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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.)

STATE ENGINEER'S OFFICE
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**OPPOSITION TO CPB'S MOTION IN
LIMINE TO EXCLUDE TESTIMONY
OF DON A. BARNETT**

The Southern Nevada Water Authority ("SNWA") hereby opposes the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints, on behalf of the Cleveland Ranch ("CPB")'s Motion in Limine to Exclude Testimony of Don A. Barnett ("Motion").

INTRODUCTION

The matter before the State Engineer is the hearing of four issues based upon the scope of a Decision directing a remand from the District Court. As part of the initial evidence exchange, two exhibits submitted by protestants raise issues which appear to be outside of the scope of the defined issues on remand because they delve into policy considerations that were already ruled upon by the District Court.¹ As described in the SNWA Summaries of Rebuttal Witnesses' Testimony, Don Barnett has been named as a rebuttal witness to address those policy issues relevant to calculation of perennial yield, safe yield, and sustainable yield in rebuttal to the evidence submitted and anticipated testimony from Dr. Myers and Aquaveo. Mr. Barnett may testify in support of the use of a water budget method in order to determine the amount of water available for use. Consistent with that, he may testify in counter to CPB's expert reports by supporting the water budget method rather than the use of groundwater modeling results to determine the amount of water available for appropriation. To

¹ These arguments are set forth in the Motions in Limine filed by SNWA on August 18, 2017, and by this reference those arguments are incorporated herein. SNWA notes that the testimony of Don Barnett is necessary only to rebut that evidence if it is allowed into evidence despite SNWA's objections.

SE	'S EXHIBITS 151
DATE: _____	

1 the extent Dr. Myers and the Aquaveo witnesses are allowed to testify on these issues, Mr. Barnett's
2 testimony is necessary and appropriate rebuttal, and should be allowed also. Furthermore, contrary to
3 CPB's argument, Mr. Barnett's testimony has been adequately disclosed pursuant to the rules
4 applicable for this remand hearing.

5 ARGUMENT

6 The CPB Motion is entirely based upon a claim that SNWA has not adequately disclosed the
7 anticipated testimony of Don Barnett. Contrary to the assertions of CPB, the scope of this rebuttal
8 opinion is very clear and indeed, is true rebuttal evidence and will be defined by the evidence and
9 testimony that is allowed from the witnesses to be rebutted: Aquaveo and Dr. Myers.

10 As is clearly and succinctly stated in Don Barnett's Declaration (SNWA Exh. 609), if called to
11 testify, he would offer testimony disputing the appropriateness of evapotranspiration capture
12 computer modeling results as a tool to determine a limitation on safe yield calculations, and would
13 testify in support of the use of a water budget method to evaluate the amount of water available for
14 use.² This testimony is likely categorized as expert opinion, since as described in his Declaration, it
15 will be based upon his over 30 years of extensive and high-level experience regarding this precise
16 issue. This will include his work in a number of western states, including particularly Utah, his
17 familiarity with the scientific and professional literature related to water budgets, perennial yield, safe
18 yield and sustainable yield, and how that experience has led him to conclude that the water budget
19 method is the superior and indispensable tool for determination of those issues in this case.

20 The anticipated testimony of Mr. Barnett is appropriately disclosed and his testimony should
21 be allowed. Mr. Barnett has been identified in the SNWA Summaries of Rebuttal Witnesses'
22 Testimony (SNWA Exh. 595) to oppose the opinions of Dr. Myers and Aquaveo that water budgets are
23 not an appropriate basis to support the appropriation of water.³ Thus, Mr. Barnett's expert opinion is
24

25 ² See, Declaration of Don A. Barnett at paragraph 7 and 8. See also, Summaries of Rebuttal Witnesses' Testimony
26 Submitted by the Southern Nevada Water Authority for the Hearing Scheduled to Begin September 25, 2017, dated August
27 10, 2017 ("Rebuttal Witness List"), at paragraph 1, identifying CPB Exhibit 19 and GBWN/WPC Exhibit 281 as the
evidence to be rebutted by Don Barnett.

³ *Id.*

1 set forth in his declaration, primarily in Paragraph 8 where it is stated that “water budgets are valuable
2 and appropriate method to evaluate applications to appropriate water rights.”⁴ This opinion is in
3 writing, signed by the witness, and complies with the relevant rules and orders relating to expert
4 disclosure. Further, the Declaration and Mr. Barnett’s résumé express the basis for the opinions.
5 Consequently, the expert opinion has been disclosed in a fashion consistent with the evidentiary
6 exchange procedure in the State Engineer’s Interim Ruling and in a fashion consistent with the Nevada
7 Administrative Code.

8 In this instance, there is no showing of prejudice by CPB. While CPB claims it is missing “an
9 adequate opportunity to understand the scope of Mr. Barnett’s opinion,” CPB’s Motion does not
10 describe just what is so confusing or hard to understand about the scope of Mr. Barnett’s opinion. To
11 the extent CPB understands the scope of its own witnesses’ opinions on Nevada water policy, CPB
12 should be able to understand Mr. Barnett’s opinion to the contrary, as counter opinions are clearly
13 stated in Mr. Barnett’s Declaration. Notably absent from the CPB Motion was any contention that
14 Don Barnett does not possess specialized knowledge that would assist the State Engineer if the
15 testimony and evidence to be rebutted is allowed.⁵ Mr. Barnett has vast experience in this regard and
16 his opinion, derived from his experience, runs directly contrary to the opinions advanced by the
17 witnesses to be rebutted. Therefore, if the Motions in Limine filed by SNWA to exclude the evidence
18 sought to be rebutted are denied, it is appropriate and relevant to hear the proposed testimony of Don
19 Barnett.

20 In the alternative, to the extent that Mr. Barnett’s testimony could also accurately be
21 characterized as percipient in nature, the State Engineer may consider his testimony as factual. To that
22 extent, his testimony is still rebuttal to the factual underpinnings of Dr. Myers and Aquaveo. In this
23 regard, Mr. Barnett would provide factual testimony related to his observations from over 30 years of
24 work in this field in Utah and other Western states that are in contradiction to the apparent factual
25 basis of the evidence from Aquaveo and Dr. Myers. This factual testimony is also disclosed in the

26 ⁴ *Id.*

27 ⁵ *See* NRS 50.275.

1 Summaries of Rebuttal Witnesses' Testimony submitted by SNWA and in Mr. Barnett's Declaration.
2 Thus, although SNWA has designated Don Barnett as an expert witness, his witness testimony may
3 also be considered percipient in nature insofar as it is, in large measure, based upon his factual
4 experience and personal observations over a lifetime of work in this field. Regardless, the testimony is
5 relevant and directly rebuts the evidence described herein.

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CONCLUSION

1
2 Mr. Barnett's proposed testimony is relevant and meets the requirements for expert witness
3 disclosures because it is in writing, is signed by the witness, and contains a complete summary of his
4 opinions and the basis therefore. His résumé contains a statement of his qualifications as an expert
5 witness. CPB did not demonstrate any prejudice from allowing Mr. Barnett to testify. Therefore, to
6 the extent SNWA's Motions in Limine on these topics are denied, Mr. Barnett should be allowed to
7 testify as an expert witness. In the alternative, Mr. Barnett may be allowed to testify as a factual or
8 percipient witness. Either way, CPB's Motion should be denied.

9 Respectfully submitted this 28 day of August, 2017.

10
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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:

By electronic means using a web-based file sharing service pursuant to stipulation of counsel made on April 25, April 27, May 15, and June 22, 2017, as follows:

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DATED this 28th day of August, 2017.



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