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.

MOTION IN LIMINE TO EXCLUDE EXHIBITS GBWN/WPC 281, GBWN/WPC 282, GBWN/WPC 290, GBWN/WPC 292, OR PARTS THEREOF, AND RELATED TESTIMONY

The Southern Nevada Water Authority ("SNWA") requests that the State Engineer issue a pre-hearing order excluding from evidence the majority of Great Basin Water Network/White Pine County ("GBWN/WPC") Exhibit GBWN/WPC_281, except for the "Monitoring, Management and Mitigation Plans" section on pages 66 through 80 ("3M Section"), all of exhibit GBWN/WPC_282, all of exhibit GBWN/WPC_290, and all of exhibit GBWN/WPC_292. This motion is made pursuant to the State Engineer's hearing regulations (NAC 533.142 and NAC 533.260), the State Engineer's Interim Order on Pre-Hearing Scheduling (October 2, 2016), the State Engineer's Notice of Hearing and Interim Order (November 28, 2016), and the Hearing Officer's letter regarding scheduling for motions in limine (August 8, 2017).

The State Engineer should exclude the majority of exhibit GBWN/WPC_281 because the topics raised within that exhibit, except for the 3M Section, are outside of the specific issues on remand. Likewise, the State Engineer should exclude exhibits GBWN/WPC_282, 290, and 292 because these exhibits are referenced to address issues that are also outside of the specific issues on remand. Because these exhibits relate to matters that are not within the scope of the remand hearing, they are irrelevant and unduly repetitious and should be excluded under NAC 533.260. Moreover, exhibits GBWN/WPC_282 and 292 should be excluded because they contain opinions related to

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groundwater dependent ecosystems and other biological matters that are outside of the expertise of the only expert witness GBWN/WPC identified: the hydrologist Dr. Myers.

SNWA requests that the State Engineer issue an order excluding these exhibits and related testimony before the hearing begins, rather than withholding a decision until the exhibits and testimony are offered into evidence. SNWA must present its witnesses first during the hearing and is not guaranteed a rebuttal case. Without a pre-hearing ruling on exclusion, SNWA will be placed in the awkward position of either (1) having its witnesses discuss the very exhibits SNWA is trying to exclude during its case in chief, or (2) risk losing the opportunity to rebut the exhibits at all should they come into evidence during the protestants' cases, and over SNWA's objection. Additionally, the time allotted for this hearing is very limited and does not afford the luxury of presentation of perhaps irrelevant and unnecessary testimony or for that matter argument over admissibility of evidence.

In the event SNWA's motion in limine is denied, SNWA respectfully requests an additional five days of hearing time to present evidence and witnesses to address the topics SNWA argues are outside the scope of the remand hearing. SNWA has carefully planned its four and one-half days of testimony to address just the four remand topics. In the event SNWA's motions in limine are denied, SNWA will need additional hearing time to address the extraneous topics identified in the GBWN/WPC exhibits that are the subject of this motion in limine. That time could be allowed during the case in chief or preferably as rebuttal.

STATEMENT OF FACTS

I. The Remand Order

On December 13, 2013, the Seventh Judicial District Court (the Court) remanded portions of the State Engineer's Rulings for Spring Valley, Cave Valley, Dry Lake Valley, and Delamar Valley (Rulings 6164 through 6167, respectively) ("Remand Order"). The Court's Remand Order directed the State Engineer to address the following four topics:

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;

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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, threshold 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.

The Court stated, however, that it "would not disturb the findings of the Engineer" except for the four issues listed above.[1] Importantly, the Court's Remand Order did not overturn Rulings 6164-6167 in their entirety. Instead the Court simply remanded to the State Engineer for the narrow purpose of addressing the four remand topics.

II. Pre-Hearing Conference

On September 14, 2016, the State Engineer held a Status Conference regarding the Court's Remand Order. The Status Conference was held to determine whether a new administrative hearing would be necessary and whether additional evidence was needed to address the four remand topics. Counsel for GBWN/WPC asserted that no additional hearing was necessary. Other parties at the status conference were not in agreement that an additional hearing was unnecessary. Many parties, including counsel for GBWN/WPC, agreed that if an additional administrative hearing was to be held that it should be restricted only to the matters subject to remand.[2] The hearing officer agreed that the scope of the remand included only the four issues and said that attempts to go beyond the scope of remand would not be allowed.[3]

III. Interim Order on Pre-hearing Scheduling

In the October 2, 2016 Interim Order on Pre-hearing Scheduling ("Pre-hearing Order"), the State Engineer found that an "additional administrative hearing is necessary to provide the parties the opportunity to fully address the issues remanded." (Pre-hearing Order p. 2). Also, "[t]he scope of the

[1] Remand Order, p. 23.
[2] Transcript, September 17, 2016 Pre-hearing Conference ("Transcript"), p. 71:18-20 (Mr. Herskovits: "We believe that the only issues that need to be taken up on remand are the ones covered by Judge Estes' four directives.").
[3] Transcript, p. 70:24-71:6.

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remand hearing will be limited to the specific issues identified in the [Court's] Ruling, and only new evidence relating to those issues will be considered in addition to the existing record."[4]

IV. Notice of Hearing and Interim Order

On November 28, 2016, the State Engineer's Notice of Hearing and Interim Order ("Interim Order") reiterated the limited scope of the upcoming hearing. (Interim Order p. 1). The State Engineer also noted the unprecedented size of the record and stated that the "State Engineer will not add to it documents that will not be relevant to his analysis on remand." (Interim Order p. 6).

The State Engineer required expert witnesses to write a report including within it 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] any exhibits to be used as a summary of or in support of the opinions." (Interim Order p. 8).

V. Nevada Administrative Code and Nevada Legal Authority

The State Engineer's regulations for protest hearings allow admission of evidence that is "relevant" to the subject matter of the hearing. NAC 533.260(1). The regulations allow the State Engineer to exclude testimony that is "irrelevant, incompetent or unduly repetitious." NAC 533.260(2). Evidence is relevant if it has "any tendency to make the evidence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. Even if evidence is relevant, it can be excluded if its probative value is outweighed by "undue delay, waste of time or needless presentation of cumulative evidence." NRS 48.035. Independent of evidentiary determinations, the regulations allow the State Engineer to "define or limit the issues to be considered." NAC 533.210(2).

ARGUMENT

I. Doctrine of Law of the Case and Scope of Remand

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. "Where an appellate court states a principal [sic] or rule of law in deciding a case, that rule becomes the law of the case and is controlling both in the

[4] Pre-hearing Order p. 3.

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lower courts and on subsequent appeals, so long as the facts remain substantially the same."[5] In other words, courts are loath to revisit prior decisions that were decided at earlier appellate stages of the same litigation.[6] The law of the case doctrine furthers important policy goals of judicial consistency and finality, and prevents reconsideration of decisions that are intended to "put a particular matter to rest" during the course of a single lawsuit.[7]

The State Engineer made many factual findings and ruled on many issues in Rulings 6164-6167. On appeal, only four issues were remanded, and the remainder of the State Engineer's findings were not set aside.[8] The District Court's decision not to disturb the State Engineer's findings, other than the four specific remand issues, made all the other State Engineer findings "law of the case" on remand. Additionally, the facts of this case remain "substantially the same."[9] Accordingly, the State Engineer's matters outside of the four remand issues are beyond the scope of remand, and any evidence or testimony related to decided issues that were upheld on remand should be excluded from consideration at the limited remand hearing. Reopening any of these matters on remand is wholly improper and would represent a waste of resources. The parties had the opportunity to challenge all of the State Engineer's determinations, but the Court did not agree with all of their challenges and instead only overturned four of the State Engineer's findings. The doctrine of the law of the case demands that the already settled evidentiary matters remain settled on remand.

Accordingly, the evidentiary findings contained within Rulings 6164-6167, together with the conclusions of law established by the Court in the Remand Order, constitute the settled law of the case for any further proceedings. At the prehearing conference, the parties stipulated that the scope of remand was limited to the four issues. Further, the State Engineer has previously ordered that "[t]he scope of the remand hearing will be limited to the specific issues identified in the [Court's] ruling, and

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[5] *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).

[6] *Christianson v. Solt Industries Operating Corp.*, 486 U.S. 800, 817, 108 S.Ct. 2166 (1988); *See* 5 Am. Jur. 2d Appellate Review §566.

[7] *Hsu*, 123 Nev. at 630, 173 P.3d at 728.

[8] Remand Order, p. 23 ("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").

[9] *Geissel,* 105 Nev, at 103, 769 P.2d at 1296.

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only new evidence relating to those issues will be considered in addition to the existing record." (Pre-hearing Order p. 3). As such, any topic or issue outside of the four remand issues should not be entertained at the remand hearing and such evidence should be excluded or stricken if it relates to a topic beyond the scope of the remand.

II. The Majority of GBWN/WPC_281 is Outside the Scope of the Remand Order

Exhibit GBWN/WPC_281 is a report authored by Dr. Tom Myers entitled "Hydrogeology of Spring, Cave, Dry Lake, and Delamar valleys – Impacts of Developing Southern Nevada Water Authority's Clark, Lincoln, and White Pine Counties Groundwater Development Project" ("Myers (2017)"). This report was submitted as part of the first evidentiary exchange by White Pine County, Great Basin Water Network, et al., (collectively "GBWN"). Myers (2017) was specifically written with the presumption that the original applications "are the starting point for this rehearing" (Myers (2017), p. 3). Thus, the report is unabashedly a violation of the directives of the Remand Order and the State Engineer.

Nearly the entirety of this report failed to follow to the Remand Order, as well as the State Engineer's instructions on adhering to the Remand Order. Rather, Myers (2017) begins anew with arguments and evidence already ruled upon by the State Engineer in 2012 and not set aside by the Court in 2013. The only section of this report which addresses an issue in the Remand Order is the "Monitoring, Management and Mitigation Plans" section on pages 66 through 80. Aside from this, the remaining sections discuss topics that are not at issue on remand, and are therefore irrelevant and unduly repetitious. For instance, topics outside the remand issues include recharge and discharge estimates, projected drawdown and model impacts, numerical and conceptualized model construction, equilibrium analysis in the White River Flow System (WRFS) and interbasin flow calculations.

A. Recharge and discharge estimates

The "Conceptual Flow Model" section of Myers (2017), pages 10 through 24 and including portions of the "Method of Analysis" section on pages 3 to 4, discusses recharge and discharge estimates from varying sources and relies on information that was available during the last hearing, not

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an alleged change in circumstances. Instead, this section attempts to have the State Engineer re-determine what the recharge and discharge estimates are for Spring, Cave, Dry Lake, and Delamar valleys. The State Engineer determined the groundwater evapotranspiration ("ET") amounts for Spring (84,100 afa, Ruling 6164, p. 76), Cave (1,300 afa, Ruling 6165, p. 76), Dry Lake (no measurable ET, Ruling 6166, p. 75), and Delamar (no measurable ET, Ruling 6167, p. 75) valleys. These findings of the State Engineer were not disturbed by the Court. As such, this section consisting of pages 10 through 24 and all other mentions of recharge and discharge estimates should be stricken from the report and further excluded from testimony.

Similarly, Myers (2017) "Perennial yield" section on pages 33 through 36 discusses perceived errors with calculating perennial yield. However, the perennial yield determinations in Rulings 6164-6167 were not disturbed by the Court. For Spring Valley, the Court "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." Remand Order p. 13. The Court did not set aside the State Engineer's ET value or perennial yield value for Spring Valley (84,000 afa, Ruling 6164, p. 90). Likewise, the Court did not disturb the State Engineer's ET values for Cave (12,900 afa, Ruling 6165, p. 80), Dry Lake (15,000 afa, Ruling 6166, p. 79), and Delamar (6,100 afa, Ruling 6167, p. 78) valleys. Also, the Court did not set aside the State Engineer's perennial yield values (Remand Order, p. 20). Myers' (2017) attempt to re-litigate the decided issue of perennial yield calculations should not be allowed and this section consisting of pages 33 through 36 and all other mentions of perennial yield should be stricken from the report and further excluded from testimony.

B. <u>Projected drawdown and model impacts in Spring Valley</u>

Interspersed throughout Myers (2017) are claims of impacts caused by modeled drawdown within Spring Valley, primarily in the "Summary" and "Introduction" sections on pages one to three, and also in the "Conclusion" section on pages 99 to 100. The State Engineer in Ruling 6164 provided an in-depth analysis of the groundwater model from page 121 through 132, identifying the strengths and weaknesses of the different models. Following this analysis, the State Engineer presented a site-

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specific qualitative analysis of impacts to existing rights and environmental areas of interest from page 133 through 144. Satisfied by the findings, the State Engineer found that "[SNWA]'s model is more comprehensive, better documented and peer reviewed, and will carry more weight in impacts analyses." (Ruling 6164, p. 151). Based upon the modeled impacts, the State Engineer granted Applications 54003 to 54015 and 54019 to 54020 subject to varying conditions.

At issue in the Court's Remand Order is "[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," and a defining "standards, threshold or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley." (Remand Order, p. 23). Claiming impacts based upon model projections relates to neither of these topics. For instance, the opinion that "[i]mpacts from the proposed project would be severe and far reaching" (Myers (2017), p. 1) is not relevant to the topics in the Court's Remand Order. These opinions only cloud the upcoming hearing. As such, all references to projected drawdown and model impacts in Spring Valley contained within Myers (2017) should be stricken from the report as well as excluded from testimony.

C. Model construction

Myers (2017) criticizes the numerical model (the "CCRP model"), even though the State Engineer found the CCRP model to be "a reliable tool to examine potential effects on the groundwater system." (Ruling 6164, p. 128). Generally, Myers (2017) from pages 80 to 99 and including portions of the "Method of Analysis" section on pages 3 to 4 provides a review of the numerical model "based on the review [he] completed on behalf of White Pine County in 2010," including his perceived shortcomings.

Myers (2017) briefly mentions on page 80 how the model's grid orientation does not match the general basin outlay and asserts that the grid should have been rotated 10 degrees. He also disagrees with the cell size. Primarily, Myers (2017) focused on the "Vertical Layers and Layer Manipulation" in the model, summarizing his opinions as to how the layers in the model should have been constructed. This same argument was discussed in Ruling 6164 from pages 125 to 126. Specifically,

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in reference to the confining layer portion on pages 81 and 82 of Myers (2017), the State Engineer found that "[t]he use of a confining layer was directed and approved by the many groundwater modeling experts on the BLM's Hydrology Technical Group." (Ruling 6164 p. 125). Ruling 6164 cites the 2011 hearing transcript and states that ultimately, "Dr. Myers determined that this would have no effect on model results." (Ruling 6164 p. 126).

Further critiques of the model construction are present on pages 82 to 87 of Myers (2017), where the primary concern is that the model layers did not represent changing lithologic units with enough precision. However, the State Engineer understood the limits associated with a regional model and found that local-scale features are not meant to be accurately simulated in regional scale models. (Ruling 6164 p. 125). Calibration techniques were also analyzed in Myers (2017) from pages 87 through 91. Here, Myers (2017) again raised issues already decided by the State Engineer which were not disturbed by the Court.

In the "Muddy River Springs" section on pages 57 to 65, Myers (2017) asserts that the presence of faults in the model should be similar to their real-word setting; that is, the faults should have a cell grid width which coincides with their actual width. Myers (2017) cites to an article by Fairley and Hinds (2005), listed as an exhibit as GBWN/WPC_290 titled *Rapid transport pathways for geothermal fluids in an active Great Basin fault zone*. This article used a local model which identified the varying degrees of transmissivity values across a fault plane. In the CCRP model, the width of faults follows the grid resolution and the aquifer properties represent averages across the cells, and were adjusted during calibration to match spring flow and water levels. In other words, the CCRP model calibration process properly addressed flow across faults, despite Myers' criticism. Ultimately, Myers had the opportunity to raise this issue before the issuance of Ruling 6164, and the State Engineer's finding that the CCRP model is a "reliable tool" was not disturbed by the court. How the model addressed fault width and varying degrees of transmissivity across a fault plane are not issues on remand. For this reason, the discussion of modeling on pages 57 to 65 of Myers (2017) and all other mentions of modeling faults should be stricken from the report as well as excluded from testimony and exhibit GBWN/WPC_290 should be excluded from evidence.

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More critiques of the model are presented in Myers (2017) from pages 92 to 99. In these sections, the water balance and specific comments pertaining to the numerical model are discussed, including Myers' opinion of errors associated with Gandy Warm Springs. As stated *supra*, the State Engineer's findings regarding model construction was not disturbed by the Court. As such, these sections within pages 92 to 99 and any other mention of them are not within the narrow scope of the Court's Remand Order and should be stricken from the report and further excluded from testimony.

Myers (2017) on pages 31 to 33 discusses the hydrogeologic properties of aquifer systems and provides lithologic data presumably to support his theory that transmissivity parameters in the model should be changed. However, as noted *supra*, the State Engineer found the CCRP model to be a useful tool and Myers' renewed and repetitious critique of State Engineer's findings on the model are simply an attempt to begin the 2011 hearing anew. Accordingly, pages 31-33, 57-65 and 80-99 and any other mention of model construction should be excluded from evidence and further excluded from testimony because they are irrelevant to the remand issues, do not comport with the State Engineer's instructions to adhere to the Court's Remand Order, and are unduly repetitious of arguments presented in 2011.

D. <u>Equilibrium analysis in WRFS</u>

Myers (2017) explores the issue of time to equilibrium in the White River Flow System ("WRFS") on pages 49-57, and 65-66. However, equilibrium in the WRFS is not one of the four remand issues. The time to equilibrium in the WRFS was previously included in evidence and considered in Rulings 6165-67 and subsequent appeals. In those Rulings, the State Engineer found that "[i]t will often take a long time to reach near-equilibrium in large basins and flow systems." (Ruling 6165, p. 80, Ruling 6166, p. 79, Ruling 6167, p. 78). This rests on the fact that most of the basins in the WRFS, particularly Delamar, Dry Lake, and Cave valleys, are known as dry basins because they discharge little to no water as evapotranspiration. The time required for water sourced in these dry basins to reach discharge locations in another basin may be on the order of millennia. Reaching equilibrium from pumping would require hundreds if not thousands of years for drawdown propagation to produce a measurable result on capturing evapotranspiration in a discharge basin.

Ultimately, attempting to quantify the time required to arrive at equilibrium in the WRFS becomes irrelevant and was therefore not an issue remanded by the Court—the equilibrium issue on remand only relates to Spring Valley. (Remand Order p. 9-12 and 23).

Moreover, the only remand issue relating to the WRFS is the request to calculate the existing rights in the WRFS to make sure that the system as a whole is not over appropriated. As stated by the District Court "[a]fter 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." (Remand Order p. 23). Time to equilibrium in the WRFS is outside of the scope of the Remand Order, and therefore pages 49-57 and 65-66 of Myers (2017) and any further discussion about time to equilibrium in the WRFS should be excluded from evidence and further excluded from testimony.

E. Interbasin flow calculations

The "White River Flow System" section on pages 25 to 31 and including portions of the "Method of Analysis" section on pages 3 to 4 of Myers (2017) provides background information associated with interbasin flows. The State Engineer determined the amounts of interbasin flows in the WRFS in Rulings 6165, 6166, and 6167 (p. 59-71, p. 58-70, and p. 58-70, respectively). Myers (2017) section titled "Central Carbonate Flow System Numerical Modeling" on pages 37 through 44 discusses modeling projections for different BLM FEIS alternatives showing potential changes in flux conditions at basin boundaries. This section simply presents snapshots of potential drawdowns for FEIS Alternatives E and F and gave no expert analysis or opinions interpreting these results. Similarly, the section titled "Spring Valley" and "White River Flow System" (p. 45 through 48 and 49 to 60, respectively) present the impact different pumping scenarios may have on the interbasin flow regime. The State Engineer's determination of the amount of interbasin flows in Spring Valley or the WRFS was not set aside by the Court. Therefore, pages 25-31, 45-48 and 49-60 and any further discussion regarding interbasin flow should be excluded from evidence and further excluded from testimony because they do not pertain to the narrow issues on remand and instead present unduly repetitious information on findings already made by the State Engineer.

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F. Myers (2017) Provides Non-Expert Opinions within the Monitoring, Management and Mitigation Plan Section

Myers (2017) provides unsubstantiated opinions on water rights quantification and environmental resources in the section relating to Monitoring, Management and Mitigation Plans occurring from page 66 to 80. Opinion testimony can only be offered if it is presented by an expert. *See* NRS 50.265. Water rights quantification and environmental resource analysis requires scientific, technical, or other specialized knowledge. Without that knowledge, a witness cannot to assist the State Engineer. *See* NRS 50.275. While, Dr. Myers is a hydrologist, he has not demonstrated any qualification to offer expert opinions regarding water right quantification or environmental resource analysis. As such, Dr. Myers' opinions in these areas are not based on specialized knowledge, and should be excluded.

G. Quantification of water rights

Myers (2017) on page 76 presents Table 4, the *Total number and amount of spring and stream water rights by valley downgradient from Cave, Dry Lake, and Delamar Valleys*. This quantification is similar to the exercise presented in Myers (2011) when he failed to analyze individual water rights, or make any adjustments for supplemental or consumptive use. The State Engineer in Ruling 6164 on page 100 found that "Dr. Myers' estimates cannot be relied upon to determine the amount of committed spring water rights in Spring Valley." Moreover, during testimony, Dr. Myers conceded that he does not consider himself an expert in the area of water rights in Nevada. (2011 Hearing Transcript, Vol. 19 p 4286:4-8). The circumstance currently presented is analogous. As such, the table on page 76 of Myers (2017) and the preceding paragraph on page 75, and any water right quantification statements by Myers in his rebuttal report, should be excluded from the evidence.

H. Groundwater Dependent Ecosystems

Beginning on page 67 and continuing to page 68 under the section titled *Groundwater Dependent Ecosystems*, Myers (2017) presents non-expert opinions regarding wetlands. One non-expert opinion focuses on the water required for wetlands to continue its existence. Others relate to the process by which phreatophytes extract moisture, the ecosystems in playa environments, and the

potential effect on subterranean ecosystems. As can be seen from Dr. Myers' Curriculum Vitae (GBWN/WPC_280), he has degrees in hydrology and hydrogeology and civil engineering. He does not have education or work experience in the area of environmental resources or groundwater dependent ecosystems. As such, he does not have the type of scientific, technical or other specialized knowledge that will assist the State Engineer on these topics. Additionally, GBWN has two articles on groundwater dependent ecosystems listed on its exhibit list: GBWN/WPC_282 and GBWN/WPC_292. Since Dr. Myers is the only expert witness on GBWN's witness list, and he is not qualified as an expert in the area of groundwater dependent ecosystems, GBWN cannot utilize this witness to properly offer the foundation for these exhibits to be admitted. Because pages 67-68 of Myers (2017) and GBWN/WPC 282 and 292 present information that is outside of Dr. Myers' expertise, they should be excluded from evidence and the referenced exhibits should not be admitted based upon foundation provided by Dr. Myers.

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CONCLUSION

For the foregoing reasons, SNWA asks that the State Engineer issue a pre-hearing order excluding those sections of GBWN/WPC_281 identified herein and the entirety of exhibits GBWN/WPC_282, 290, and 292 from evidence. In the alternative, SNWA requests that the hearing be extended to give SNWA the opportunity to present rebuttal evidence.

Respectfully submitted this 18th day of August, 2017.

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 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 18th day of August, 2017.

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