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

***

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

SNWA'S OPPOSITION TO MOTION TO DISMISS FOR FAILURE TO JOIN UNITED STATES DEPARTMENT OF INTERIOR BUREAUS

On October 13, 2016, the Confederated Tribes of the Goshute Reservation ("CTGR"), the Duckwater Shoshone Tribe, and the Ely Shoshone Tribe (together the "Tribes") submitted their Motion to Dismiss for Failure to Join United States Department of Interior Bureaus ("Motion to Dismiss"). White Pine County et. al. ("GBWN") submitted their Joinder to the Motion to Dismiss on October 14, 2016. SNWA opposes the Tribes' Motion to Dismiss and requests the State Engineer to deny the motion.

I. BACKGROUND

SNWA has applications to appropriate water in Spring Valley, and in Dry Lake Valley, Delmar Valley, and Cave Valleys ("DDC").[1] Numerous protests were filed against the applications, including protests by the Tribes, and by the United States National Park Service ("NPS"), Fish and Wildlife Service ("FWS"), Bureau of Land Management ("BLM"), and Bureau of Indian Affairs ("BIA") (the "federal bureaus").[2] The federal bureaus formally withdrew their protests to SNWA's Spring Valley applications in 2006, and their protests to SNWA's DDC applications in 2008, because

[1] *See* December 10, 2013 Decision at 2, CV-1204049 (7th Jud. Dist.).
[2] *Id.*

the United States and SNWA executed stipulations to address protection of federal water rights and resources (hereinafter the "Federal Stipulations").[3] Thereafter, the State Engineer issued SNWA applications in Spring Valley (Ruling 5724) and in the DDC Valleys (Ruling 5875).

In *Great Basin Water Network v. State Engineer*, the Nevada Supreme Court ruled that NRS 533.370(2) required the State Engineer to re-notice the protest period for the applications that were granted in Ruling 5724 and Ruling 5875.[4] After re-noticing SNWA's applications and re-opening the protest period, the Tribes filed protests. A new hearing was held in the fall, 2011. During that hearing, SNWA submitted Monitoring, Management and Mitigation Plans ("3M Plans") for Spring Valley and the DDC Valleys. The 3M Plans are separate documents from the Federal Stipulations, and each of the eight documents have a separate exhibit number.[5] Four months after the conclusion of the hearing the State Engineer issued Ruling 6164-6167 regarding SNWA's applications.[6] Those rulings were appealed to district court.

On December 10, 2013, the district court (Senior Judge Estes) remanded the Rulings back to the State Engineer. One instruction from the district court relatea to the lack of triggers and thresholds in SNWA's 3M Plans. Specifically, the district court remanded for the "defining [of] standards, thresholds, or triggers for the mitigation of unreasonable effects from the pumping of water."[7]

The Tribes argue that the 3M Plans are not separate documents and are actually exhibits to the Federal Stipulations, and that because they are part of the same documents, the 3M Plans cannot be amended as Judge Estes required without federal agreement. The Tribes also argue that it would violate the due process rights of the Tribes to set triggers and standards for federal water rights without direct participation of the federal bureaus, which participation is also required to adequately protect tribal water rights.

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[3] A similar stipulation was entered regarding SNWA applications that were filed in Delamar, Dry Lake and Cave Valleys.
[4] *Id.* at 198, P.3d at 919.
[5] The Spring Valley Stipulation is State Engineer Exhibit 41, the DDC Valleys Stipulation is State Engineer Exhibit 79, the Spring Valley hydrologic 3M Plan is SNWA Exhibit 148, the DDC hydrologic 3M Plan is SNWA Exhibit 149, the Spring Valley biologic 3M Plan is SNWA Exhibit 365, and the DDC biologic 3M Plan is SNWA Exhibit 366.
[6] *See* December 10, 2013 Decision at 3, CV-1204049 (7th Jud. Dist.).
[7] *Id.* at 22.

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II. LEGAL STANDARD

When a court considers a motion to dismiss for failure to join an indispensable party under NRCP 12(b)(6), the court must conduct a fact specific and practical inquiry.[8] The court must undertake a two part analysis. First, the court must determine if an absent party is necessary.[9] Second, the court must determine whether the party is indispensable so that equity and good conscience require the suit should to be dismissed.[10] The inquiry is designed to avoid the harsh results of rigid application.[11] The moving party bears the burden of arguing for dismissal pursuant to NRCP 12(b)(6).[12]

III. ARGUMENT

A. The United States Does Not Need to Approve Amendments to SNWA's 3M Plans.

The Tribes' claim that the United States must approve any changes to the SNWA 3M Plans is without merit. The Tribes incorrectly claim that the district court's remand instructions require amendments to the Federal Stipulations. The district court's remand requires amendments to the SNWA 3M Plans. The Federal Stipulations and the SNWA 3M Plans are completely different documents with different exhibit numbers assigned during previous water right hearings. Nothing in the Stipulations purports to regulate the 3M Plans SNWA submits to the State Engineer pursuant to Nevada law. Therefore, proceeding with a hearing on the SNWA applications does not violate the terms of the Federal Stipulations.

In 2006, the Federal Stipulation for Spring Valley was admitted as Exhibit 50. On September 11, 2006, representatives from the federal agencies and SNWA jointly explained the Federal Stipulation for Spring Valley to the State Engineer.[13] This action satisfied the requirement of the Federal Stipulation that "The DOI Bureaus and SNWA shall jointly explain and defend this

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[8] *Makah Indian Tribe v. Verity*, 910 F.2f 555, 558 (9th Cir. 1990).
[9] *Id.*
[10] *Id.*
[11] *Eldredge v. Carpenters 46 Northern California Joint Apprenticeship & Training Comm.*, 662 F.2d 534, 537 (9th Cir. 1981).
[12] *Id.*
[13] Tr. Vol. I Public Hearing at 10-27 (Sept. 11, 2006).

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Stipulation and Exhibit A and B to the State Engineer."[14] Ron Winkler, state director for the BLM testified on behalf of the BLM. Robert Williams, field supervisor, testified on behalf of the FWS. Chuck Pettit, chief of the NPS' water rights office, testified regarding aspects of the Federal Stipulation that were important to the NPS.

Specifically, Mr. Pettit and the NPS testified that early information and cooperative monitoring were important aspects of Federal Stipulation in Spring Valley. Mr. Williams testifying regarding biological monitoring provisions in that Federal Stipulation. Additional mitigation efforts were further disclosed and discussed during the federal parties' panel discussion.[15] Examination of these witnesses was permitted during this process. In 2008, the Federal Stipulation for DDC was admitted as Exhibit 19 in hearing on SNWA's DDC applications. On February 4, 2008, representatives from the federal agencies and SNWA jointly explained the DDC Federal Stipulation to the State Engineer.[16] Hence, the federal agencies jointly explained and defended the Federal Stipulations pursuant to Paragraph 9 of those stipulations.

The testimony and stipluations from the Spring Valley hearing and the DDC hearing were incorporated into the record, without objection, for the 2011 State Engineer hearing.[17] The Federal Stipultations were specifically included in the 2011 State Engineer hearing as State Engineer Exhibit 41 (Spring Valley) and 80 (DDC Valleys). After the 2013 district court remand, the testimony and exhibits were incorporated, without objection, into the hearing record for the hearing that will occur in fall, 2017.[18]

At the 2011 hearing, SNWA also submitted four separate 3M Plans.[19] SNWA presented one pair of plans for Spring Valley and one pair of plans for the Delamar, Dry Lake, and Cave Valleys. Each pair of plans had a hydrologic plan and a biologic plan. The hydrologic monitoring plans were submitted into evidence as SNWA Exhibits 148 and 149.[20] The biological monitoring and mitigation

[14] *See* Tribes' Motion to Dismiss at 2.
[15] Tr. Vol. I Public Hearing at 15, 16:1-17 (Sept. 11, 2006).
[16] Tr. Vol. I Public Hearing at 72-85 (February 4, 2008)
[17] Tr. Status Conference at 25:9-25 (May 11, 2011).
[18] Tr. Status Conference at 18:21-25 (Sep. 14, 2016).
[19] ROA 13289-13386, 020625-21200.
[20] ROA 13289-13386.

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plans are submitted as SNWA Exhibits 365 and 366.[21] These are the documents the State Engineer relied on in the Ruling 6164-6167. In Ruling 6164-6167, the State Engineer relied on these 3M Plans, not the Federal Stipulations, when he reviewed whether the SNWA applications would conflict with existing rights, or would be environmentally sound.[22] As noted by the State Engineer, the comprehensive 3M Plans would control the development of SNWA's applications long after the applications are granted.[23] The State Engineer was clear that the 3M Plans, not the Federal Stipulations, are what he relied on in granting SNWA's applications.[24]

On appeal, the district court reviewed the State Engineer's approval of the SNWA applications. Since the State Engineer clearly relied on the 3M Plans to approve the SNWA applications, the district court had to consider the adequacy of the 3M Plans. As the district court indicated, the State Engineer's approval required SNWA to "comply with the MMM plan prepared by SNWA and approved by the State Engineer."[25] In the next paragragh of its order, the district court made the same statement regarding the 3M Plans for the DDC Valleys. These references are clearly to the 3M Plans and not the Federal Stipulations. Also, the district court refered to the 3M Plans Nghineer After the 2013 district court remand, these 3M Plans were incorporated, without objection, into the hearing record for the hearing that is scheduled for the fall, 2017.

The Federal Stipulations and the 3M Plans represent separate and distinct legal agreements. SNWA has a legally binding agreement with the federal bureaus in the form of the Federal Stipulations. Those agreements place specific obligations on SNWA to address concerns related to federal water rights and resources. SWNA prepared separate 3M Plans that were incorporated into the approval by the State Engineer of SNWA applications in Rulings 6164-6167. The 3M Plans address the state water law criteria that the State Engineer must review prior to the approval of water right applications. The 3M Plans are broader and more inclusive than the Federal Stipulations because they address non-federal water rights and resources.

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[21] ROA 020625-21200.
[22] ROA 103-106.
[23] ROA 103.
[24] *Id.*
[25] December 10, 2013 Decision at 3, CV-1204049 (7th Jud. Dist.).

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The district court's remand instructions require amendments to the 3M Plans that SNWA submitted to the State Engineer.[26] The required amendments will be more protective, not less protective. For instance, the Tribes reference the Swamp Cedars area, the fact that Judge Estes' ruling indicates that triggers are needed, and more detail is required about monitoring.[27] SNWA intends to comply with the Estes remand instructions and provide specific triggers and monitoring for the protected resources in the Swamp Cedars area. If the 3M Plans have different protections than the Federal Stipulations, that is not necessarily a conflict between the 3M Plans and the Federal Stipulations. The Federal Stipulations do not need to be amended for the State Engineer to approve SNWA's applications. Also, the federal bureaus do not need to be present at the hearing to approve amendments to SNWA's 3M Plans based on the district court's remand instructions. The federal bureaus made the decision to withdraw their protests and forego their ability to participate in the hearings on the SNWA applications because they chose the agreed-upon protections and alternative dispute resolution procedures included in the Stipulations. There is no basis in state or federal law for the State Engineer to override the decision of the federal bureaus.

B. The United States is not an Indispensable Party.

1. NRCP 19 Does Not Apply to State Engineer Proceedings.

The Tribes rely on Nevada Rule of Civil Procedure ("NRCP") 19 to bolster their argument, but these civil procedure rules do not apply to hearings before the State Engineer. Instead, the provisions of Nevada Administrative Code Chapter ("NAC") 533 "govern the practice and procedure of hearings before the State Engineer on protests against applications to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right."[28] NAC 533 does not contain any provision that is similar to the indispensable party provision in NRCP 19.

The State Engineer is required to protect existing water rights based on NRS 533.370(2). That obligation exists whether a water right owner files a protest or not, and whether a federal bureau participates in a hearing or not. If NRCP 19 applied in State Engineer proceedings, the State

[26] *See* December 10, 2013 Decision at 23, CV-1204049 (7th Jud. Dist.).
[27] Tribes' Motion to Dismiss at 2.
[28] NAC 533.010(1)(a).

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Engineer would have to join all water right owners whose water rights could be impacted by a pending water right application. Without adding such parties, the State Engineer would not have jurisdiction to consider any water right applications unless he added all potentially impacted parties to also render the statutory procedures and deadlines for filing a protest superfluous because the State Engineer would be forced to require any interested person to participate under NRCP 19, without regard to whether a timely protest were on file.

The Tribes do not cite to any case law that supports the argument that a party can be "indispensable" to a State Engineer administrative proceeding. Unlike NRCP 19, there is no procedure in NAC 533 for joining a person or entity as a party to the proceedings. NAC 533 provides the only procedure for participation as a party in a protest hearing. The term "party" means an applicant or protestant.[29] The term "protestant" means a person filing a protest against an application or a successor in interest to a protestant.[30] Participation as an applicant or a protestant is discretionary, and not mandatory.

The Tribes cite *EEOC v. Peabody w. Coal Co.*, 400 F.3d 774, 776 (9th Cir. 2005) to support their position that the joinder rules in NRCP 19 apply to this proceeding.[31] *Peabody* is the Ninth Circuit case that reviewed hiring practices of a mine in Arizona.[32] The case is categorically different from of a Nevada administrative proceeding in which the Tribes' rights cannot be impacted.[33] The basis for the Ninth Circuit's holding in *Peabody* was that the Navajo Nation should be joined as a party when an action involves the coal company's compliance with Navajo's hiring preferences at a coal mine that was leased from the Navajo Nation.[34] Here, the Tribes are already parties in this proceeding.

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[29] NAC 533.050.
[30] NAC 533.080.
[31] Tribes' Motion to Dismiss at 11.
[32] *Id.*
[33] NRS 533.370(2) (protecting existing rights from conflicts).
[34] *Id.*

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2. NRCP 19 Does Not Require the United States to be a Party

Even if NRCP 19 applied, Nevada courts would look to federal decisions to interpret the breadth of NRCP 19. The rule is clear in the Ninth Circuit (and others) that "in a suit by an Indian tribe to protect its interest in tribal lands, regardless of whether the United States is a necessary party under Rule 19(a), it is not an indispensable party in whose absence litigation cannot proceed under Rule 19(b)."[35] Put simply, when a tribe sues to protect its rights, the United States is not required to be involved. Since the Tribes' involvement in this this matter is based on the filing of its own protests, the United States in not indispensable to this matter.

3. The United States Voluntarily Withdrew Its Protests.

Even assuming that the United States could be an indispensable party, the federal bureaus that filed protests to the SNWA Applications voluntarily withdrew those protests in 2006 and 2008. After the protests were withdrawn, the federal bureaus were no longer protestants. The federal agencies received notice of the second hearing when the SNWA Applications were re-published in 2011. The federal agencies chose not to protest the SNWA Applications. Clearly, the United States was a party to this action during the first hearing but then elected to voluntarily withdraw its protest and not participate in the second hearing or the upcoming 2017 hearing. A party cannot be indispensable if the party appears in a case and then voluntarily settles its involvement in the matter.

4. The Tribes are adequately represented in this action.

The Tribes will participate in the hearings on the SNWA Applications and have a full and fair opportunity to submit evidence, cross-examine witnesses, and present expert and lay witnesses on direct examination. Pursuant to *Glancy v. Tabuman Ctrs., Inc.*, 373 F.3d 656, 658 (6th Cir. 2004), the first step in determining whether joinder is necessary is whether "a person or entity already named as a party to the action has the same interests and litigation goals as the absentee." *Glancy* recognizes that if a party is adequately represented, then joinder is unnecessary. As the Tribes are adequately capable of representing their own interests, joinder of the United States is unnecessary.

[35] *Puyallup Indian Tribe v. Port of Tacoma,* 717 F.2d 1251, 1254 (9th Cir. 1983).

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C. **Due Process Rights Are Not Violated.**

The Tribes argue that they will be deprived of procedural due process because the federal agencies will not participate in the hearing.[36] The Tribes have already previously presented this argument to the State Engineer and Judge Estes, and their argument was unsuccessful.[37] The Federal Stipulations do not require a federal representative to participate in a 2017 hearing, and the State Engineer cannot require a federal representative to participate as a party.

The Tribes will be provided procedural due process, as protestants receive a full "opportunity to be heard at a meaningful time and in a meaningful manner.'"[38] No evidence exists that the Tribes will be deprived of a constitutionally protected life, liberty or property interest because the evidence indicates that the Tribes' interests will not be affected. There is no evidence that drawdown will reach the Tribes' reservation lands or impact their water rights.[39] The Tribes expressed a concern that drawdown from pumping under the SNWA Applications would affect reservation lands but their witnesses admitted that this concern was not based on any evidence.[40] The Tribes' own witness Dr. Thomas Myers did not allege that drawdown would affect reservation lands.[41] The Tribes presented evidence regarding past and present use of natural resources in Spring Valley but there was no evidence that those uses would be affected.[42] After weighing all of the evidence, the State Engineer found that there was no credible evidence presented that there could or would be conflicts with the Tribes' reserved water rights or interests in Spring Valley.[43] Further, in this proceeding, more specific monitoring and mitigation will be provided for the resources the Tribes are concerned about.

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[36] Tribes' Motion to Dismiss at 9-10.
[37] ElyDW Tribes OB 21 (The Tribes were "denied due process by having to participate in the State Engineer's hearing without an opportunity to cross-examine any federal representative"), ElyDW Tribes OB 22 (the "right to a full and fair hearing process necessarily includes the right to have a federal representative present, especially where stipulations filed as exhibits in this case specifically required it").
[38] *J.D. Constr. v. IBEX Int'l Grp.*, 126 Nev. 366, 377, 240 P.3d 1033, 1041 (2010) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).
[39] ROA 143.
[40] ROA 38208- 38209, 38239.
[41] ROA 38383.
[42] ROA 144.
[43] ROA 143- 144.

The Tribes will have a full opportunity to be heard during the hearing process. The Tribes were able to file protests for themselves, and will have the opportunity to call witnesses to support the Tribes' claims. The Tribes received notice of the filing of the SNWA Applications pursuant to NRS 533.360. The Tribes received notice of the water rights hearing pursuant to NRS 533.365(4). The Tribes attended the pre-hearing conference which the State Engineer ordered pursuant to NAC 533.170. The Tribes can submit documentary evidence in advance of the hearing. The Tribes can be represented by counsel at the hearing. The Tribes can present direct testimony and have the opportunity to cross examine witnesses at the hearing. Therefore, the Tribes will receive all the process that is due.

Finally, the Tribes will continue to receive procedural protections. The State Engineer has a continuing duty to regulate groundwater, specifically through ongoing investigations and limiting withdrawals "to conform to priority rights."[44] The State Engineer must also restrict any additional wells in a groundwater basin if he "determines that additional wells would cause an undue interference with existing wells."[45] Any person feeling aggrieved by any order or decision of the State Engineer may petition for judicial review.[46] Therefore, the Tribes will receive additional procedural protections in the future, should they be necessary.

D. The State Engineer is not required to address in this proceeding the United States' Trust Responsibility to the Tribes.

The Tribes claim that the United States must be a party to this proceeding based on its trust responsibility to the Tribes and the Tribes' due process rights will be violated if the United States is not a party to this proceeding. The State Engineer has already recognized that if the Tribes have a trust responsibility claim against the United States based on the Federal Stipulations, that is a matter between the Tribes and the Federal agencies, "and does not require resolution in order to consider [SNWA's] Applications."[47] The same holds true here.

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[44] NRS 534.110(6).
[45] NRS 534.110(8).
[46] NRS 533.450(1).
[47] ROA 103.

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E. The Tribes' Arguments are Precluded.

1. The Tribes Stipulated to Admission of the Federal Stipulations.

The Federal Stipulations were filed and used as evidence in the 2006 and 2008 hearing on the SNWA Applications in Spring Valley and in the 2008 hearing on the SNWA Applications in the DDC Valleys. During the prehearing conference for the fall, 2011, hearing, every protestant including the Tribes were "on record as agreeing to incorporation of the previous exhibits and thus waives any objection to the use of the previous exhibits."[48] The Stipulations were previous exhibits because they were filed and used in the first hearings. The Tribes and GBWN had a list of all exhibits from the first hearings and had notice that the Stipulations were filed in the first hearings. The State Engineer further specifically included the Stipulations in the 2011 State Engineer Hearing under the State Engineer Exhibits. When the hearing officer admitted the Stipulations (State Engineer Exhibits 41 and 80) at the 2011 State Engineer hearing, along with other exhibits, the Tribes did not object to the admission of the Stipulations,[49] and waived any objection to the filing and use of the Stipulation. In the absence of an objection at the administrative proceeding, the issue of admissibility of the evidence is not preserved for judicial review.[50]

2. The Tribes' Arguments Have Already Been Decided.

The Tribes argue that the Federal Stipulations should not be offered into evidence because this is a new hearing.[51] The Tribes again argue that the use of the Stipulations violates Paragraph 9, which states in part: "[t]he DOI Bureaus and SNWA shall jointly explain or defend this Stipulation and Exhibits A and B to the State Engineer." The plain reading of paragraph 9 identifies that all parties to the Stipulation have agreed that the federal agencies may attend the hearings. Specifically, the Stipulation states, "Following the submission of this Stipulation and Exhibits A and B to the State

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[48]

[49] ROA 32424-32425

[50] *Sowa v. Looney*, 23 N.Y.2d 329, 333, 244 N.E.2d 243, 245 (1968); *Savoy Club v. Bd. of Supervisors*, 12 Cal. App. 3d 1034, 1042, 91 Cal. Rptr. 198, 202-203 (Ct. App. 1970) (petitioner cannot complain to the court that certain evidence presented to the agency was illegally obtained if petitioner failed to object to its introduction); *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Com'n of State of Mo.*, 116 S.W.3d 680, 690 (Mo. Ct. App. 2003) ("When any admissibility issue is waived by failure to object, the issue cannot be raised subsequently by arguing the lack of sufficiency of the evidence to support a decision").

[51] Tribes' Motion to Dismiss at 8.

Engineer, then the DOI Bureaus, at their option, may attend the hearing," This permissive language is demonstrative of the fact that the federal government's participation is not necessary. In the 2006 hearing, the federal agencies did appear to explain the Federal Stipulation.

The same argument was made by the Tribes to the State Engineer in a prior proceeding. The doctrine of the law of the case prohibits consideration of issues which have been decided by the same tribunal in a prior proceeding in the same case.[52] "Where an appellate court states a principal or rule of law in deciding a case, that rule becomes the law of the case and is controlling both in the lower courts and on subsequent appeals, so long as the facts remain substantially the same."[53] "In short, issues decided in earlier appellate stages of the same litigation should not be reopened, except by a higher court, absent some significant change in circumstances."[54] Furthermore, if a court analyzes an issue, but fails to rule on it, the omission is considered a denial.

On December 10, 2013, the district court issued its Decision remanding Rulings 6164, 6165, 6166, and 6167. The district court held, "[a]fter an in-depth review of the record this Court will not disturb the findings of the Engineer save those subject to this order."[55] The only issues remanded were the specific four items mentioned by the court. The omission of any mention in Judge Estes' ruling of the Tribes' arguments regarding the Federal Stipulations constitutes a denial of the Tribes' claims.

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[52] *United States v. Utah Constr. and Mining Co.*, 384 U.S. 394, 399-400, 421-22.
[53] *Geissel v. Galbraith*, 105 Nev, 101, 103, 769 P.2d 1294, 1296 (1989); *See also Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007); 5 Am. Jur. 2d Appellate Review §566.
[54] 5 Am. Jur. 2d Appellate Review §566.
[55] *See* December 10, 2013 Decision at 23, CV-1204049 (7th Jud. Dist.).

IV. CONCLUSION

For these reasons, the Tribes' Motion to Dismiss should be denied.

Respectfully submitted this 31st day of October, 2016.

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NRS 533.450, I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this date I served, or caused to be served, a true and correct copy of the foregoing, as follows:

[X] By electronic means pursuant to stipulation of counsel made on October 13, 2016, addressed as follows:

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[X] By U.S. POSTAL SERVICE: I deposited for mailing in the United States Mail, with postage prepaid, an envelope containing the above-identified document, at Carson City, Nevada, in the ordinary course of business, addressed as follows:

Attention: Jerald Anderson
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DATED this 31 day of October, 2016.

Employee of TAGGART & TAGGART, LTD.