

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

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)

**MILLARD AND JUAB COUNTIES'
CLOSING ARGUMENT ON
SPRING VALLEY REMAND HEARING**

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Protestants Millard and Juab and Juab Counties submit the following closing argument on the State Engineer's Spring Valley remand proceeding:

FACTS

1. The undisputed evidence at the 2011 hearing, namely the testimony of the Applicant's then General Manager Patricia Mulroy that the Applicant still supports and is committed to the promises and commitments made in the September 8, 2006 Spring Valley Stipulation for Withdrawal of Protests between the Applicant and the Federal Protestants (hereafter "2006 Spring Valley Stipulation"), was reaffirmed at the 2017 remand hearing through Applicant's Zane Marshall, who testified:

MR. MARSHALL: So due to the District Court's remand, we have developed this approach, this 3M Plan, wholly separate from the stipulation. There is overlap for sure, and there is data that we would collect as part the 3M Plan that's consistent with the stipulation, but these are two separate agreements now, or contracts or programs, and we intend to implement the stipulated agreements with the Department of Interior Federal agencies as well as implement this 3M Plan as we've proposed.

Transcript Vol. 3 at 738-739.

2. The State Engineer approved the 2006 Spring Valley Stipulation.

3. The 2006 Spring Valley Stipulation provides for an extensive hydrologic and biologic monitoring, management and mitigation throughout a geographic region known as the “Area of Interest,” which covers all of Snake Valley, Utah as well as several basins and ranges within the geographic boundaries of Protestants Millard and Juab Counties according to the area mapped and shown in Figure 1 to the 2006 Spring Valley Stipulation.

4. The plain language of the 2006 Spring Valley Stipulation demonstrates that the parties intended to apply the hydrologic and biologic monitoring, management and mitigation plan to the entire “Area of Interest” shown on the map in Figure 1 to the 2006 Spring Valley Stipulation, including

(a) All of the hydrologic monitoring, management and mitigation provisions set forth in Exhibit A to the 2006 Spring Valley Stipulation; and

(b) All of the biologic monitoring, management and mitigation provisions set forth in Exhibit B to the Spring Valley Stipulation.

5. Based on the undisputed testimony of SNWA’s Mr. Prieur, SNWA is aware of and familiar with the network of groundwater monitoring wells that the State of Utah has developed. *Remand Hearing Transcript* Vol 3. at 754-755. Specifically SNWA is aware of monitoring performed by Utah Geological Survey all up and down Snake Valley along the Utah border. *Id.* SNWA has a joint funding agreement with U.S. Geological Survey Salt Lake City, Utah branch to monitor 73 wells in western Utah in both Millard and Juab Counties. *Id.* SNWA provides a link to this Utah Geological Survey data as part of its annual reports. *Id.* The same

goes for the Utah Geological Survey's monitoring of springs throughout Snake Valley. *Id.* at 755, some of which SNWA has entered into a joint funding agreement. *Id.* SNWA collects data from these Snake Valley, Utah groundwater and spring monitoring stations pursuant to an agreement with the U.S.G.S. *Id.* at 756. SNWA also collects independent separate data like the water chemistry in the springs in Snake Valley, Utah. *Id.* SNWA did geophysical surveys and stream gauging to some springs that reaches into Utah including the Deep Creek Range (which is as far north as northern Snake Valley, Utah in Juab County). *Id.* Mr. Prieur's work includes summarizing all the data and provide specific hydrogeologic setting data on a number of springs on the Utah side of Snake Valley. *Id.* at 757. It is an ongoing effort for SNWA to collect and utilize the data off of all groundwater monitoring and spring monitoring stations in Snake Valley, Utah. *Id.* If a change occurred in one of these wells on the Utah side, the State Engineer could require SNWA to do an investigation that would be exactly the same as a trigger in interbasin zone. *Id.* at 764-765. According to Mr. Prieur's undisputed testimony, SNWA is absolutely amenable to paying close attention to those Utah groundwater monitoring sites and spring stations and be ready to apply its planned monitoring investigation, management and mitigation action if deemed appropriate, and would very much work with Utah Geological Survey and the Utah office of the U.S. Geological Survey. *Id.* at 766-767.

6. The scientific outlook on the impact on Snake Valley from SNWA's Spring Valley groundwater pumping is mixed at best. Expert witnesses Doctors Jones and Mayo testified they expect the naturally occurring groundwater flow from Spring Valley to Hamlin Valley (which is part of the Snake Valley hydrographic basin) would actually reverse due to expected SNWA groundwater pumping in Spring Valley. *Remand Hearing Transcript Vol 6* at

1185-1189. This makes more critical than ever, the need to include the entire network of groundwater, spring and biologic monitoring stations throughout Snake Valley, Utah in the State Engineer's approved monitoring, management and and mitigation plan.

ARGUMENT

From the foregoing facts, four main points inform Millard and Juab Counties' closing argument:

(a) The State Engineer has already approved the 2006 Spring Valley Stipulation and is overseeing the enforcement and performance of that stipulation;

(b) The Area of Interest covered by the 2006 Spring Valley Stipulation includes all of Snake Valley Utah and beyond;

(c) The expert testimony is mixed at best and includes two credible views (Jones and Mayo) that SNWA pumping in Spring Valley could actually reverse the groundwater flow from Snake Valley, and

(d) Including the U.S.G.S. and U.G.S. monitoring network stations in the State Engineer's 3-M plan would not be inconvenient and only make sense for two reasons:

(1) Not only would that match the 2006 Spring Valley Stipulation's monitoring effort and reach throughout all of Snake Valley, Utah (a Stipulation which SNWA not only entered into and actively supports, but which the State Engineer expressly approved), but

(2) SNWA's Mr. Prieur's undisputed testimony is that SNWA already voluntarily, willingly and systematically includes, records, follows, collects and studies *all available data* from the groundwater and spring monitoring network for *all such* U.S.G.S. and U.G.S. stations in Snake Valley, Utah anyway.

THEREFORE, it is reasonable and appropriate that the State Engineer find and rule that the monitoring, management and mitigation plan to be approved by the State Engineer herein should:

(a) Match the geographic scope of the full hydrological and biological monitoring, management and mitigation program throughout Snake Valley, Utah, which is within with the Area of Interest covered by the 2006 Spring Valley Stipulation, including

(b) All known Federal Agency and Utah State agency groundwater monitoring, spring monitoring and biologic monitoring sites maintained by Federal and Utah State agencies throughout the entire portion of Snake Valley Utah; and

(c) Apply and continue for several decades, because the full extent of impacts to the Snake Valley groundwater system from drawdown due to pumping in southern Spring Valley may not fully be known for several to at least tens of years after pumping and groundwater export commences.

Respectfully submitted this 18th day of January, 2018.

/s/ J Mark Ward

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CERTIFICATE OF SERVICE

I certify that on the 18th day of January, 2018 the original foregoing document and one copy thereof were sent via Federal Express Overnight Courier to Jason King, P.E. Nevada State Engineer State of Nevada Division of Water Resources 901 S. Stewart St., Suite 2002 Carson City, NV 89701, care of hearing officer Susan Joseph-Taylor.

I further certify that on the 19th day of January, 2018 a true and correct electronic PDF copy of the foregoing document was set to all counsel of record by email, pursuant to stipulation among all counsel.

/s/ J Mark Ward

J. Mark Ward