

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

RECEIVED

AUG 18 2017

STATE ENGINEER'S 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 OF DON A. BARNETT**

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 verbal testimony from Don A. Barnett, or any written evidence authored by Don A. Barnett, including SNWA Exhibit 608 (Barnett CV) and SNWA Exhibit 609 (Declaration of Don A. Barnett), as a result of SNWA's failure to adhere to the State Engineer's November 28, 2016 Notice of Hearing and Interim Order (the "Interim Order").

Nevada Administrative Code ("NAC") 533.230, provides that before the hearing, the State Engineer may require the parties to identify the persons who will offer direct testimony at the hearing. If a party fails to comply with a prehearing order to identify a witness, the State Engineer may refuse to allow that witness to testify. NAC 533.265, if the State Engineer authorizes rebuttal evidence, the party may offer in its rebuttal only evidence that directly explains, counteracts or disproves of facts offered into evidence by other parties of record. NAC 533.280(1) allows the State Engineer to require, in advance of the hearing, identification of each

exhibit that a party intends to use, as well as exchange of exhibits between parties. If a party fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibit into evidence. NAC 533.280(2).

Here, the Interim Order is a prehearing order setting forth deadlines and standards for documentary evidence, witnesses, and expert witnesses. As a part of the Interim Order, the State Engineer denied CPB's motion for pre-hearing discovery and written direct testimony. In denying the request for written direct testimony, the State Engineer referenced SNWA's argument "...that expert witnesses are required to provide written reports in advance of the hearing and ...that the addition of written testimony will add little to what is already available from the reports." Interim Order at pp. 2-3. Additionally, the Interim Order noted: "The State Engineer finds that the expert witnesses in the remand hearing will be required to submit written reports with citations to the information upon which their opinions are based and believes this is sufficient to inform the parties of the opinions of those witnesses without the additional discovery proceedings." Interim Order at p. 3. Further, "[i]f a witness is presented to provide expert testimony, the evidentiary exchange shall include a written report prepared and signed by the witness, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness in forming the opinions, and exhibits to be used as a summary of or in support of the opinions and a statement of qualifications of the witness." Interim Order at p. 8.

Although SNWA designated Mr. Barnett as a witness in Exhibit 595 and furnished the witness's curriculum vitae (SNWA Exhibit 608), one cannot conclude that SNWA Exhibit 609 is a written report containing a complete statement of all opinions of the witness, which contains the basis and reasons for the witness's opinions, along with the necessary data and information that was considered by the witness in forming his opinions. SNWA, in disclosing its other


rebuttal expert witnesses has furnished the requisite written reports for those witnesses, but has failed to meet this obligation for Mr. Barnett.

The intent of the State Engineer's Interim Order is to have experts pre-disclose their expert opinions and the basis for those opinions in a signed report and to limit the experts' testimony to the contents of the reports. Neither CPB nor the other Protestants have been afforded an adequate opportunity to understand the scope of Mr. Barnett's opinion, let alone the basis for his opinions, and therefore SNWA should be precluded from offering Mr. Barnett as a witness in these proceedings.

For the reasons stated above, CPB respectfully requests that the State Engineer issue a pre-hearing order excluding any testimony or evidence on behalf of SNWA by Don A. Barnett.

DATED this 18<sup>th</sup> day of August, 2017.

KAEMPFER CROWELL

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of August, 2017, a true and correct copy of the foregoing CPB'S MOTION IN LIMINE TO EXCLUDE TESTIMONY OF DON A. BARNETT 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:

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