

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) SNWA REPLY IN SUPPORT OF
 APPLICATIONS 54003 THROUGH 54021,) SNWA'S MOTION IN LIMINE TO
 INCLUSIVE, FILED TO APPROPRIATE THE) EXCLUDE EXHIBITS GBWN/WPC
 UNDERGROUND WATERS OF CAVE) 281, GBWN/WPC 282, GBWN/WPC 290,
 VALLEY, DELAMAR VALLEY, DRY LAKE) GBWN/WPC 292, OR PARTS
 VALLEY, AND SPRING VALLEY) THEREOF, AND RELATED
 (HYDROGRAPHIC BASINS 180, 181, 182) TESTIMONY
 AND 184), LINCOLN COUNTY AND WHITE)
 PINE COUNTY, NEVADA.)

The Southern Nevada Water Authority ("SNWA") hereby replies to the Response To SNWA's Motion In Limine To Exclude Exhibits GBWN/WPC 281, GBWN/WPC 282, GBWN/WPC 290, GBWN/WPC 292, Or Parts Thereof, And Related Testimony ("Response") filed by White Pine County ("WPC") and the Great Basin Water Network, et al. ("GBWN"). This Reply is based on the pleadings and papers currently on file with the State Engineer in this case, including SNWA's Motion In Limine To Exclude Exhibits GBWN/WPC 281, GBWN/WPC 282, GBWN/WPC 290, GBWN/WPC 292, Or Parts Thereof, And Related Testimony ("Motion") which is incorporated herein by reference.

INTRODUCTION

WPC and GBWN's completely exaggerates the District Court's remand order in an effort to re-open and re-litigate the entire 2011 State Engineer proceedings in spite of the District Court's limited remand instructions and the Hearing Officer's prior orders. WPC and GBWN repeatedly mischaracterize the District Court's findings and conclusions and misinterpret the State Engineer's orders and regulations related to the nature of the remand hearing and the admissibility of evidence. The District Court did not, as WPC and GBWN assert, *reverse and remand*. The District Court *remanded only*, for four specific reasons, and left the approval of SNWA's applications intact.

SE	'S EXHIBITS 156
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1 There are two simple facts that all of the aspersions and insinuations made by WPC and
2 GBWN in the Response cannot hide: (1) with one small exception, Dr. Myers' report, and the
3 supporting materials thereto, completely fail to address the District Court's specific and limited
4 remand instructions, and (2) Dr. Myers offers opinions and conclusions that he is not qualified to
5 render, based on WPC and GBWN's own expert disclosures. These two facts render the majority of
6 Dr. Myers' report, and the supporting materials thereto, inadmissible.

7 **ARGUMENT**

8 **I. WPC and GBWN's Mischaracterizations and Misinterpretations.**

9 **A. The Remand Order**

10 The District Court's Remand Order was specific and limited to four issues. The Remand Order
11 also specifically stated that the District Court was not disturbing the findings and conclusions of the
12 State Engineer with respect to any factual issues not specifically identified in the four remand
13 instructions.¹

14 Several times throughout the Response WPC and GBWN allege that the District Court found
15 that "the State Engineer's findings related to availability of water, conflicts with existing rights, the
16 public interest, and the environmental soundness criteria in Rulings 6164 through 6167 were
17 unsupported by substantial evidence and were arbitrary and capricious."² This statement is totally
18 untrue and WPC and GBWN provide no direct quote from the District Court's Remand Order to
19 support their overly expansive interpretation. In reality, when read in context, the District Court's
20 Remand Order is far from a blanket rejection of the State Engineer's rulings but is instead a limited
21 reversal of certain technical aspects of those rulings.

22 First, nowhere in the Remand Order does the District Court find that SNWA's pumping will
23 conflict with existing rights. The only finding the Court found arbitrary and capricious was the State
24 Engineer's approval of a 3M Plan because the Court concluded it lacked objective standards and
25

26 ¹ December 10, 2013, Decision, White Pine County v. Jason King, P.E., Seventh Judicial District Court of Nevada Case
27 No. CV1204049 ("Remand Order") at 23.

28 ² Response at 1-2; See also Response at 6, 9, 16, and 22.

1 triggers for managing and mitigating any impacts that might arise. As noted by the Court “[n]ot
2 knowing where or how bad an impact is, is not the same thing as defining what [constitutes] an
3 adverse impact.”³ Accordingly, the District Court instructed the State Engineer on remand to consider
4 changes to the 3M Plan to “define standards, thresholds or triggers” that can be used to assure
5 unreasonable impacts do not occur, and if they do, identify what will be done to mitigate them.⁴ This
6 is a limited ruling that does not sanction re-opening already-decided issues related to availability of
7 water, conflicts, public interest, or environmental soundness.

8 Second, the District Court’s instruction to recalculate the appropriations from the project basins
9 has little to do with the issues raised by Dr. Myers in his report. With respect to Cave, Dry Lake, and
10 Delamar Valleys, the Court was concerned that, because the valleys are part of a larger flow system,
11 the approved appropriations would result in a situation where “the same water has been awarded
12 twice, once in the upper basins, and again in the lower basins.”⁵ The Court found that there was not
13 enough information in the record to make such a determination. All the Court requested on remand
14 was for the State Engineer to provide an accounting of the appropriations in the White River Flow
15 System valleys on a flow system basis rather than as individual basins. The Court did not disturb the
16 State Engineer’s findings with respect to the calculation of the individual perennial yields assigned to
17 each of the individual basins. Nor did the Court’s remand instruction require the State Engineer to re-
18 open previously decided issues related to conflicts, the environmental soundness of SNWA’s proposed
19 project, or the public interest.

20 Likewise, with respect to Spring Valley, the Court did not disturb the State Engineer’s findings
21 related to the calculation of the perennial yield of the basin or the amount of water being discharged
22 via evapotranspiration (“ET”). Quite the contrary, the Court relied upon those quantifications when
23 analyzing whether project pumping would fully capture ET.⁶ The Court’s primary concern was that if
24 project pumping does not fully capture ET, more water will be discharging from the basin than is

25 ³ Remand Order at 16.

26 ⁴ Remand Order at 23.

27 ⁵ Remand Order at 19.

⁶ See Remand Order at 9-10.

1 recharged on an annual basis.⁷ Accordingly, the Court instructed the State Engineer to recalculate the
2 amount of water awarded to SNWA so that “the amended award has *some prospect* of reaching
3 equilibrium in the reservoir.”⁸ The Court’s statement that Ruling 6164 was “not in the public interest”
4 was limited to the Court’s concern about whether the Spring Valley basin would reach a new
5 equilibrium within a reasonable time and was not an invitation to re-open a general inquiry into
6 whether the proposed project, as a whole, serves the public interest.⁹

7 WPC and GBWN’s repeated mischaracterization of the findings made by the District Court
8 should not obscure what the District Court actually did – remand the case to the State Engineer for a
9 re-consideration of four specific and limited issues. The State Engineer has provided SNWA with less
10 than a week of time during the hearing to present evidence related to the four remand instructions *and*
11 to rebut any evidence submitted by the Protestants. This will only be possible if the Hearing Officer
12 strictly enforces her previous determination that “[t]he scope of the remand hearing will be limited to
13 the specific issues identified in the [Court’s] Ruling, and only *new evidence* relating to *those* issues
14 will be considered.”¹⁰

15 **B. The State Engineer’s Orders and Regulations**

16 WPC and GBWN assert that “[t]he State Engineer’s hearing regulations make clear that the
17 paramount goal of a protest hearing is to create a fully developed record that contains all relevant
18 evidence to support a sound decision.”¹¹ WPC and GBWN present a false dichotomy – limiting the
19 evidence presented to only that which makes a fact at issue for the remand more or less probable does
20 not mean that the record has been inappropriately truncated. Where, as here, an appellate court has
21 remanded a case to the State Engineer with specific and limited remand instructions, it is an abuse of
22 discretion for the State Engineer to exceed the limited review that the appellate court ordered the State

23 ⁷ Remand Order at 11. For this to occur the actual pumping of water from SNWA’s project combined with the actual
24 pumping of all other water rights and any uncaptured ET discharge in Spring Valley would have to exceed 84,100 afa.

⁸ Remand Order at 13 (emphasis added).

⁹ SNWA reserves its right on any future appeal to argue that ET capture is not a reason to limit a water appropriation. For
25 purposes of this Reply, SNWA respects the decision of the District Court at the trial court level and understands that the
26 District Court’s interpretation of Nevada water law with respect to ET Capture and basin equilibrium has not been
confirmed on appeal.

¹⁰ October 3, 2016, Interim Order on Pre-Hearing Scheduling at 3.

¹¹ Response at 4 (citing NAC 522.180).

1 Engineer to perform.¹² Moreover, the issue is not whether the State Engineer will be “confused” by
2 the irrelevant evidence, like a jury may be. The issue is simply balancing the limited time allotted for
3 the remand hearing without repeating information that is already contained in the 2011 hearing record,
4 while at the same time providing the State Engineer with evidence that will be most helpful in
5 complying with the remand instructions. There is no need to waste time developing foundational
6 information during the hearing for evidence that the State Engineer can exclude now, before the
7 hearing begins. Contrary to WPC and GBWN’s characterization, NAC 533.260 allows the State
8 Engineer to “refuse to consider” the evidence by issuing a pre-hearing ruling on exclusion.

9 In addition, NAC 533.260 makes clear that evidence offered at a hearing before the State
10 Engineer “must be relevant *to the subject matter of the proceeding.*”¹³ Evidence is only relevant if it
11 has a tendency to make a fact “that is of consequence to the determination” of the issue before the
12 tribunal “more or less probable than it would be without the evidence.”¹⁴ Here, the subject matter of
13 the proceeding is limited to addressing the four remand instructions provided by the District Court.
14 WPC and GBWN concede in their Response that the evidence SNWA seeks to exclude is only
15 “arguably relevant evidence.”¹⁵ WPC and GBWN’s argument that the evidence is relevant is premised
16 solely on their misinterpretation of the District Court’s Remand Order as discussed above. Given the
17 small amount of time allotted for the remand hearing there is no time for evidence that is only
18 “arguably relevant”¹⁶ especially where such evidence is also barred by the law of the case doctrine.

19 The State Engineer has repeatedly warned the parties that the scope of the remand hearing will
20 be limited to consideration of “new evidence” concerning the four remand instructions.¹⁷ In their
21 Response, WPC and GBWN admit that “what Dr. Myers did in his initial report was *reexamine the*
22 *evidentiary record*” in this case.¹⁸ A reexamination of the already existing evidentiary record does not

23 ¹² See *State Engineer v. Curtis Park Manor Water Users Ass’n*, 101 Nev. 30, 32, 692 P.2d 495, 497 (1985) (“In failing to
24 perform the limited review we ordered it to perform, the district court abused *its* discretion.”)

25 ¹³ NAC 533.260 (emphasis added).

26 ¹⁴ NRS 48.015.

27 ¹⁵ Response at 4.

28 ¹⁶ Response at 4.

¹⁷ October 3, 2016, Interim Order on Pre-Hearing Scheduling at 3; See also Transcript of Proceedings, September 17, 2016
Pre-Hearing Conference at 70:24 - 71:6; November 28, 2016, Notice of Hearing and Interim Order at 1.

¹⁸ Response at 14 (emphasis added).

1 constitute new evidence concerning the four remand instructions. The State Engineer may reexamine
2 the existing evidentiary record without considering the duplicative information in Dr. Myers' report.
3 However, nowhere in the District Court's Remand Order does the Court direct the State Engineer to
4 re-open the entire evidentiary record for reexamination. Accordingly, WPC and GBWN's arguments
5 are without merit.

6 **II. The Doctrine of the Law of the Case is Applicable to the Remand Hearing.**

7 WPC and GBWN incorrectly allege that "Judge Estes' Decision did, in fact, disturb the
8 findings SNWA now claims still stand as the 'law of the case.'"¹⁹ In reality, The State Engineer made
9 a host of factual findings and legal conclusions in Rulings 6164-6167. The District Court's Remand
10 Order only addressed the four relatively limited issues noted above. By not expressly reversing them,
11 all of the other findings and legal conclusions of the State Engineer were expressly upheld by the
12 District Court. Those findings and legal conclusion now constitute the "law of the case" on remand.
13 Accordingly, they are now outside the scope of the State Engineer's jurisdiction on remand and re-
14 opening any of them would be improper.

15 WPC and GBWN contend that the law of the case doctrine is inapplicable because the previous
16 findings of fact made by the State Engineer are not "the sort of legal rule or construction of law that
17 the 'law of the case' doctrine applies to."²⁰ However, when an appellate court upholds a factual
18 determination of the State Engineer, the appellate court is making a legal determination that substantial
19 evidence supported the State Engineer's determination.²¹ This is a legal conclusion that becomes the
20 law of the case on remand. Accordingly, the State Engineer's previous findings of fact with respect to
21 perennial yield, interbasin flow, conflicts, and the reliability of the groundwater model presented by
22 SNWA and relied upon by the State Engineer cannot now be disturbed on remand.

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26 ¹⁹ Response at 12.

27 ²⁰ Response at 13.

28 ²¹ See *Bacher v. State Engineer*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006) ("this court's review focuses on whether the record includes substantial evidence to support the State Engineer's decision.").

1 **III. The Majority of Dr. Myers' Report is Outside the Scope of the Remand Order.**

2 Nearly the entirety of Dr. Myers' initial report failed to follow the District Court's limited
3 remand instructions and the State Engineer's explicit direction to provide only "new evidence"
4 regarding the four remand instructions. Instead, Dr. Myers chose to reexamine the previous
5 evidentiary record and recycle arguments that the State Engineer had already rejected. In fact, the
6 only section of Dr. Myers' initial report than can be remotely considered relevant to these remand
7 proceedings is the section entitled "Monitoring, Management and Mitigation Plans" found on pages 66
8 through 80. Topics included in Dr. Myers' report that are outside the scope of the remand proceedings
9 are: (1) estimates of recharge and discharge, (2) projected drawdown and impacts in Spring Valley, (3)
10 the reliability of the groundwater model, (4) an equilibrium analysis for the basins in the WRFS, and
11 (5) calculations of interbasin flow.

12 **A. Recharge and discharge estimates**

13 In his report, Dr. Myers seeks to have the State Engineer re-determine the recharge estimates
14 for Spring, Cave, Dry Lake, and Delamar Valleys. However, the findings the State Engineer made
15 with respect to the recharge estimates were not overruled by the District Court and are irrelevant to
16 these remand proceedings. Likewise, the State Engineer's previous determination regarding the
17 perennial yield of the respective basins was also not overruled. The District Court's instructions to
18 recalculate the water available for appropriation in these basins were not a directive to alter the State
19 Engineer's determination of perennial yield. Instead, they were instructions for the State Engineer to
20 review the portion of the previously established perennial yield that is available for SNWA to
21 appropriate.

22 There is simply not enough time during the remand hearing to re-visit and re-calculate the State
23 Engineer's previous determinations regarding basin recharge and perennial yield. In addition, these
24 determinations were not disturbed by the District Court²² and are, therefore, the law of the case on
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27 ²² See Remand Order at 23 ("this Court will not disturb the findings of the State Engineer save those findings that are the
subject of this Order.").

1 remand. Accordingly, the portions of Dr. Myers' initial report relating to these topics should be
2 excluded from evidence and Dr. Myers should be precluded from testifying about them.

3 **B. Projected drawdown and impacts in Spring Valley**

4 At issue in the remand hearing is the District Court's instruction to recalculate SNWA's
5 appropriation based on the basin reaching equilibrium within a reasonable period of time. Claims of
6 impacts to existing rights and the public interest on the basis of model projections from a regional-
7 scale model that is not designed to predict localized impacts provides nothing to help the State
8 Engineer make the requested recalculation.²³ Rather, such claims serve to distract the State Engineer
9 from the task at hand. The State Engineer has already reviewed these claims based on drawdown
10 simulations and determined that a projected lowering of the water table of fifty feet or less is
11 reasonable pursuant to NRS 534.110(4).²⁴ The State Engineer found that SNWA's "approach to the
12 conflicts analysis is acceptable given the limitations in the model and the purpose of this analysis."²⁵
13 These findings were upheld by the District Court. The concern expressed by the District Court was
14 not whether SNWA's pumping would result in an unreasonable drawdown of the static water level,
15 but whether some prospect exists that project pumping would fully capture ET. Dr. Myers' report
16 provides no new evidence with respect to this question.

17 Further, the District Court instructed the State Engineer on remand to consider changes to the
18 3M Plan to "define standards, thresholds or triggers" that can be used to determine whether
19 unreasonable adverse impacts are occurring and identify what will be done to mitigate them.²⁶ The
20 State Engineer made undisturbed findings that the drawdown evidence did not constitute a conflict, in
21 part because of the 3M Plan. The Court is not asking the State Engineer to reconsider whether project
22 pumping will create conflicts with existing rights. Rather, the Court is directing the State Engineer to

23 Pages 145-151 of Ruling 6164 provide an in-depth analysis of Dr. Myers' claims with respect to conflicts with existing
rights. None of the findings made in this section of the Ruling were disturbed by the District Court, including the State
Engineer's conclusion that "[a]fter considering both the Applicant's and Dr. Myers' models, the State Engineer finds that
the Applicant's model is more comprehensive, better documented and peer-reviewed, and will carry more weight in
impacts analyses."

24 Ruling 6164 at 132 ("a drawdown of less than 50 feet over a 75-year period is generally reasonable.").

25 Ruling 6164 at 132.

26 Remand Order at 23.

1 ensure that the 3M Plan: (1) contains standards, triggers, or thresholds for identifying any
2 unreasonable impacts to existing rights, and (2) provides specific mitigation measures that will be
3 implemented.

4 Accordingly, the portions of Dr. Myers’ report identified in SNWA’s Motion which speculate
5 on potential drawdowns or impacts should be excluded from evidence and Dr. Myers should be
6 precluded from testifying on these matters at the upcoming hearing.

7 **C. Reliability of the Groundwater Model**

8 WPC and GBWN contend that “[a]lthough the State Engineer accepted SNWA’s model
9 structure, that acceptance was based on the simulations presented in 2011.”²⁷ This claim ignores basic
10 notions of model construction and use. Model simulations are conducted only after a conceptual
11 model exists and a numerical model has been constructed, calibrated, and reviewed. Numerical model
12 simulations and different project pumping scenarios do not affect the validity of the conceptual or
13 numerical model structure.

14 Here, the State Engineer has already determined that “the Applicant’s model provides a
15 reliable tool to examine potential effects on the groundwater system.”²⁸ Not only did the District
16 Court uphold this determination, it expressly relied on the validity of the model results in formulating
17 the remand order.²⁹ In addition, other protestant experts have also reviewed the model (and SNWA’s
18 recent updates to it) and acknowledged its validity.³⁰ In fact, Dr. Myers stands alone among the
19 experts in this case in his challenge of the validity of the CCRP model.

20 Given the near universal acceptance of the CCRP model as a tool for investigating regional-
21 scale effects of pumping on the groundwater system, a debate regarding model construction will serve
22 no relevant purpose during the upcoming hearings. Certainly if Dr. Myers desires to raise issues
23 related to the specific updates SNWA made to the model in response to the District Court’s Remand
24 Order as documented in SNWA Exhibit 475, he is free to do so. However, since those updates do not

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26 ²⁷ Response at 19.

²⁸ Ruling 6164 at 128.

²⁹ Remand Order at 12-13.

³⁰ CPB Exhibit 25 at 10.

1 implicate the basic structure and construction of the model itself, Dr. Myers should be prohibited from
2 presenting any testimony or evidence respecting the construction and structure of the CCRP model.

3 **D. Equilibrium analysis in WRFS**

4 There is no question that an equilibrium analysis for the basins in the White River Flow
5 System (“WRFS”) is outside the scope of the District Court’s remand instructions. WPC and GBWN
6 assert that such an analysis is warranted “because it is inextricably connected to consideration of what
7 conflicts or impacts will occur in down gradient basins.”³¹ However, this ignores that the District
8 Court’s concern with downgradient basins had nothing to do with whether the Cave, Dry Lake, and
9 Delamar Valleys will reach equilibrium in response to project pumping. Instead, the concern of the
10 District Court was whether “the same water has been awarded twice, once in the upper basins, and
11 again in the lower basins.”³² An equilibrium analysis does absolutely nothing to answer this
12 accounting question. Accordingly, the portions of Dr. Myers’ initial report identified in SNWA’s
13 Motion should be excluded from evidence and Dr. Myers should be prohibited from testifying about
14 these issues.

15 **E. Interbasin flow calculations**

16 The State Engineer’s determinations of the amount of interbasin flows in Spring Valley and the
17 WRFS were upheld by the District Court.³³ Accordingly, those determinations are the law of the case
18 and should not be disturbed on remand. Dr. Myers’ discussion of interbasin flows is nothing more
19 than an attempt to re-litigate issues that have already been decided. WPC and GBWN admit that the
20 interbasin flow calculations contained in Dr. Myers’ report were taken from the draft environmental
21 impact statement that was in evidence during the 2011 hearings.³⁴ Accordingly, there is nothing in
22 this section of Dr. Myers’ report that is new evidence relating to the District Court’s four remand
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24
25 ³¹ Response at 20.

26 ³² Remand Order at 19.

27 ³³ Pages 76-89 of Ruling 6164 provide an in-depth analysis of interbasin flows and specifically considers Dr. Meyers’
28 contentions related thereto. None of the State Engineer’s findings in this section of the Ruling were disturbed by the
District Court.

³⁴ Response at 20.

1 instructions and this portion of the report should be excluded from evidence and Dr. Myers should be
2 prohibited from testifying about these issues.

3 **IV. Unqualified Opinions and Conclusions of Dr. Myers.**

4 In his report, Dr. Myers offers opinions and conclusion on matters outside of his expert
5 qualifications and credentials. These opinions and conclusions are, therefore, improper and should be
6 excluded from evidence and Dr. Myers should be prohibited from testifying about these issues.

7 **A. Quantification of water rights**

8 Dr. Myers is not a water rights surveyor nor has he otherwise demonstrated qualifications
9 related to the quantification of water rights and his testimony and evidence related to that issue should
10 not be considered. WPC and GBWN admit that all Dr. Myers did to quantify water rights was to use
11 the list of the number of stream and spring rights found on the State Engineer's web page.³⁵ This is
12 woefully inadequate and runs afoul of the State Engineer's explicit instructions to provide new
13 evidence related to the four remand instructions. As he did in 2011, Dr. Myers appears to have again
14 ignored the fact that the information provided on the web site can be easily misinterpreted as it is
15 "derived by interpretations of paper records" and anyone conducting a proper water rights search
16 should refer to the actual water rights records which "may differ from the information provided [on the
17 web page]."³⁶ During the 2011 hearing, the State Engineer, cognizant of this issue and based on Dr.
18 Myers' own concession that he is not a water rights expert in Nevada,³⁷ declined to rely upon Dr.
19 Myers' attempt to quantify water rights.³⁸ Dr. Myers qualifications, or lack thereof, in this regard
20 have not changed.

21 WPC and GBWN contend that "[u]se of the State Engineer's own water rights data to support
22 a hydrologic analysis does not require water rights surveying expertise."³⁹ However, understanding
23 and analyzing the data provided by the State Engineer does require specialized expertise that Dr.
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25 ³⁵ Response at 21.

26 ³⁶ State of Nevada Division of Water Resources, Permit Search Legal Disclaimer, available at
<http://water.nv.gov/permitsearch.aspx>.

27 ³⁷ 2011 Hearing Transcript, Vol. 19 at 4286:4-8.

28 ³⁸ Ruling 6164 at 100.

³⁹ Response at 21.

1 Myers, by his own admission, does not possess. Accordingly, the opinions and conclusions offered by
2 Dr. Myers are outside the scope of his “special knowledge, skill, experience, training, or education”
3 and should be excluded from evidence and Dr. Myers should be prohibited from testifying about these
4 issues.⁴⁰

5 **B. Groundwater Dependent Ecosystems**

6 Dr. Myers is a hydrologist, hydrogeologist, and civil engineer by education and training. In his
7 report, Dr. Myers presents opinions and conclusions related to the health and maintenance of wetland
8 ecosystems, the process by which phreatophytic plants extract and consume moisture, the ecosystems
9 in playa environments, and the potential effects of pumping on subterranean ecosystems. These are
10 determinations that require expertise in environmental ecosystems, environmental resources, plant
11 biology, and animal and plant habitat maintenance. Rather than provide additional evidence regarding
12 his qualifications to make such determinations, WPC and GBWN state only that a description of Dr.
13 Myers’ qualifications in these fields will be provided at the upcoming hearing.⁴¹ This claim falls short
14 of compliance with the State Engineer’s November 28, 2016, Interim Order directing the parties to
15 provide a statement regarding the qualifications of expert witnesses as part of the initial evidentiary
16 exchange.

17 The purpose for requiring the qualifications of expert witnesses to be disclosed prior to a
18 hearing is to allow opposing parties to research those qualifications ahead of time and be prepared to
19 challenge whether the proffered witness is, in fact, an expert on the topics to be discussed. WPC and
20 GBWN’s failure to provide adequate information in advance of the hearing relating to Dr. Myers’
21 expertise on the above-identified issues is prejudicial to SNWA and should not be allowed by the State
22 Engineer. Accordingly, the conclusions and opinions contained in Dr. Myers’ report relating to topics
23 outside his identified area of expertise should be excluded from evidence and Dr. Myers should be
24 prohibited from testifying about these issues.

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27 ⁴⁰ See NRS 50.275.

⁴¹ Response at 21.

CONCLUSION

Based upon the arguments set forth herein and in SNWA’s Motion, the State Engineer should grant SNWA’s Motion in its entirety. In the alternative, SNWA respectfully requests that the State Engineer extend the hearing to provide SNWA the opportunity to present rebuttal evidence to any testimony that is allowed and that is outside the scope of the District Court’s remand.

Respectfully submitted this 5th day of September, 2017.

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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:

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