

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

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STATE ENGINEERS OFFICE

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

**CPB'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND EVIDENCE
RELATING TO THEORETICAL ET-CAPTURE WELLS**

The Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-Day Saints, on behalf of the Cleveland Ranch ("CPB" or the "Cleveland Ranch") requests that the State Engineer preclude SNWA from presenting evidence pertaining to wells or well fields that were not specifically described in the pending application. This motion is prompted by SNWA Exhibit 475, which describes a new field of 101 ET capture wells. That is not relevant and consideration of such theoretical points of diversion in these proceedings deprives the Protestants, and presumably third parties, of their due process rights under Nevada's water law. Furthermore, it violates the prior ruling in these proceedings in which the Hearing Officer unambiguously declared: "They've – they've applied for a diversion rate from specifically 19 wells, and that's all the State Engineer is considering. He's not considering a different well field...And in a different hearing with different people, the State Engineer said we're not talking about a different well field. We're talking about the applications under consideration here." *See Transcript of Proceedings*, Vol. 11 (October 10, 2011) at p. 2507, ll. 11-21.

This motion is made pursuant to NAC 533.142 and the State Engineer's First Informational Statement entered August 8, 2017.

On October 17, 1989, SNWA filed 19 applications to appropriate groundwater in Spring Valley, setting forth 19 proposed points of diversion. *See* Ruling 6164 at pp. 2-6. Those 19 applications and proposed points of diversion have been and remain the focus of these proceedings. After an extensive six-week hearing in 2011, in March 2012, the State Engineer denied four of the 19 applications. *See* Ruling 6164 at p. 216. The 15 applications which were granted, were granted subject to various conditions, and were granted for a cumulative amount of water not to exceed 61,127 afa to be pumped from the 15 approved points of diversion. *See* Ruling 6164 at pp. 216-217.

SNWA Exhibit 475 sets forth SNWA's intent to take its 15 granted applications and to take a portion of each of those groundwater appropriations to distribute the water across 101 theoretical points of diversion or "ET-capture wells." *See* SNWA Exhibit 475 at Section 4.3.2. Applications for those 101 wells have not been filed with the State Engineer, and therefore have not been published, protested, or subject to a public hearing.

The District Court's Decision remands this matter to recalculate the award of water rights which may be pumped from the 15 approved applications – not to consider new theoretical points of diversion, let alone 101 points of diversion as a means to justify the award of 61,127 afa. The 101 theoretical points of diversion offered by SNWA in its Exhibit 475 are not relevant to the proceedings at hand. NAC 533.260(1) provides that all evidence offered in a hearing, including the testimony of a witness, must be relevant to the subject matter of the proceeding. Further, the State Engineer may exclude testimony that is irrelevant. *See* NAC 533.260(2). Here, theoretical points of diversion are irrelevant to the 15 applications that were granted by the State Engineer and the Court's direction on remand, that the State Engineer calculate an award less

than the calculated E.T. for Spring Valley, and that such an amended award has some prospect of reaching equilibrium. The use of theoretical points of diversion, which have not been applied for, let alone approved, is not relevant as to whether the approved 15 points of diversion can capture an amount of E.T. less than the prior award, while reaching equilibrium as ordered by the District Court.

For the reasons stated above, CPB respectfully requests that the State Engineer issue a pre-hearing order excluding any testimony or evidence by SNWA referencing the theoretical ET-capture wells.

DATED this 18th day of August, 2017.

KAEMPFER CROWELL

By:  _____

Severin A. Carlson
Kaempfer Crowell
Nevada Bar No. 9373
50 W. Liberty Street, Suite 700
Reno, Nevada 89501
Telephone: (775) 852-3900
scarlson@kcnvlaw.com

Paul R. Hejmanowski
Hejmanowski & McCrea LLC
520S. 4th Street, Suite 320
Las Vegas, Nevada 89101
Telephone: (702) 834-8777
prh@hmlawlv.com

Attorneys for **Protestant
Corporation of the Presiding Bishop of The
Church of Jesus Christ of Latter-Day Saints,
a Utah corporation on behalf of the Cleveland
Ranch**

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2017, a true and correct copy of the foregoing CPB'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND EVIDENCE RELATING TO THEORETICAL ET-CAPTURE WELLS was served on the following persons by electronic service according the parties' agreement, and by depositing the same for delivery with the United States Postal Service, first-class postage prepaid, addressed to the following:

Paul G. Taggart, Esq.
Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
Paul@legalnt.com
Tammy@legalnt.com

Dana R. Walsh, Esq.
Southern Nevada Water Authority
1001 South Valley View Boulevard, MS #485
Las Vegas, Nevada 89153
dana.walsh@lvvwd.com
Denise.Derossett@snwa.com

Paul Echo Hawk
Echo Hawk Law Office
P.O. Box 4166
Pocatello, Idaho 83205
paul@echohawklaw.com
aaronw@w-legal.com

Scott W. Williams
Curtis Berkey
Williams & Weathers, LLP
2030 Addison Street, Suite 410
Berkeley, California 94704
swilliams@berkeywilliams.com

Rob Dotson
Dotson Law
One East First Street, 16th Floor
Reno, Nevada 89501
rdotson@dotsonlaw.legal
hcampbell@dotsonlaw.legal

Simeon Herskovits
Iris Thornton
Advocates for Community & Environment
P.O. Box 1075
El Prado, New Mexico 87529
simeon@communityandenvironment.net
iris@communityandenvironment.net

Attention, Jerald Anderson
EskDale Center
1100 Circle Drive
EskDale, Utah 84728
geraldanderson@hotmail.com

J. Mark Ward
Utah Association of Counties
5397 Vine Street
Murray, Utah 84107
wardjmark@gmail.com

John Rhodes
Rhodes Law Offices, Ltd.
P.O. Box 18191
Reno, Nevada 89511
johnbrhodes@yahoo.com


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