has been instituted to "determine the appropriate course of action to avoid and/or mitigate any effects to Water-dependent Ecosystems . . . within the Great Basin National Park [and other Federal] 'Areas of Interest.'" ROA 020806. The Biologic monitoring is to "determine potential indicator species and appropriate parameters to monitor for early warning of unreasonable adverse effects and of any effect within the boundaries of Great Basin National Park . . .

resulting from SNWA's withdrawal of ground water from the Spring Valley HB." Id. The Mitigation portion of the Plan briefly describes what could possibly be done to mitigate unreasonable effects. Id.

Appendix B of NSE Ruling 5726 contains objectives 6, 7, and 8 of the "Plan":

> 6. During the Pre-Withdrawal Phase, establish the range of variation for each indicator (or suite of indicators) that will be considered acceptable.
>
> 7. Define what constitutes an "unreasonable adverse effect" during the Pre-Withdrawal Phase.
>
> 8. In coordination with TRP, during the Pre-Withdrawal Phase, establish criteria that will initiate the BWG consultation process as outlined in the Stipulation.
>
> The Stipulation directs there be no "unreasonable adverse effect" to groundwater-influenced ecosystems in the IBMA and no adverse effect to GBNP as a result of SNWA's groundwater withdrawal in Spring Valley. In order to meet these requirements, it is imperative that impacts are detected and assessed, and appropriate management actions are initiated, prior to such effect occurring.

ROA 020647.

As noted above, the Engineer has instituted the MMM Plan as a condition of the SNWA appropriations (ROA 000181), and has been involved in developing the Plan. ROA 013243-44. However, the MMM Plan is flawed in several respects, most notably: "Mitigation planning is not part of this plan but will be handled separately when impact location and magnitude are better understood." ROA 020648. Nonetheless, the MMM Plan emphasizes that mitigation will cure any adverse effects and the Engineer has found that the existing, non-Federal rights are sufficiently protected by the Plan. ROA 000215. There are no objective standards to determine when mitigation will be required and implemented. The Engineer has listed what mitigation efforts can possibly be made, i.e., stop pumping, modifying pumping, change location of pumps, drill new wells, or increase or improve leopard frog populations in a different location from one that suffers an

unreasonable impact. ROA 000190. Also, the Engineer has noted that if pumping has an adverse effect on swamp cedars, SNWA could mitigate, ROA 000189. but does not cite objective standards of when mitigation is necessary. The Engineer states: "where unreasonable impacts may occur and how bad the impacts may be is not understood and thus mitigation cannot be part of the plan at the present." Not knowing where or how bad an impact is, is not the same thing as defining what an adverse impact..

The Engineer has found that it is "premature to attempt to set quantitative standards or triggers for mitigation actions," because "[f]actors such as natural variation in the environmental resources must be understood before any standards or triggers are set." ROA 000311. "Selecting specific standards before a full baseline is developed would be premature. It would not lead to sound scientific decisions." ROA 000182-183.

While this Court cannot completely disagree with the Engineer's statement above, he has also stated: "The State Engineer finds that the applicant [SNWA,] gathered and presented substantial environmental resource baseline material and that the environmental resource baseline information provides a platform for sound, informed decision making." ROA 00176. Thus, if SNWA, and thereby the Engineer, has enough data to make informed decisions, setting standards and "triggers" is not premature. Curiously, the Engineer has made the finding that a failure to even make "Mitigation" a part of the current MMM plan "demonstrates Applicant's determination to proceed in a scientifically informed, environmentally sound manner." ROA 000183. It seems that if there is enough data to make informed decisions, exactly when an unreasonable impact to either the environment or existing rights occurs, the Engineer or SNWA should recognize it and make the decision to mitigate. If there is not enough data (as shown earlier, no one really knows what will happen with large scale pumping in Spring Valley), granting the appropriation is premature. The ruling is arbitrary and capricious.

Still other flaws with the MMM Plan are evident. The Engineer stated: "the regulation of water rights is in the State Engineer's purview, and the State Engineer proactively monitors impacts to existing rights and the environment." ROA 000183. Also, "[t]he State Engineer finds that the potentially impacted water rights . . . are or will be monitored and that this monitoring will allow for early warning of potential impacts to these water rights . . . and will exercise his authority as needed to protect these existing rights and will require mitigation if needed." ROA 000139-140.

The Engineer found that lowering the Spring Valley water table by 50 feet is "reasonable," but has avoided any mention of what is unreasonable. Nor did he state how monitoring will be accomplished, or what constitutes an impact, potential or otherwise. There is no standard to know how much of an impact is unreasonable to leopard frogs, or to swamp cedars, before mitigation is necessary. The Engineer gives a vague statement of how mitigation can be done, but has no real plan or standard of when mitigation would be implemented. Without a stated, objective standard, the ruling is arbitrary and capricious.

Regarding monitoring and proactive monitoring by the Engineer, there is no plan. The Federal/SNWA stipulation requires yearly reports to the Engineer, but even a cursory examination of the stipulation reveals that between SNWA, the Federal agencies and existing water right holders, the goals and motivations of each party will certainly conflict. The Engineer finds that he has jurisdiction to oversee the "environmental soundness" of the project "and will do so." ROA 000178. Again, he has not stated how this will be accomplished. If the Engineer believes that his department will monitor the non-Federal rights and environment, he has not said how it will be done. The Engineer pointed out in *Great Basin Water Network v. State Engineer*, 126 Nev. Adv. Op. 20; 234 P.3d 912 (2010), that he is short staffed. There are 172,605 acres in Spring Valley alone. ROA 18788. Without a plan to monitor that large of an area, a statement that the Engineer will monitor the area is also arbitrary and capricious.

Impliedly, the Engineer has ceded the monitoring responsibilities to SNWA. "The State Engineer finds that [SNWA] has the ability to identify impacts of the project through its environmental monitoring plan." ROA 000193. Yet, the plan has failed to set any standard of how impacts may be recognized. Essentially, the Engineer is simply saying, "we can't define adverse impacts, but we will know it when we see it."

Both SNWA and the Engineer have properly referenced the successful MMM plan used at Devil's Hole in the Armagosa Valley. In Devil's Hole, aside from being a small fraction of area compared to Spring Valley, Delamar, Dry Lake and Cave Valley, the MMM plan specifically has a "trigger." When the water level falls 2.7 feet below a copper washer, mitigation must occur. Transcript, Vol. I, p.65. This is an objective and recognizable standard.

The Engineer has stated several times that "under specific conditions" SNWA will be required to modify or curtail pumping. ROA 013248 and 013264. Yet again, there are no specifics stated.

The Engineer rightly recognized his "heavy burden of ensuring" that this water project is environmentally sound. ROA 000173. A heavy burden indeed and one which is not complete. Several of the Protestants noted that the MMM plan is filled with good intentions but lacks objective standards. This Court agrees. Granting water to SNWA is premature without knowing the impacts to existing water right holders and not having a clear standard to identify impacts, conflicts or unreasonable environmental effects so that mitigation may proceed in a timely manner. Based on the above, this matter must be remanded to the State Engineer until objective standards can be established and stated – as to when mitigation must occur.

VII
CAVE, DRY LAKE AND DELAMAR VALLEY

A. THE WATER AWARDED TO SNWA IN RULINGS 6165, 6166 AND 6167 IS ALREADY APPROPRIATED IN THE LOWER BASINS

Cave, Dry Lake, and Delamar Valley (CDD) are contiguous and linear, stretching from White Pine County, Nevada, southerly, into Lincoln County. It is approximately sixty (60) miles from the Northern tip of Cave Valley to the Southern end of Delamar Valley. ROA 020507. Unlike Spring Valley, which is a "closed valley", the CDD basins are "not closed". ROA 000599. In closed valleys, natural water discharge is by evapotranspiration (E.T.). In CDD, water is discharged by water flow from one basin into another. "Just like water in streams, groundwater moves from areas of higher hydraulic heads to areas of lower hydraulic heads." ROA 017407.

The Engineer described the CDD basins as part of the White River Flow system, consisting of ten (10) additional hydrographic basins, which discharge primarily into the White River Valley, Pahranagat Valley, and the Muddy Springs Area. ROA 000599. Approximately 2,000 afa flow into Dry Lake Valley from Pahroc. ROA 010588. "There is no groundwater E.T. in Dry Lake Valley, (ROA 017415) so all groundwater in Dry Lake Valley flows down gradient to the south to Delamar Valley." Id. and continues from Delamar to northern Coyote Springs Valley. Id.

The Protestants allege that the CDD water allocation to SNWA, has been previously appropriated. The awarding SNWA water from the higher gradient of the White River Flow allows SNWA to take the water before it recharges the lower basins, which conflicts with earlier established water rights. In other words, the same water has been awarded twice, once in the upper basins, and again in the lower basins.

The Engineer tacitly acknowledges the double appropriation of the same water but rationalizes it in two different ways. First, he refers to the rights in Coyote Springs as "paper water rights." Oral Arg. Trans., Vol. II, p.255. Exactly what the Engineer means by "paper water rights" is unclear, but this Court takes it to mean: valid, existing rights. If the rights were invalid, there would be no over appropriation. Second, the Engineer states that "up-

gradient use will not, if at all, measurably affect down-gradient supply for hundreds of years." ROA 000599-600. Further, he found that "if no measurable impacts to existing rights occur within hundreds of years, then the statutory requirement of not conflicting with existing water rights is satisfied." ROA 000600.

Considering that models which project water disbursement longer than seventy-five (75) years are uncertain (ROA 020061) -- and giving some deference to the Engineer's ruling, (see *Town of Eureka*, 108 Nev. 163 (1992)), this Court cannot agree with the Engineer's interpretation of NRS 533.370 (2). The statute is unequivocal, if there is a conflict with existing rights, the applications "shall" be rejected.

Moreover, it is also unseemly to this court, that one transitory individual may simply defer serious water problems and conflict to later generations, whether in seventy-five (75) years or "hundreds," especially when the "hundreds" of years is only a *hoped* for resolution.

There may be water from the CDD basins which could properly be appropriated without conflicting with down-gradient rights. The current orders do not contain such a calculation. For this reason, rather than an outright reversal of the appropriations from Cave, Dry Lake and Delamar Valleys, the matter is remanded to the Engineer for recalculation of possibly unappropriated water.

B. LIKE SPRING VALLEY, THE MONITOR, MANAGE AND MITIGATION PLAN REQUIRES SPECIFIC STANDARDS TO BE AN EFFECTIVE PLAN

The analysis of the MMM Plan and the requirement for standards to be applied to determine when mitigation is necessary in the Cave, Dry Lake and Delamar Valleys is much the same as in Spring Valley. There is still a great deal of uncertainty regarding the hydrology of CDD. ROA 000671. Because of the unknowns, the Engineer has adopted the MMM Plan in the CDD valleys:

> The State Engineer finds an effective management program that includes monitoring activities, management tools and mitigation options is critical to the determination that the Applications will not

> conflict with existing water rights or with protectable interests in existing domestic wells.

ROA 000632.

The Engineer has also found that a drawdown of less than fifty (50) feet over a seventy-five (75) year period is a reasonable lowering of the static water table "made on a case-by-case basis". ROA 000653. He has presumably accepted testimony of SNWA's expert predicting one (1%) percent to seventeen (17%) percent spring flow reductions in the White River and Pahranagat Valleys and has determined a seventeen (17%) percent flow reduction is reasonable.

Additionally, he found that "Federal and state laws, including the National Environmental Policy Act ("NEPA"), the [Environmental Species Act (ESA)], the Clean Water Act ("CWA") and Nevada water law, require environmental protection through comprehensive permitting and regulatory process." ROA 000683. "The ESA imposes strict substantive protections, in the form of reasonable and prudent alternatives, that include minimization and mitigation measures that prevent jeopardy to listed species or their critical habitat." ROA 000684. Further, "non-listed" species will also be protected – "resulting in an even greater breadth of coverage." Id. Notwithstanding the Federal involvement, the Engineer states that he still has the jurisdiction and responsibility to determine environmental soundness independently of other agencies – "and will do so." ROA 000684.

The Engineer has, in effect, relinquished his responsibilities to others. Again, the Engineer has failed to state under what specific conditions he will require mitigation. The Engineer also recognizes that SNWA will extensively monitor springs and sensitive sites in the CDD valleys and finds that the Applicants' monitoring plan will be effective. ROA 000636-000640.

Like the Spring Valley Plan, the Engineer finds that it is premature to set standards and/or triggers because there is not enough "baseline" data. ROA 000641. Yet, the

Engineer has also made the specific finding "that the Applicant gathered and presented substantial environmental resource baseline material and that the environmental resource baseline information provides a platform for sound, informed decision-making." ROA 000683. Whether this is contradictory or not (sufficient baseline data v. insufficient baseline data), standards, triggers or thresholds, however phrased, must be objective to provide notice of when and where mitigation is necessary. Without standards, any decision to mitigate is subjective and thus, arbitrary and capricious.

Stated differently, the Engineer decided that because the final configuration of the wells and locations of wells within the valleys is unknown at the present, setting quantitative standards, "or triggers" for mitigation is pre-mature because it must be known how the aquifer responds to pumping. ROA 000641. It seems that when and where unreasonable effects occur, is not the same as recognizing an unreasonable effect, wherever or whenever it appears. Paraphrasing Samuel Clemens, show me a man who knows what's reasonable and I'll show you a man who knows what isn't.

Further, the Engineer found that "natural variability in the system must be documented to determine if observed changes are due to pumping, rather than natural fluctuations due to seasonal recharge or other factors." ROA 000641. The Engineer has already found that SNWA has gathered and presented enough baseline data to make sound and informed decisions, not to mention that SNWA has been studying the basins and valleys for at least twenty-five (25) years and likely longer. In short, without standards, triggers or thresholds the MMM Plan is not a "comprehensive" plan, "critical to the determination that the Applications will not conflict with existing water rights or with protectable interests in existing domestic wells". ROA 000632.

This Court is charged with "determining whether there is substantial evidence in the record to support the [Engineer's] decision." *Revert v. Ray*, 95 Nev. 782, 786 (1979). Here, the Engineer said, however not quite consistently, that there is not enough evidence to

implement, what he has characterized as "critical," the MMM Plan. Thus, if there is insubstantial evidence and it is premature to set triggers and thresholds, it is premature to grant water rights.

As stated in the Plan, a definition of an unreasonable adverse effect, i.e. a trigger, a standard, a threshold must be defined. ROA 020647. Absent a thorough plan and comprehensive standards for mitigation, any mitigation, (or lack thereof) is subjective, unscientific, arbitrary and capricious. This matter must be remanded to the Engineer so that objective standards may be established.

VIII
CONCLUSION

After an in-depth review of the record this Court will not disturb the findings of the Engineer save those findings that are the subject of this Order. This Court remands orders 6164, 6165, 6166 and 6167 for:

1. The addition of Millard and Juab counties, Utah in the mitigation plan so far as water basins in Utah are affected by pumping of water from Spring Valley Basin, Nevada;

2. A recalculation of water available for appropriation from Spring Valley assuring that the basin will reach equilibrium between discharge and recharge in a reasonable time;

3. Define standards, thresholds or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley, Cave Valley, Dry Lake Valley and Delamar Valley, and;

4. Recalculate the appropriations from Cave Valley, Dry Lake and Delamar Valley to avoid over appropriations or conflicts with down-gradient, existing water rights.

DATED this 10th day of December, 2013.

ROBERT E. ESTES
SENIOR DISTRICT JUDGE

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, DRY LAKE VALLEY, (HYDROGRAPHIC BASINS 180, 181, 182 AND 184), LINCOLN COUNTY AND WHITE PINE COUNTY, NEVADA.

DECLARATION OF RUPERT STEELE

I, RUPERT STEELE, declare under penalty of perjury as follows:

1. My name is RUPERT STEELE. I am a member of the Confederated Tribes of the Goshute Reservation ("Goshute Tribes"). I am also a Tribal elder and former Tribal Chairman. The following facts and statements are based on my personal knowledge and experience. If called as a witness I could and would truthfully testify thereto.

2. I was born on the Goshute Reservation, and I have been a member of the Goshute Tribes for 63 years. Over the course of my entire life I have been involved in Tribal activities, cultural events, and Tribal ceremonies. I have lived on the Goshute Reservation for 46 years.

3. I am a Tribal elder of the Goshute Tribes, and I have been making regular and frequent visits to the regions that may be affected by the SNWA's Groundwater Development Project, if approved. Many Tribal members, including myself, are personally tied to those potentially affected regions, especially the Goshute Reservation and Swamp (Shoshone) Cedars in Spring Valley.

4. I am a former Chairman of the Goshute Tribes. I held that position as Chairman for nine (9) years between 2001-2010, keeping a close watch on the Southern Nevada Water Authority's (SNWA) Groundwater Development Project and working closely with other tribes (Duckwater Shoshone, Ely Shoshone, and Wells Band of the TeMoak Tribes) on that issue. I

represented the Goshute Tribes at the Inter-Tribal Council of Nevada, the Utah Tribal Leaders, and the National Congress of American Indians. I served a one-year term as Chairman of the Utah Tribal Leaders. Also during my time as Goshute Tribal Chairman, I was appointed by the Governor of Utah to serve on Utah's Snake Valley Water Advisory Committee. A main focus of my time as Chairman of the Goshute Tribes was to protect our water, to protect our water-dependent resources on and off the Reservation, and to get our Federal-reserved water rights quantified.

5. During my time as Chairman of the Goshute Tribes, the National Congress of American Indians, the Inter-Tribal Council of Nevada, and Utah Tribal Leaders each adopted resolutions opposing the SNWA's Groundwater Development Project.

6. As Chairman, I pursued Cooperating Agency status on the Bureau of Land Management's (BLM) Environmental Impact Statement of the SNWA's Groundwater Development Project. However, I was told by the BLM that the Bureau of Indian Affairs (BIA) would represent our rights and interests. The BIA never consulted the Goshute Tribes regarding the Environmental Impact Statement.

7. The Federal government has a legal obligation to undergo government-to-government consultation the Goshute Tribes. This is part of the trust responsibility and it is a vital source of protection of Indian rights and interests. The Federal government is the trustee of our Tribal rights. That Federal trust responsibility extends both on and off the Reservation.

8. The Federal government ignored our concerns about the SNWA's Groundwater Development Project and Tribal consultation. So the Goshute Tribes adopted a Tribal Consultation Policy and sent it to the Federal agencies. But the agencies did not respond. An important part of consultation is to sit down at the table with state and federal directors and decision-makers. Instead of this, the Department of Interior agencies such as the BLM kept sending their low-level staff. Those staff had no decision-making authority.

9. The Federal government provided very minimal information to the Goshute Tribes about the SNWA's Project. We had to go knocking on doors to get information. But even then,

the Federal government would not release much information without first requiring us to sign a so-called "Data Sharing Agreement," which restricted our rights to use information about our own Tribes' cultural history. The Federal government such as BLM continues to withhold important tribal historical information on cultural resources, including information relating to the Native American Graves Protection and Repatriation Act (NAGPRA). Little to no consultation happens on NAGPRA matters even in areas where we know there are burial grounds and sacred objects of cultural patrimony.

10. The Goshute Tribes sent comments to the BIA office in Elko, Nevada, voicing our concerns about no government-to-government consultation and about the withholding of information. But the BIA office disregarded our comments.

11. When the Federal government disregards its trust responsibility and consultation obligation, it greatly diminishes the Goshute Tribes' ability to protect our Tribal rights and interests. This has been the case through the entire SNWA Project, both the Federal process relating to the proposed pipeline right of way, and also the State process for SNWA's water rights applications.

12. Perhaps most shocking, the Federal agencies backed out of their legal duty to protect Tribal rights, resources, and interests when they signed the Stipulated Agreements, or the Stipulations for Withdrawal of Protests. The Goshute Tribes found out about the Spring Valley Stipulated Agreement in or about September 2006 ***after*** the Department of Interior agencies signed them. No tribal consultation ever occurred before they were signed. But in or about September 2006, the BLM called a meeting in Ely, Nevada. The Duckwater Shoshone Tribe and Ely Shoshone Tribe attended in addition to the Goshute Tribes. Penny Woods at BLM went over the "3M Plan" (the Monitoring, Management and Mitigation Plan) that SNWA agreed to provide in exchange for the Federal government's withdrawal of their protests to their water rights applications. That's when we realized that the Federal government agreed to and signed the Stipulated Agreements, which were inappropriate actions since they were required to consult with

the Tribes before agreeing and before signing. Plus, the Federal government was supposed to protect Tribal rights, resources, and interests, not give them away.

13. The Goshute Tribes never agreed to those Stipulated Agreements. The Goshute Tribes sent a letter to the BIA objecting to their signing of the Stipulated Agreements. The BIA did not respond for a long time, and still have not backed out of the Agreements as we have asked them to do numerous times. As the Federal trustee, the Department of Interior was required to protect our rights, resources, and interests--not sign back-room deals with the SNWA.

14. I examined the Stipulated Agreements. And it seemed clear to me that the SNWA and State Engineer violated those Agreements during the 2011 water hearing. At least two parts of the Stipulated Agreements seemed to be expressly violated: (1) that the Stipulations were not to be used to prejudice any other Parties or protestants, including any Indian Tribe; and (2) that the SNWA and DOI were to jointly explain the Stipulated Agreements and 3M Plan to the Nevada State Engineer during the water hearing.

15. Now with the Nevada District Court's decision that found serious flaws in the State Engineer's rulings for Spring, Delamar, Dry Lake, and Cave valleys, our Tribal rights, resources, and interests will again need to be defended in front of the State Engineer. Tribal rights, resources, and interests are affected in the upcoming State Engineer proceedings. Those rights, resources, and interests cannot be protected without Federal participation.

16. The Federal government is legally obligated to protect our rights, resources, and interests in the present proceeding. Without that protection, many things are at risk of irreparable loss or damage to the Goshute Tribes. Below are a few:

(a) Our water. Our people have gained traditional knowledge of this region over the course of thousands of years. We know that the water in Spring Valley is connected to the water on the Goshute Reservation. It is connected in the same way that blood in one's hand is connected to the blood in one's heart. But we keep hearing of the scientific studies that say the water SNWA intends to pump and export is from a different source and will not affect our Reservation. We know that to be false.

(b) Tribal health and well-being and safety. The Goshute Tribes have expended a large amount of Tribal funds to protect our rights, resources, and interests from the SNWA's pursuit of the Groundwater Development Project. Those expenditures take away from funding other Tribal programs and purposes. The expenditures make difficult conditions that our Tribes are faced with even more difficult. It affects everything from health and living conditions, to education and public safety, to pursuit of Tribal businesses and economic advancement. Already, the Federal government pulls funding from our Tribal programs, while at the same time they spend billions of dollars to aid countries and communities abroad. Our situation will worsen without the Federal government's protection of the Tribes' rights and interests. It will become far worse if the SNWA's Project is approved and constructed.

(c) Business and economy. Without the Federal government's participation in protecting our Tribal rights, resources, and interests, revenue that comes from the Reservation will not be protected. All of the grazing leases and other business activities will be faced with serious loss. Part of this loss will include traditional medicines and traditional foods, both on and off the Reservation.

(d) Religious rights and ceremonial areas. All over the Goshute Tribes' ancestral territory, we have places of traditional and spiritual significance. Spring Valley and the Goshute Reservation are only two areas. Spring Valley is especially significant to the Goshute and Western Shoshone People. Swamp Cedars in Spring Valley has always been a sacred tribal gathering area for Indian ceremonies. Swamp Cedars has always provided special medicines and spiritual power in the water. The three massacres that occurred there make it even more holy to our People. Swamp Cedars is our Vatican and our Arlington National Cemetery. The Federal government certainly would not have stipulated to withdraw protests in exchange for monitoring if SNWA sought to drain and destroy either of those sacred places.

17. If the Federal government does not protect our rights and interests in the present proceeding, the above risks (a-d) will become severe impacts to the Goshute Tribes. SNWA will go about using up and depleting the water and resources. And they will just move on, leaving the Tribes to suffer the long-term consequences.

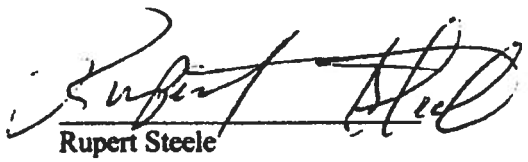
18. If the Federal government will participate in the present proceeding to protect Tribal rights, resources, and interests, then these above risks (a-d) can be averted. And the Goshute Tribes can go about building a future for the coming generations, protecting our cultural legacy, and practicing our ceremonies and spiritual ways of life within our ancestral territory.

19. If the Federal agencies (particularly the Bureau of Indian Affairs) are not participants in the State Engineer's proceeding, that would be a serious breach of the trust responsibility and due process rights of the Tribal protestants.

20. The back-room deals made in the Stipulated Agreements never should have happened. The use of those Stipulated Agreements to prejudice the Tribes in the 2011 hearing never should have happened. Instead, the Federal government should have engaged in consultation with the Goshute Tribes, worked closely with the Tribes to protect our rights and interests, and held strong to its trust responsibility.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of October 2016.



Rupert Steele

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DECLARATION OF RUPERT STEELE was served on the following counsel of record by depositing the same for mailing, at Pocatello, Idaho, with the United States Postal Service and addressed to the following:

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DATED this 13TH day of October 2016.

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