

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

RECEIVED
2010 JAN 19 PM 4:57
STATE ENGINEERS OFFICE

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.)

SOUTHERN NEVADA WATER AUTHORITY'S
CLOSING BRIEF

Paul G. Taggart, NBN 6136
David H. Rigdon, NBN 13567
Timothy D. O'Connor, NBN 14098
TAGGART & TAGGART, LTD.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

Steven C. Anderson, NBN 11901
SOUTHERN NEVADA WATER AUTHORITY
1001 South Valley View Boulevard, MS #480
Las Vegas, Nevada 89153
(702) 875-7029 – Telephone
(702) 259-8218 – Facsimile

Robert A. Dotson, NBN 5285
DOTSON LAW
One East First Street, Sixteenth Floor
Reno, Nevada 89501
(775) 501-9400 – Telephone

Attorneys for Southern Nevada Water Authority

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTSi

INTRODUCTION 1

STANDARD OF REVIEW 1

ARGUMENT 3

I. Evidence From The Remand Hearing Demonstrates That Ruling 6164’s Calculation of Water Available for Appropriation in Spring Valley Was Correct. 3

 A. Adequate safeguards are already in place to ensure that the basin will reach a new equilibrium state within a reasonable period of time. 4

 B. An overly strict interpretation of the new equilibrium rule creates practical, administrative, and environmental problems that were not considered by the District Court. 6

 1. The San Luis Closed Basin Project 7

 2. Well placement, ET capture, and water quality..... 8

 3. An unauthorized return to riparianism..... 8

 4. Administrative obstacles 9

 C. Substantial evidence in the record shows that SNWA has fully complied with the District Court’s remand instruction. 10

 1. SNWA’s ET Capture model imulation..... 10

 2. The prior model simulation 10

 3. The State Engineer can consider SNWA’s model scenarios. 11

 D. If a strict reading of the new rule is applied, it should be limited to requiring that applicants make a *prima facie* showing of equilibrium at the application stage. 13

 1. Reducing the award at the application stage is premature 13

 2. Regardless, the maximum reduction is 9,780 afa..... 14

II. The Submitted 3M Plans Include Empirically-Based Triggers and Thresholds as Well as Protections for Water Resources in Millard and Juab Counties 15

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 - Telephone
(775)883-9900 - Facsimile

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

A. The proposed mitigation measures included in the 3M Plans are allowed under Nevada law and the common law of prior appropriations. 15

B. The 3M Plan defines objective standards, triggers, and thresholds, and mitigation actions, ensuring that the project is environmentally sound and will not conflict with existing rights. 17

 1. Substantial evidence demonstrates that SNWA’s groundwater pumping will not conflict with the surface water sources at Cleveland Ranch. 21

 2. Substantial evidence demonstrates that environmental and cultural resources will be protected. 22

C. The Spring Valley 3M Plan includes Millard and Juab Counties. 23

D. Once adopted, the State Engineer will control enforcement of the 3M Plans. 24

III. The Appropriations Approved in Rulings 6165, 6166 and 6167 Will Not Result in an Over-Appropriation of the White River Flow System and Have Not Been Awarded to Down-Gradient Water Users 25

 A. Nature and scope of the remand order. 26

 B. Analysis of the entire WRFS or its constituent basins shows sufficient water is available to supply all committed groundwater rights. 26

 C. Sufficient water exists to supply committed groundwater rights down-gradient of the White River Flow System 28

CONCLUSION 30

INTRODUCTION

1
2 The testimony and evidence submitted to the State Engineer during the remand proceedings
3 confirmed that the State Engineer’s prior approval of Southern Nevada Water Authority’s (“SNWA”)
4 applications was correct and scientifically justified. The District Court’s December 13, 2013, Decision
5 (the “Remand Order”) upheld most of the State Engineer’s prior determinations. Consequently, the
6 remand proceedings were limited to taking evidence and testimony on the four specific issues identified
7 in the Remand Order: (1) a recalculation of water available for appropriation in Spring Valley so that
8 equilibrium can be reached in a reasonable amount of time; (2) revised monitoring, management and
9 mitigation plans (“3M Plans”) with defined and objective standards, thresholds and triggers that will
10 avoid unreasonable effects; (3) the inclusion of Millard and Juab counties in the 3M Plans to the extent
11 that pumping in Spring Valley might affect those areas; and (4) a recalculation of Cave Valley, Dry
12 Lake Valley and Delamar Valley water appropriations that assures that down-gradient basins are not
13 over-appropriated. Based on the extensive evidence and testimony provided during the remand hearing,
14 SNWA respectfully requests that the State Engineer reaffirm the pumping duties and staged
15 development process approved in Ruling 6164 and the pumping duties approved in Ruling 6165, 6166
16 and 6167.

STANDARD OF REVIEW

17
18 The State Engineer is responsible for administering the appropriation and management of
19 Nevada’s public waters.¹ Under NRS 533.370, the State Engineer must approve properly submitted
20 water rights applications if such applications satisfy the specific criteria outlined in the statute.² In
21 determining whether applications satisfy the statutory criteria, the State Engineer is designated as the
22 exclusive trier of all factual issues.³ In this capacity, the State Engineer is given authority to judge the
23 credibility of witnesses and the weight to be given to the evidence.⁴ In reviewing a determination of the
24

25 ¹ See generally NRS Chapters 532, 533 & 534.

26 ² See also *Eureka Cnty. v. State Engineer*, 131 Nev. __, 359 P.3d 1114, 1117 (2015).

27 ³ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

28 ⁴ *Douglas Spencer and Assoc. v. Las Vegas Sun, Inc.*, 84 Nev. 279, 282, 439 P.2d 473, 475 (1968) (“It is the prerogative of the trier of facts to evaluate the credibility of witnesses and determine the weight of their testimony.”).

1 State Engineer, a district court is expressly prohibited from passing judgment “upon the credibility of
2 the witnesses . . . or reweigh[ing] the evidence.”⁵ This rule reflects the reality that the district court will
3 never see the witnesses testify but will only have written transcripts to review. The cold record will not
4 reflect many of the non-verbal indicators of credibility such as pregnant pauses a witness may employ
5 to avoid answering a difficult question, or a witness’ furtive glance to his attorney desperately seeking
6 help when presented with a cross-examination question that exposes an inconsistency in his testimony.

7 Any factual or legal determination made by the State Engineer must be supported by substantial
8 evidence in the record.⁶ Substantial evidence is evidence that “a reasonable mind might accept as
9 adequate to support a conclusion.”⁷ The failure of a party to provide evidence rebutting a particular fact
10 or contention raised by an opposing party can be interpreted by the State Engineer as an admission of
11 that fact or contention.⁸ Evidentiary determinations made by the State Engineer are “prima facie correct,
12 and the burden of proof is on the party attacking the same.”⁹

13 On remand from an appellate court, the law of the case doctrine prohibits consideration of issues
14 that have been previously decided and not expressly included within the remand instructions.¹⁰ The
15 previous determinations “render the issue res judicata and the doctrine of the law of the case precludes
16 the reconsideration of issues for which final judgment has been given.”¹¹ Accordingly, all prior findings
17 of fact and conclusions of law included within State Engineer Rulings 6164, 6165, 6166, and 6167 not
18 expressly disturbed by the District Court are final and outside the limited scope of these remand
19 proceedings.

20 ///

21 ///

22 ///

23 _____
24 ⁵ *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979).

25 ⁶ *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 525, 245 P.3d 1145, 1148 (2010).

26 ⁷ *Bacher v. State Engineer*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006).

27 ⁸ *See Gietzen v. Feleciano*, 964 P.2d 699, 700 (Kan. 1998) (“It is well settled that uncontroverted statements of fact in a
28 party’s motion for summary judgment are deemed admitted by a party who fails to controvert those facts.”).

⁹ NRS 533.450(10).

¹⁰ *Molino v. Asher*, 96 Nev. 814, 818, 618 P.2d 878, 880 (1980).

¹¹ *Molino v. Asher*, 96 Nev. 814, 918, 618 P.2d 878, 880 (1980).

ARGUMENT

I. Evidence From The Remand Hearing Demonstrates That Ruling 6164’s Calculation of Water Available for Appropriation in Spring Valley Was Correct.

The District Court remanded Ruling 6164 with instructions to revisit a single issue – time to reach equilibrium. After agreeing that time to reach equilibrium is *not* a valid reason to deny an application, the District Court proposed that it *may* be a reason to limit an award to less than the calculated ET. The District Court further suggested that SNWA’s award could be reduced by *up to* 9,780 acre-feet annually (“afa”) if substantial evidence indicated that cutting the award would actually assure that the basin will reach a new equilibrium within a reasonable period of time. While strongly disagreeing with the District Court’s determination, SNWA complied with the remand instruction and developed a pumping scenario that even the Protestants agree shows that the basin can reach a new equilibrium.

SNWA provided substantial evidence showing that the Spring Valley basin can reach equilibrium within a reasonable period of time. In addition, the evidence demonstrates that fully capturing project pumping from water used by plants in Spring Valley can be accomplished in an environmentally-sound manner that allows for a healthy transition of existing plant species.

The State Engineer’s prior ruling on perennial yield and the amount of groundwater available for appropriation in the Spring Valley basin was correct. The remand proceedings provided an opportunity to address several misconceptions that appear to have influenced the District Court’s decision to impose the new equilibrium rule. The proceedings also identified several challenges to implementing the new rule that had not previously been considered. These misconceptions and challenges include: (1) the administrative, practical, and legal complications that will arise from an overly strict enforcement of the new rule; (2) the false notion that capture of groundwater used by plants means “phreatophytes must be completely eliminated” in Spring Valley;¹² and (3) a fundamental misunderstanding regarding what constitutes the achievement equilibrium within a groundwater basin.

¹² Exhibit No. SE_118, p. 10.

1 In proffering this evidence, SNWA is not suggesting that the State Engineer ignore the express
2 remand instructions of the District Court. As discussed later in this brief, SNWA has submitted to the
3 State Engineer substantial evidence demonstrating that 61,127 afa can be pumped in Spring Valley in a
4 manner that assures that equilibrium will be reached within a reasonable timeframe. The State Engineer
5 does, however, have an obligation as the legislatively established expert regarding water issues to make
6 the District Court aware of the potential negative impacts that will result from an overly strict application
7 of an ET capture requirement.

8 With these points in mind, SNWA respectfully requests that the State Engineer recalculate and
9 award SNWA 61,127 afa of groundwater permits in the Spring Valley basin because: (1) an overly strict
10 application of the new equilibrium rule will arbitrarily limit groundwater development throughout
11 Nevada, even where substantial evidence indicates that such development will not conflict with existing
12 rights or harm the environment; (2) the negative consequences of an overly strict applications of the new
13 equilibrium rule significantly outweigh any perceived benefits; (3) SNWA has provided substantial
14 evidence demonstrating that a the basin will achieve a new equilibrium condition within a reasonable
15 period of time; and (4) the new equilibrium rule should be interpreted as requiring only a *prima facie*
16 showing that the basin will achieve a new equilibrium in a reasonable time, with actual reductions in
17 pumping reserved for latter stages of development when aquifer response data has been procured and
18 fully integrated into the groundwater models. In short, to the extent time to reach equilibrium *may* be a
19 reason to limit an award below the calculated perennial yield, there is *no* substantial evidence in the
20 record to support any such limitation on SNWA's requested appropriation.

21 A. **Adequate safeguards are already in place to ensure that the basin will reach a new**
22 **equilibrium state within a reasonable period of time.**

23 Time to reach equilibrium is not a reason to limit an appropriation below the calculated ET when,
24 as is the case here, there is substantial evidence in the record showing that adequate safeguards are
25 already in place to assure that a new equilibrium will be reached. The District Court defined equilibrium
26
27
28

1 as the point in time in which “water removed from the system equals the recharge of the system.”¹³ This
2 is consistent with the textbook definition of equilibrium. In practice, however, equilibrium is considered
3 reached once water levels in a basin stabilize in response to a changed condition, like pumping.
4 Therefore, once actual, on the ground, measurements of water levels in a basin have stabilized in
5 response to groundwater pumping, equilibrium has been achieved regardless of whether an artificial
6 computer model indicates that there may be an ongoing imbalance between recharge and discharge in
7 the water budget.

8 SNWA’s groundwater project will be subject to staged development, rigorous 3M Plans, and
9 statutes and regulations that prohibit any *unreasonable* lowering of the water table. These regulatory
10 requirements are designed to ensure that existing water rights and other environmental resources are not
11 unreasonably impacted. As long as the existing rights and environmental resources are being protected
12 from harm, there is no added public benefit from requiring an applicant to prove equilibrium will be
13 reached within some arbitrary timeframe.

14 The Nevada Supreme Court affirmed that the State Engineer can manage this project through
15 staged pumping.¹⁴ SNWA has developed sophisticated and robust 3M Plans that protect existing water
16 rights and environmental habitats and the species that rely on them. The 3M Plans include adaptive
17 management, voluntary investigations, and other safeguards to prevent any unreasonable lowering of
18 the water table. These safeguards will ensure that water levels in the aquifer are adequately progressing
19 towards stabilization in response to project pumping.

20 Throughout these proceedings Protestants have tried to place SNWA in a Catch-22 situation.
21 While insisting that any failure to fully capture project pumping from water used by plants constitutes
22 impermissible groundwater mining, they also insist that fully capturing ET discharge will destroy plant
23 communities, rendering the project environmentally unsound. However, substantial evidence presented
24 at the remand hearing proves that is a false choice. Expert testimony indicated that even if groundwater
25 used by phreatophytes is captured by pumping, a significant amount of precipitation will remain

26 _____
27 ¹³ Exhibit No. SE_118, p. 10.

28 ¹⁴ See *Corp. Bishop, LDS v. Seventh Jud. Dist. Ct.*, 132 Nev. ____, 366 P.3d 1117 (2016).

1 available to them.¹⁵ In addition, there is ample evidence that healthy plant transitions will occur as
2 groundwater development proceeds.¹⁶ Even the Protestants' experts admitted that project pumping will
3 not result in a complete drying up of the basin or the death to all phreatophytes.¹⁷ Dr. Roundy, for
4 example, admitted that his claim that certain plants would be "doomed" was nothing more than
5 *hyperbole* designed to "keep people awake."¹⁸ Likewise, when asked whether all phreatophytes will die
6 in Spring Valley, as predicted in his expert rebuttal report,¹⁹ Dr. Myers, GBWN's expert witness,
7 admitted that "no they won't, they won't all die in Spring Valley."²⁰

8 In sum, interpreting the District Court's remand instruction as requiring an applicant to
9 demonstrate, at the application stage, that groundwater used by plants will be fully captured serves no
10 practical purpose. Achieving full capture of groundwater used by plants is simply not necessary in
11 situations, like this one, where environmental resources are otherwise protected and the water table will
12 not be unreasonably lowered. Protestants advocacy of an overly strict interpretation of the remand
13 instruction is nothing more than an attempt to hinder groundwater development in contravention of clear
14 legislative direction to maximize the beneficial use of Nevada's limited water resources.²¹

15 **B. An overly strict interpretation of the new equilibrium rule creates practical,**
16 **administrative, and environmental problems that were not considered by the**
17 **District Court.**

18 Testimony at the remand hearing firmly established that the District Court's remand instruction
19 is a new rule under Nevada law.²² Accordingly, it is important for the State Engineer to consider
20 testimony and evidence related to how this new rule should be applied. This includes evidence related
21 to the practical, administrative, and environmental problems that will result from an overly strict
22

23 ¹⁵ 2017 Transcript Vol.4 p. 1035:2-14 (Burns).

24 ¹⁶ 2017 Transcript Vol.3 p. 587:20-24 (Marshall); 2017 Testimony Vol.1 pp. 225:15 – 226:1 (Huntington).

25 ¹⁷ 2017 Transcript Vol.9 p. 1861:22 – 1862:3 (Myers); 2017 Transcript Vol.9 p. 1876:18-21 (Myers).

26 ¹⁸ 2017 Transcript Vol.7 p. 1463:17-22 (Roundy).

27 ¹⁹ Exhibit No. GBWN_297, p. 13.

28 ²⁰ 2017 Transcript Vol.9 p. 1876:18-21 (Myers).

²¹ See NRS 534.020.

²² That the District Court's ET capture requirement represents a new formulation of the water law in Nevada was uncontested at the remand hearing. See e.g. 2017 Transcript Vol.6 p.1267:14-18 (Jones); Vol.9 p. 1849:8-13(Myers); Vol.4 p. 1022:2-19 (Burns); Vol.9 p. 1851:19-20 (Myers); Vol.6 p. 1266:2-6 (Jones).

1 interpretation of the new equilibrium rule. This evidence was not available to the District Court when
2 it formulated the new rule.

3 **1. The San Luis Closed Basin Project**

4 Because capture of groundwater used by plants is generally not a requirement for the
5 appropriation of water, examples of projects that are specifically designed accomplish this are rare. The
6 only such project identified by the experts who testified at the remand hearing is the San Luis Closed
7 Basin Project in southern Colorado. This project provides an opportunity to see what happens when the
8 theoretical concept of ET salvage is applied in the real world. The Closed Basin Project was an attempt
9 by the United States Bureau of Reclamation to salvage uncaptured ET in the San Luis basin to augment
10 the flows of the Rio Grande River and assist the United States in meeting its 1906 treaty obligations to
11 Mexico.²³ The project originally anticipated capturing 104,000 afa of groundwater that would otherwise
12 be used by plants.²⁴

13 Unfortunately, the Closed Basin Project has not been a success. SNWA's expert, Mr. Burns,
14 testified the project actually delivers only a small fraction the water that was anticipated.²⁵ CPB's expert
15 testified that from a water management perspective the project "was just a total disaster."²⁶ Both experts
16 noted that the wellfield design of the project, which sought to maximize capture of water used by plants,
17 led to poor water quality.²⁷ In fact, some of the project wells were producing water with total dissolved
18 solids at levels 88 times greater than what is considered safe for drinking water.²⁸

19 The Closed Basin Project demonstrates how difficult the practical application of the theoretical
20 concept of ET capture can be. Rather than use ET Capture as the indicator of whether equilibrium is
21 being achieved, the better approach is to use data from pumping to determine whether water levels in
22 the basin are progressing towards stabilization.

23 ²³ Exhibit No. SNWA_611, p. 2

24 ²⁴ Exhibit No. SNWA_611, pp. 2-3; 2017 Transcript Vol.4 pp. 1022:23-1023:2 (Burns).

25 ²⁵ 2017 Transcript Vol.4 p. 1023:3-7; pp. 1025:24-1026:3 (Burns).

26 ²⁶ 2017 Transcript Vol.6 p. 1232:23 (Mayo).

27 ²⁷ 2017 Transcript Vol.4 p. 1030 (Burns); *Id.*, Vol.6 p. 1231:16-22 (Mayo) ("They were having trouble with the wells -- with
28 production of the wells. It was a terrible place to put wells in the bottom of a closed basin.").

²⁸ *Compare* 2017 Transcript Vol.6 p. 1231:16-22 (Mayo) with Secondary Drinking Water Standards: Guidance for Nuisance
Chemicals. (January 18, 2018), <https://www.epa.gov/dwstandardsregulations/secondary-drinking-water-standards-guidance-nuisance-chemicals>.

1 **2. Well placement, ET capture, and water quality**

2 As just indicated, a project designed to rapidly capture water used by plants has a higher
3 likelihood of encountering problems with poor water quality. To accomplish their purpose, such projects
4 generally place wells directly within the groundwater discharge area of a basin. However, both SNWA
5 and CPB experts agree that for a project like SNWA's it is best to place wells on the alluvial fans.²⁹ The
6 trade-off for this is that it takes a much longer period of time to capture the groundwater used by plants.

7 As noted above, the groundwater model simulation that produced the 84% capture value relied
8 upon by the District Court simulated pumping from 81 wells located primarily along the lower portions
9 of the alluvial fans on either side of the valley.³⁰ This is exactly the type of well layout recommended
10 by CPB's expert.³¹ However, because the District Court held that 84% does not constitute "full" capture
11 of groundwater used by plants, it will be challenging to design a project that is both economical for the
12 Nevadans that will be beneficially using the water (i.e. SNWA's ratepayers) and that fully captures its
13 pumping from groundwater used by plants. This challenge is unnecessary because the implementation
14 of the 3M Plan, combined with the requirement for staged development, will already ensure that water
15 levels are progressing towards long-term equilibrium.

16 If the District Court's remand instruction is applied in an overly strict manner that specifically
17 requires applicants to prove high levels of capture of groundwater at the application stage, developing
18 Nevada's groundwater resources will become extremely difficult. Instead, the State Engineer should
19 interpret the new equilibrium rule in a manner that focuses on whether groundwater levels are
20 progressing towards stabilization in response to project pumping.

21 **3. An unauthorized return to riparianism**

22 Nevada's unique geography also makes an overly strict enforcement of the new equilibrium rule
23 extremely difficult. Groundwater basins in Nevada, like Spring Valley, tend to be large and highly
24 elongated. This geographic reality, when combined with the extremely small percentage of land that is
25

26 ²⁹ 2017 Transcript Vol.6 p. 1233:6-9 (Mayo).

27 ³⁰ Exhibit No. GBWN_110, p. 3.3-103.

28 ³¹ 2017 Transcript Vol.6 p. 1233:6-9 (Mayo).

1 privately owned, will often require that wells be placed in locations that are distant from areas of natural
2 groundwater discharge. As evidence from these proceedings shows, the ability to demonstrate full
3 capture of water used by plants is highly dependent upon the proximity of pumping wells to areas where
4 ET discharge is occurring. Accordingly, an overly strict enforcement of the new equilibrium rule will
5 make the ability to appropriate groundwater dependent on whether the appropriator owns or has access
6 to property that is located near an ET discharge area. This is a reintroduction into Nevada water law of
7 concepts of riparianism that were expressly rejected by both the Judiciary and the Legislature when the
8 water law was formulated.³² Nevada, along with virtually all Western states, rejected riparianism
9 precisely because it was incompatible with our state’s unique climate and geography.³³ The evidence
10 in the record on remand clearly demonstrates that an overly strict application of the new rule is also
11 incompatible with the climate and geography of Nevada and, for those reasons, should be rejected.

12 4. Administrative obstacles

13 The appropriation process advocated by Protestants, based on their overly strict interpretation of
14 the new equilibrium rule, would be administratively burdensome. Protestants advocate that the State
15 Engineer should eliminate the historical practice of establishing a perennial yield for each groundwater
16 basin based on a water budget analysis and replace it with a case-by-case approach wherein a sustainable
17 yield is determined separately for each application.³⁴ Nevadans would no longer be able to rely on a
18 transparent, published estimate of water available for appropriation in each basin. Instead, applicants
19 will be required to hire a groundwater modeling expert to determine how much groundwater used by
20 plants their particular well can capture. This system will not only increase the time and expense of filing
21 applications to appropriate water, it fundamentally contradicts the express direction of the Legislature.³⁵

22 Managing equilibrium based on real world data about how water levels in the aquifer are
23 responding to project pumping is a far better method to accomplish the goal set by the District Court

24 _____
25 ³² See *Jones v. Adams*, 19 Nev. 78, 6 P. 442 (1885).

26 ³³ *Reno Smelting, Milling & Reduction Works v. Stevenson*, 20 Nev. 269, 21 P. 317, 322 (1889) (“Our conclusion is that the
common-law doctrine of riparian rights is unsuited to the condition of our state.”).

27 ³⁴ 2017 Transcript Vol.6 p. 1314:12-24.

28 ³⁵ See 2017 Nev. Stat. 3486, 3497 (requiring the State Engineer to establish a published water budget for each groundwater
basin that includes “an estimate of the amount of groundwater that is available for appropriation in the basin.”).

1 without creating additional administrative burdens on the State Engineer and future groundwater
2 applicants. This approach also comports with legislative policy to provide greater transparency and
3 certitude in the appropriations process.

4 **C. Substantial evidence in the record shows that SNWA has fully complied with the**
5 **District Court's remand instruction.**

6 **1. SNWA's ET Capture model simulation**

7 On remand, SNWA provided a model simulation demonstrating that, in response to a pumping
8 demand of 61,127 afa, 96% of project pumping is captured from groundwater used by plants within 75
9 years after the start of full production.³⁶ This increases to 98% by the end of the 200-year model
10 timeframe.³⁷ All of the relevant experts testified that these percentages represent achievement of a new
11 equilibrium in the basin within a reasonable period of time.³⁸

12 Because the SNWA's model scenario demonstrates that the basin has the potential to achieve a
13 new equilibrium condition in response to a pumping demand of 61,127 afa, SNWA's award should be
14 recalculated at that amount. As the project develops and data is gathered regarding how the water levels
15 in the aquifer are responding to project pumping, adjustments to the staged pumping plan, including
16 limiting the quantity of water that can be pumped in subsequent stages, can be made.

17 **2. The prior model simulation**

18 In drafting the remand instruction, the District Court used the 84% capture value reported by a
19 prior model simulation as the measure of whether the basin is reaching a new equilibrium state. The
20 Court reasoned that any water that is not captured from groundwater used by plants constitutes
21 groundwater mining. This is problematic because a groundwater mining assessment needs to consider,
22 in unison, both the reported rate of capture and the size of the aquifer. The ultimate indicator of
23 groundwater mining is whether actual measured water levels are showing progress towards stabilization
24 not whether water is being captured from plants.

25 ³⁶ Exhibit No. SNWA_475, p. 6-2 (Table 6-1).

26 ³⁷ Exhibit No. SNWA_475, p. 6-2 (Table 6-1).

27 ³⁸ 2017 Transcript Vol.4 p. 1014:9-15 (Burns); 2017 Transcript Vol.6 p. 1325:11-15 (Jones) ("Q. So you would agree with
28 me that a 98 percent report of ET capture rate results in project pumping reaching an equilibrium between recharge and
discharge after 200 years? A. [by Dr. Jones] Within the uncertainty of the model, yes.").

1 Considering only the computer models estimate of water that will be captured by plants, the
2 District Court determined 9,780 afa of project pumping will be from groundwater removed from basin
3 storage.³⁹ The Court found that perpetually removing this amount of water from storage was “unfair to
4 following generations of Nevadans.”⁴⁰ However, the evidence in the record clearly indicates that the
5 removal of this relatively small amount of groundwater from storage will have little impact on water
6 levels in the basin, which is the real indicator of whether a new equilibrium has been establish.

7 Evidence showed that the primary groundwater aquifer in Spring Valley is generally between one
8 and a half and two kilometers deep (approx. 5,000 to 6,500 feet).⁴¹ The recoverable storage reservoir
9 consists of just the top 100 feet of the saturated basin fill.⁴² In Spring Valley, this recoverable storage
10 reservoir is estimated to hold between 4.75 million acre-feet and 8.57 million acre-feet of water.⁴³ Being
11 conservative, and assuming the lower estimate of 4.75 million acre-feet, a 9,780 acre-feet storage depletion
12 at 200 years represents just 0.21% annually of the water in the recoverable storage reservoir. Such a small
13 depletion will have virtually no measurable effect on the groundwater levels in the basin. Because
14 equilibrium occurs when groundwater levels have stabilized in response to project pumping, and the
15 removal of such a relatively small amount of water from the transitional reservoir will not significantly
16 affect water levels, SNWA’s prior modeling scenario provides additional evidence that equilibrium will be
17 effectively achieved. Recalculating SNWA’s award at 61,127 afa is appropriate because this amount of
18 water “can be safely used without depleting the source.”⁴⁴

19 **3. The State Engineer can consider SNWA’s model scenarios.**

20 The testimony and evidence presented at the hearing clearly demonstrates that, for the limited
21 purpose of considering the issue of time to reach equilibrium, the State Engineer is not restricted to
22 evaluating only the 15 PODs identified in SNWA’s applications. First and foremost, the District Court
23
24

25 ³⁹ Exhibit No. SE_118, p. 12.

26 ⁴⁰ Exhibit No. SE_118, pp. 12-13.

27 ⁴¹ 2017 Transcript Vol.4 p. 1015:11-15 (Drici).

28 ⁴² 2017 Transcript Vol.4 p. 1015:16-20 (Drici).

⁴³ Exhibit No. SNWA_475, p. 6-3.

⁴⁴ Exhibit No. SE_118, p. 12 (citing *Ricci*, 126 Nev. at 525, 245 P.3d at 1149).

1 considered a scenario with 84 well locations and gave absolutely no indication that the State Engineer
2 is prohibited from doing likewise.

3 Second, all the experts agreed that it is unreasonable to assume that the final build-out of the
4 project will be limited to the initial 15 wells.⁴⁵ Mr. Watrus testified that similar projects managed by
5 large municipal water providers in other states use proportionately more wells for their projects than the
6 15 POD's included in SNWA's applications.⁴⁶

7 Third, all the experts who testified agreed that ET capture and time to reach equilibrium are more
8 a function of wellfield design and project layout than the quantity of water pumped by a particular
9 project.⁴⁷ CPB's experts ran a series of model simulations with fractional levels of project pumping and
10 concluded that "no matter how much the pumping is reduced, none of the fractional pumping scenarios
11 reach equilibrium."⁴⁸ When these results are considered along with the model scenarios run by SNWA,
12 they support the general consensus of the experts who testified at the remand hearing that well location,
13 not the quantity of water pumped, is the significant variable to consider in an equilibrium analysis.
14 Accordingly, it is important for the State Engineer to consider model scenarios that vary the locations
15 of project wells to determine whether when pumping a certain quantity of water, equilibrium is possible.

16 Fourth, an equilibrium analysis requires a basin-wide approach that looks at how the whole
17 aquifer will respond to a particular level of pumping over a period of 200 years. Because the District
18 Court's remand instruction asks the State Engineer to recalculate the water available for appropriation
19 for the entire basin,⁴⁹ it would be arbitrary and capricious for the State Engineer to restrict his analysis
20 to just a small number of well sites within the basin.

21 Fifth, in making its determination that the approval of the Applicant's permits in Spring Valley
22 should be remanded, the District Court relied heavily on the State Engineer's statement in Ruling 6164

23
24 ⁴⁵ 2017 Transcript Vol.5 pp. 1071:10-1072:3 (Watrus); 2017 Transcript Vol.6 pp. 1323:22-1324:8 (Jones); 2017 Transcript
Vol.9 p. 1911:2-5 (Myers).

25 ⁴⁶ 2017 Transcript Vol.4 p. 1009:15-19 (Watrus).

26 ⁴⁷ Exhibit No. CPB_25, p. 15 ("changing the pumping rate has little impact on the outcome."); 2017 Transcript Vol.6 p.
1315:6-11 (Jones); 2017 Transcript Vol.4 p. 980:8-11 (Burns) ("limiting the appropriation, that is - that's not the big issue I
don't think. The bigger issue is proximity of well locations to the discharge area.").

27 ⁴⁸ Exhibit No. CPB_25, p. 14.

28 ⁴⁹ Exhibit No. SE_118, p. 23.

1 that “[p]erennial yield is *ultimately* limited to the maximum amount of natural discharge that can be
2 salvaged for beneficial use.”⁵⁰ The word ultimate is commonly defined as “furthest or farthest” and
3 “ending a process or series.”⁵¹ The purpose for the staged development requirement is to allow the State
4 Engineer time to evaluate real-world aquifer response data. This data provides a positive feedback
5 mechanism that will help determine the ultimate build-out of the project. Staged pumping also provides
6 a safety-valve that allows the State Engineer to slow or halt subsequent pumping stages. Because the
7 determinations of perennial yield and water available for appropriation are based on how much natural
8 discharge can *ultimately* be salvaged, it would be arbitrary and capricious for the State Engineer to limit
9 his analysis only to the *initial* 15 well locations identified in the Applications.

10 Sixth, all the parties agree with the District Court that there is groundwater available for
11 appropriation in Spring Valley.⁵² In addition, the District Court expressly stated that SNWA’s
12 applications cannot be denied based on time to reach equilibrium.⁵³ These statements are inconsistent
13 with the Protestants argument that the Applications should be denied based on the equilibrium analysis.

14 Accordingly, for the limited purpose of complying with the District Court remand instructions,
15 the State Engineer can consider model scenario simulations with different well locations to determine
16 whether large-scale pumping shows some prospect of reaching equilibrium in the long-term.

17 **D. If a strict reading of the new rule is applied, it should be limited to requiring that**
18 **applicants make a *prima facie* showing of equilibrium at the application stage.**

19 **1. Reducing the award at the application stage is premature**

20 Given the robust 3M Plan, staged pumping, and Nevada laws prohibiting an unreasonable
21 lowering of the water table, there is no reason to reduce SNWA’s award during the application stage.
22 The best interpretation of the District Court’s equilibrium rule is that it establishes a *prima facie*
23 threshold that requires an applicant during the application process to demonstrate some prospect of
24 capturing the groundwater used by plants in a reasonable time. Once the threshold showing is met, the

25 ⁵⁰ Exhibit No. SE_140, p. 56 (emphasis added).

26 ⁵¹ THE RANDOM HOUSE COLLEGE DICTIONARY 1425 (Rev. Ed. 1984).

27 ⁵² 2017 Transcript Vol.1 p. 30:20-21 (Hejmanowski); 2017 Transcript Vol.6 p. 1309:9-15 (Mayo); 2017 Transcript Vol.9 p.
1858:13-15 (Myers).

28 ⁵³ Exhibit No. SE_118, p. 10.

1 applications can be granted. If data gathered from pumping confirms that the basin is progressing
2 towards equilibrium, the final stage of pumping can be approved. If not, the final stage of pumping can
3 be limited.

4 Furthermore, an applicant, should not be strictly bound to construct the project in accordance
5 with the “ET capture configuration” used to satisfy the threshold showing. Rather the ultimate build-
6 out of the project should be determined by the scientific data gathered during pumping. Staged
7 development is a critical component, as it preserves the applicant’s priority in developing groundwater,
8 allows the State Engineer to proceed cautiously, and allows for the changes to project configuration
9 based on aquifer response and other important data.

10 As the project develops, staged development and 3M plan monitoring will give the State
11 Engineer the information needed to assess whether the aquifer is progressing towards equilibrium in
12 response to project pumping. If, at the later development stages, the State Engineer determines that
13 pumping is not progressing toward equilibrium at an appropriate rate, he can modify or limit later stages
14 of development. SNWA’s has made a *prima facie* showing that the basin has some prospect of reaching
15 equilibrium, the State Engineer’s recalculation should award SNWA the full 61,127 afa.

16 **2. Regardless, the maximum reduction is 9,780 afa**

17 At the remand hearing and in their expert reports, CPB and others argued that SNWA’s
18 applications should be denied outright. While Protestants’ experts and attorneys equivocated and
19 contradicted each other, the argument is moot. Not only did Protestants concede that SNWA’s ET
20 capture pumping scenario achieves equilibrium, but the Remand Order unequivocally states that time to
21 reach equilibrium is *not* a basis for denying the applications. However, to the extent time to capture
22 may be a reason to limit SNWA’s appropriation, the maximum limitation on the award should be the
23 9,780 afa of water that the District Court determined was left uncaptured.⁵⁴ Under this calculation the
24 minimum quantity that should be awarded to SNWA is 51,347 afa.

25
26
27 ⁵⁴ Exhibit No. SE_118, p. 12 (District Court noting that SNWA would be pumping 9,780 afa “over and above the amount
28 SNWA has been authorized to pump,” which, as uncaptured ET “would have to be deducted from the perennial yield.”).

1 **II. The Submitted 3M Plans Include Empirically-Based Triggers and Thresholds as Well as**
2 **Protections for Water Resources in Millard and Juab Counties**

3 The 3M Plans for all four basins have been updated to include quantitative thresholds and triggers
4 that avoid unreasonable effects and ensure specified management and mitigation actions will be taken
5 if the thresholds are crossed or triggers activated. Investigation triggers derived from baseline
6 monitoring data will identify departures from natural baseline conditions *before* unreasonable effects
7 occur. The thresholds provide a substantial buffer between the crossing of the threshold and the
8 occurrence of an unreasonable effect so management and mitigation measures can be taken to avoid the
9 effect. For sensitive resources, preemptive mitigation actions are in place that will be implemented
10 *before* groundwater development occurs. The 3M Plans also include additional protections for resources
11 in Millard and Juab counties, in Utah. In sum, the 3M Plans provide the State Engineer with ample
12 assurance that SNWA's appropriations are environmentally sound and will not cause conflicts with
13 existing water rights. The revised 3M Plans address the District Court's concerns about a purported lack
14 of objective measures and defined standards, thresholds and triggers to prevent unreasonable effects
15 from occurring in the relevant basins due to SNWA pumping.⁵⁵ They are the product of a well-reasoned,
16 empirical approach that utilizes objective tools and benchmarks. The 3M Plans, therefore, cannot be
17 deemed arbitrary and capricious.

18 **A. The proposed mitigation measures included in the 3M Plans are allowed under**
19 **Nevada law and the common law of prior appropriations.**

20 Water rights in Nevada are usufructuary rights.⁵⁶ A usufruct right is "[a] right for a certain period
21 to use and enjoy the fruits of another's property."⁵⁷ The Nevada Supreme Court has long upheld this
22 "most fundamental tenant"⁵⁸ of western water law: "[t]he water of all sources of water supply within the
23 boundaries of the state whether above or beneath the surface of the ground, belongs to the public. Indeed,
24 even those holding certificated, vested, or perfected water rights do not own or acquire title to water.

25 ⁵⁵ Exhibit No. SE_118, p. 18.

26 ⁵⁶ *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997) ("Indeed, even those holding certificated,
vested, or perfected water rights do not own or acquire title to water. They merely enjoy the right to beneficial use.").

27 ⁵⁷ Black's Law Dictionary 1684 (9th ed.2009).

28 ⁵⁸ *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997).

1 They merely enjoy the right to beneficial use.”⁵⁹ This means that the owner of a water right does not
2 own the corpus of water itself, but instead owns the right to beneficially use a certain quantity of water
3 from a particular source at a particular place.⁶⁰ Thus, if water right holder receives the quantity of water
4 to which it is entitled, delivered at the established point of diversion, that holder’s water right has not
5 been impaired regardless of other dynamics or events. Stated differently, so long as the water right
6 holder can continue to use the same amount of water from the same location in the same way they are
7 permitted to, no conflict occurs.

8 Because water rights are rights of use and not rights of ownership, a junior appropriator may take
9 water that would otherwise flow to a senior appropriator’s point of diversion, provided that the senior
10 appropriator receives the full quantity of water to which the senior appropriator is entitled under the
11 senior’s water right. Indeed, as the Oregon Supreme Court explained:

[A] subsequent appropriator may assert the right to take the waters of the
stream from which the prior appropriation has been made and give the
prior appropriator in return therefore other water from a different source,
but of like quantity and quality delivered at such a place that the prior
appropriator can make full use thereof without being injured in any way.⁶¹

15 This describes the doctrine of mitigation.

16 The Nevada Supreme Court has explained that any mitigation plan relied upon by the State
17 Engineer must “articulate what mitigation will encompass” and must show “evidence of what that
18 mitigation would entail and whether it would indeed fully restore the senior water rights at issue.”⁶² The
19 3M Plan must articulate what mitigation will be implemented to ensure the water right holder is able to
20 continue their permitted beneficial use, and the 3M Plan must also provide substantial evidence that the
21 mitigation will be successful in protecting the usufructary right.⁶³

23 ⁵⁹ *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 1059, 944 P.2d 835, 842 (1997) (internal quotations omitted).

24 ⁶⁰ *Application of Filippini*, 66 Nev. 17, 21, 202 P.2d 535, 537 (1949); *Desert Irrigation, Ltd. v. State*, 113 Nev. 1049, 944
25 P.2d 835, 842 (1997); see also *Cochran v. State, Dept. of Agr., Div. of Water Resources*, 291 Kan. 898, 902, 249 P.3d 434,
439 (2011) (“a water right does not constitute ownership of the water itself; it is only a usufruct, a right to use water.”);
Lummi Indian Nation v. State, 170 Wash. 2d 247, 252, 241 P.3d 1220, 1224 (2010) (“The appropriative right does not extend
26 to ownership of the corpus of water while it remains in the natural source of supply. It is a right to the use of the water—a
usufruct.”).

26 ⁶¹ *Ditch Co. v. Hutton*, 170 Ore. 656, 675, 133 P.2d 601, 610 (1943).

27 ⁶² *Eureka Cnty v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1119 (2015).

28 ⁶³ *Eureka Cnty v. State Engineer*, 131 Nev. 131 Nev. ___, ___, 359 P.3d 1114, 1119 (2015).

1 The proposed 3M Plans include mitigation measures that comply with the principles articulated
2 in *Ditch Co. v. Hutton* and *Eureka County v. State Engineer*. Existing well owners whose rights may be
3 impacted by SNWA’s otherwise reasonable lowering of the water table will be made whole. The
4 specific mitigation measures for the resources vary depending on the circumstances at a particular
5 location, but the end result is the same – the senior right holder will receive the full quantity and quality
6 of water to which the senior right holder is entitled and any environmental resource that depend on that
7 water will be protected. For example, if an otherwise reasonable lowering of the groundwater table
8 diminishes the flow of an artesian spring that is the source of a senior priority stockwater right, the 3M
9 Plan specifies that SNWA must drill a well at or near the location of the spring and install a solar powered
10 pump to provide the senior right holder the same quantity of flow, if this is the most effective mitigation
11 technique. Because the flow provided by the mitigation well will fully satisfy the senior right, SNWA’s
12 pumping will not, by definition, create a conflict with the existing right.

13 **B. The 3M Plan defines objective standards, triggers, and thresholds, and mitigation**
14 **actions, ensuring that the project is environmentally sound and will not conflict with**
15 **existing rights.**

16 The purpose of a 3M Plan is to provide the State Engineer and the public with assurances that a
17 groundwater development project will not cause conflicts with existing rights or have unreasonable
18 environmental effects.⁶⁴ If a water rights application is to be approved subject to a 3M plan that will
19 avoid or remedy potential conflicts, the 3M Plan must be considered at the same time as the application
20 for appropriation.⁶⁵ Therefore, if the State Engineer approves a water right conditioned on a 3M Plan
21 that is based on presently known, substantial evidence, his decision is not arbitrary or capricious.⁶⁶

22 SNWA’s proposed 3M Plans not only meet these standards, they exceed them. In accordance
23 with the express direction of the District Court, the 3M Plans include empirically-based quantitative
24 thresholds, triggers, and mitigation requirements that will identify and avoid or mitigate any
25 unreasonable effects *before* such effects can ripen into actual conflicts. Because these triggers and
26 thresholds are based on objective empirical data, defined in the 3M Plan, and based on sound scientific

26 ⁶⁴ See *Eureka Cnty. v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114 (2015).

27 ⁶⁵ *Eureka Cnty. v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1120 (2015).

28 ⁶⁶ *Eureka Cnty. v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1120 (2015).

1 standards, they are not arbitrary or capricious. The specifics of these triggers and thresholds also meet
2 the due process requirements of *Eureka County* because the Protestants have had the “opportunity to
3 challenge the evidence . . . before the State Engineer grants proposed use or change applications.”⁶⁷

4 The proposed 3M Plans were developed using a resource-based approach. SNWA’s expert
5 witness testified that such an approach focuses management and mitigation efforts on the specific
6 identified resources where impacts may occur.⁶⁸ Such an approach makes the plans more responsive
7 and effective because the thresholds, triggers, and mitigation techniques are based on the characteristics
8 and needs of the resources themselves.⁶⁹ In other words, by focusing on localized hydrologic or
9 environmental features, SNWA’s approach increases the accuracy of predicting and avoiding specific
10 impacts to specific resources at specific points in time.⁷⁰

11 The Protestants argue that the thresholds, triggers, and mitigation techniques included in the
12 plans should be established using a numerical groundwater model.⁷¹ This argument is misguided for
13 several reasons. Most notably, the only groundwater model currently available is the regional scale
14 CCRP model. While this model provides valuable insight regarding the general long-term drawdowns
15 that may occur due to project pumping, it lacks critical details that are necessary to accurately identify
16 how that might impact specific resources at specific points in time.⁷² For example, the CCRP model
17 does not include local hydrologic features like Cleve Creek in Spring Valley. CPBs expert witness
18 agreed that if such features are not included in the model, it could influence how the model predicts
19 impacts.⁷³ Accordingly, the CCRP model is not the best tool for establishing management triggers and
20 thresholds in this case.

21 The objective triggers and thresholds are designed to achieve the proposed 3M Plans’ ultimate
22 goal of avoiding unreasonable effects. To accomplish this, the 3M Plans had to define what constitutes
23

24 ⁶⁷ *Eureka Cnty v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1120 (2015).

25 ⁶⁸ 2017 Transcript Vol.2 p. 346:15-17 (Prieur).

26 ⁶⁹ 2017 Transcript Vol.2 p. 396:21-22 (Prieur).

27 ⁷⁰ Exhibit No. SNWA_478, p. 3.3-90.

28 ⁷¹ 2017 Transcript Vol.6 p. 1206:6-7 (Mayo); 2017 Transcript Vol.7 p. 1528:21-23 (Reich).

⁷² Exhibit No. SNWA_478, p. 3.3-90.

⁷³ 2017 Transcript Vol.6 p. 1353:6-9 (Jones).

1 an “unreasonable effect.”⁷⁴ Because this is a resource-based plan, unreasonable effects are defined not
2 only in the context of the impacts that project pumping may have on existing water rights, but also in
3 the context of other specific resources such as special-status and endangered animal species, wildlife
4 habitats, and plant communities in the subject basins.⁷⁵ One key premise of the 3M Plans is that if the
5 water source that supports an environmental resource is protected, then the resource itself will be
6 protected.⁷⁶ GBWN’s expert witness testified that he agreed with this approach.⁷⁷

7 The 3M Plans also establish an expansive monitoring network for groundwater, springs, and
8 streams. Monitoring wells are located in the hydrologic basins where pumping will occur and in areas
9 where significant resources have been identified but impacts are not likely to occur.⁷⁸ Spring and stream
10 monitoring locations are present throughout the hydrologic basins and gather data regarding surface
11 water flows. The monitoring network will be used to gather baseline data before the start of groundwater
12 production. The use of the network will continue after pumping operations begin to measure the
13 propagation of water level drawdowns.⁷⁹ Several of the monitoring wells are already in existence and
14 are being used to gather baseline data while many more are planned at site locations selected with third-
15 party input and consensus. Additionally, numerous spring and stream monitoring locations are planned
16 to provide a more robust monitoring and data collection network.

17 The baseline data gathered from the monitoring program is used to establish the 3M Plans’
18 thresholds and triggers. The 3M Plans establish two types of triggers – investigative triggers and
19 mitigation triggers.⁸⁰ Investigation triggers are activated when a measured value at a monitoring
20 location deviates below baseline conditions for a period of six months. These investigation triggers are
21 set to be activated well before an unreasonable effect is reached. Likewise, the mitigation triggers are
22 set at a level which is also above the unreasonable effect. These triggers provide a buffer zone to allow
23 time to conduct an investigation and implement responsive management and mitigation actions *before*

24 ⁷⁴ Exhibit No. SNWA_507, pp. 2-2 to 2-4.

25 ⁷⁵ Exhibit No. SNWA_507, pp.2-2 to 2-4.

26 ⁷⁶ 2017 Transcript Vol.2 p. 372:12-17 (Marshall).

27 ⁷⁷ 2017 Transcript Vol.9 p. 1927:16-23 (Myers).

28 ⁷⁸ 2017 Transcript Vol.2 p. 342:16-21 (Prieur).

⁷⁹ Exhibit No. SNWA_592, p. 2-1.

⁸⁰ Exhibit No. SNWA_507, p. 3-4.

1 the unreasonable effect occurs.⁸¹ In addition, for certain sensitive resources identified in the 3M Plans,
2 preemptive mitigation measures must be taken *before* project pumping begins. This ensures that such
3 resources will be fully protected from the outset.

4 The 3M Plans require specified mitigation actions that SNWA will take if a mitigation trigger is
5 activated. The 3M Plan and Technical Analysis Report details not only what the mitigation will
6 encompass, as required under *Eureka County*,⁸² but also outlines why the mitigation actions will be
7 effective to remedy the unreasonable effects that may occur. During testimony, SNWA and Protestant
8 experts largely agreed that various mitigation actions would be successful if implemented.⁸³ Notably,
9 little evidence was submitted challenging SNWA's capabilities or experience performing similar
10 mitigation actions in other projects.

11 While the Protestants' experts quibbled over SNWA's approach to establishing the thresholds,
12 triggers, and some mitigation techniques included in the proposed 3M Plans, they utterly failed to show
13 material inadequacies in SNWA's 3M Plans, or present any meaningful or reasonable alternatives.⁸⁴
14 Instead, the evidence in the record overwhelming demonstrates that the proposed 3M Plans' thresholds
15 and triggers fully satisfy the District Court's requirement to "[d]efine standards, thresholds or triggers
16 so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious."⁸⁵
17 Accordingly, there is no evidence in the record to support a rejection of the thresholds and triggers
18 proposed by SNWA.

19 ///

20 ///

21
22
23 ⁸¹ To clarify any confusion from the hearing, SNWA reiterates that investigation triggers are an additional layer of protection
that can be activated well before the need for mitigation arises and, in fact, through subsequent investigative and management
actions, may negate the need for mitigation.

24 ⁸² *Eureka Cnty v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1121 (2015).

25 ⁸³ See generally 2017 Transcript Vol.9 p. 1954:5-7 (Myers); 2017 Transcript Vol.2 p. 490:23 (Marshall); 2017 Transcript
Vol.7 pp. 1443:17-1444:7 (Roundy); Exhibit No. CPB_22 p. 7; 2017 Transcript Vol.7 p. 1468:16-19 (Roundy); 2017
26 Transcript Vol.7 p. 1470:7 (Roundy).

27 ⁸⁴ See e.g. 2017 Transcript Vol. 6 pp. 1335:14-1336:9 (questioning of Dr. Mayo regarding whether he has any alternative
solution to offer).

28 ⁸⁵ Exhibit No. SE_118, p. 23.

1 **1. Substantial evidence demonstrates that SNWA’s groundwater pumping will**
2 **not conflict with the surface water sources at Cleveland Ranch.**

3 As described in *Eureka County*, substantial evidence must support the State Engineer’s finding
4 that the 3M Plan will avoid or remedy conflicts.⁸⁶ SNWA submitted substantial evidence showing that
5 groundwater pumping will not conflict with the Cleveland Ranch surface water sources. Three
6 identified sources of water are used at Cleveland Ranch: surface water, springs, and supplemental
7 groundwater rights that are junior in priority to SNWA’s applications.⁸⁷ With respect to surface water,
8 CPB’s own expert witness testified that Cleve Creek water rights will not be affected by the proposed
9 groundwater pumping.⁸⁸ With respect to the spring water right, expert testimony identified that the
10 major source of water for the springs is secondary recharge resulting from irrigation practices at
11 Cleveland Ranch.⁸⁹ This is why the measured age of the water emerging from the springs located on
12 Cleveland Ranch is relatively young.⁹⁰ Because the primary water source for the springs will be
13 unaffected by the groundwater pumping, SNWA’s project will not conflict with the spring water rights.

14 The final point of contention was whether groundwater pumping will cause induction of recharge
15 from Cleve Creek. Expert testimony indicates that a small portion of Cleve Creek infiltrated water may
16 recharge the deeper aquifer instead of re-emerging as spring flow.⁹¹ However the 3M Plan provides
17 protections to negate any conflicts that may arise. The 3M Plan for Spring Valley requires ongoing
18 monitoring of the Cleveland Ranch’s water sources and provides investigation and mitigation triggers
19 to ensure that there are no negative impacts to the ranching operations.⁹² Because the 3M Plan provides
20 effective triggers and mitigation actions that will avoid conflicts with Cleveland Ranch’s water rights,
21 substantial evidence exists to support the approval of SNWA’s applications.
22
23

24 ⁸⁶ *Eureka Cnty v. State Engineer*, 131 Nev. ___, ___, 359 P.3d 1114, 1119 (2015).

25 ⁸⁷ 2017 Transcript Vol.2 p. 503:8-13 (Prieur).

26 ⁸⁸ 2017 Transcript Vol.6 p. 134413-16 (Mayo).

27 ⁸⁹ 2017 Transcript Vol.2 p. 512:21-24 (Prieur).

28 ⁹⁰ During testimony Dr. Mayo, CPB’s expert witness conceded that there are no spring located on Cleveland Ranch that
contain the more ancient water. 2017 Transcript Vol.6 p. 1301:4-18.

⁹¹ 2017 Transcript Vol.6 pp. 1385:4-1388:2 (Mayo).

⁹² Exhibit No. SNWA__592.

1 investigation and mitigation triggers are set well-above the level at which a conflict might occurs, (2)
2 mitigation measures, if needed, will be required to be implemented *before* the unreasonable effect
3 occurs, and (3) similar mitigation measures have proven to be successful in the past. Therefore,
4 substantial evidence supports the conclusion that the 3M Plan will ensure that approval of SNWA's
5 requested appropriation will not be detrimental to environmental resources located within the
6 groundwater discharge area or adjacent basins.

7 **C. The Spring Valley 3M Plan includes Millard and Juab Counties**

8 The Remand Order also directed that Millard and Juab counties be considered in the Spring
9 Valley 3M Plan "so far as water basins in Utah are affected by pumping of water from Spring Valley."¹⁰¹
10 While Millard and Juab Counties were included in the original 3M Plan, SNWA has bolstered the
11 monitoring programs, and added management and mitigation actions associated with the resources in
12 Millard and Juab Counties.

13 The 3M Plan for Spring Valley identifies 15 monitoring locations in the inter-basin zone.¹⁰²
14 These monitoring well locations were selected based on input received from the State Engineer, the
15 United States Department of the Interior, and the United States Geological Survey.¹⁰³ Investigation
16 triggers are included in the 3M Plan that will alert the State Engineer to any propagation of drawdown
17 in the inter-basin zone.¹⁰⁴ Given the distance between the Utah counties and the monitoring wells in
18 Hamlin Valley, these investigation triggers will effectively act as an early warning system of potential
19 problems long before they occur.

20 In addition, specific monitoring will occur at Big Springs, Deardon Springs, Granite Peak Ranch,
21 and Pruess Reservoir. The 3M Plan now includes investigation and mitigation triggers designed to
22 protect habitat for plant and animal species in Hamlin and Snake Valleys. For example, the mitigation
23 trigger at HAM1008M would be activated prior to drawdown propagation reaching Snake Valley, and
24

25
26 ¹⁰¹ Exhibit No. SE_118, p. 23.

27 ¹⁰² 2017 Transcript, Vol.3 p. 671:5-8.

28 ¹⁰³ 2017 Transcript, Vol.3 pp. 671:13-672:8.

¹⁰⁴ 2017 Transcript Vol.3 p. 680:8-9.

1 it is a “special mitigation trigger... to avoid unreasonable effects in Snake Valley.”¹⁰⁵ The 3M Plans
2 also include specific mitigation actions for native aquatic-dependent special status animal species and
3 habitats that exist in Millard County.¹⁰⁶ The 3M Plan will require SNWA to implement the
4 environmental mitigation actions specified to ensure that the water is available to continue to support
5 the longitudinal gland pyrg and mesic habitat, as well as the California floater and lake habitat. The
6 new environmental mitigation will also contribute to other longitudinal gland pyrg habitat or population
7 management efforts.¹⁰⁷

8 Given the distances involved and the relatively defined flow path between Spring Valley and
9 Hamlin Valley, drawdown propagation effects will be evident long before such effects would cause
10 impacts to existing water rights and environmental resources in Utah. Accordingly, the inclusion of
11 Millard and Juab counties in the Spring Valley 3M Plan provides assurance that SNWA’s project will
12 not cause conflicts with existing rights in Utah.

13 **D. Once adopted, the State Engineer will control enforcement of the 3M Plans.**

14 Protestants argue that the 3M Plans effectively transfer management of the groundwater basins
15 from the State Engineer to SNWA.¹⁰⁸ This is a wholly baseless charge that ignores the reality of how
16 3M Plans are managed and enforced in Nevada. SNWA has submitted to the State Engineer *proposed*
17 3M Plans. Based on the testimony and evidence submitted at the hearing, the State Engineer will decide
18 whether to reject the plans outright, adopt the plans as written, or make changes to the plans before
19 adoption. Whatever decision the State Engineer makes must be supported by substantial evidence in
20 the record.

21 If adopted by the State Engineer, compliance with the provisions of the 3M Plans will be a
22 condition placed on SNWA’s permits. Accordingly, the management and enforcement of the 3M Plans
23 will be in the hands of the State Engineer, not SNWA. Similar to other 3M plans that have been adopted
24 in Nevada, SNWA will be required to gather data and report such data to the State Engineer on both a

25 _____
26 ¹⁰⁵ Exhibit No. SNWA_592, pp. 3-47 and 3-53.

27 ¹⁰⁶ Exhibit No. SNWA_592, p. 3-55.

28 ¹⁰⁷ Exhibit No. SNWA_592, p. 3-55.

¹⁰⁸ 2017 Transcript Vol.10 p. 2028:19-21 (Hejmanowski).

1 quarterly and annual basis. However, the ultimate decisions related to any remedial actions that need to
2 be taken under the plans will rest with the State Engineer. In addition, both the terms of the permits and
3 Nevada law provide the State Engineer with enforcement mechanisms to ensure compliance with the
4 provisions of the 3M Plans.¹⁰⁹

5 **III. The Appropriations Approved in Rulings 6165, 6166 and 6167 Will Not Result in an Over-**
6 **Appropriation of the White River Flow System and Have Not Been Awarded to Down-**
7 **Gradient Water Users**

8 A full survey and accounting of water rights within the White River Flow System (“WRFS”)
9 shows that the previously approved appropriations from Cave, Dry Lake, and Delamar Valleys will not
10 result in an over-appropriation of water within the WRFS. In other words, the same rights have not been
11 granted twice. The District Court ordered the State Engineer to recalculate the appropriations from Cave
12 Valley, Dry Lake Valley, and Delamar Valley (the “DDC” basins) “to avoid over-appropriations or
13 conflicts with down-gradient, existing water rights.” SNWA met the instruction by accounting for all
14 committed water rights in the 11 upper basins of the WRFS and showing that the sum of those rights
15 did not exceed the accepted annual recharge for those basins and that therefore adequate water is
16 available to flow from those basins into the five-basin management unit.¹¹⁰

17 The WRFS is not managed as a single basin, and the hydrology does not support joint
18 administration of the basins. Similarly, Nevada law does not anticipate a flow system to be administered
19 as if it were a single basin.¹¹¹ Despite this, and solely for the purpose of complying with the District
20 Court’s instructions, SNWA performed the requested accounting exercise for the flow system. The
21 evidence provided at the remand hearing clearly demonstrates that the State Engineer’s prior
22 determination did not represent an over appropriation. The evidence also confirmed that the
23 appropriations granted in the individual DDC basins will not result in a conflict with any senior water
24 rights. Furthermore, because of the significant geological features present between the upper 11 basins
25 and the lower basins, preserving the inflow is the best protection to the downgradient basins in the flow

26 ¹⁰⁹ See e.g. NRS 533.481 (providing a penalty of up to \$10,000 per day for a violation of any permit issued by, or regulation
of, the State Engineer).

27 ¹¹⁰ Exhibit No. SE_118.

28 ¹¹¹ NRS 533.370(3).

1 system. Indeed, the evidence submitted demonstrates that additional water is available in the basins that
2 could be appropriated.

3 **A. Nature and scope of the remand order**

4 Before addressing SNWA’s recalculation, the nature of Remand Order, with respect to the
5 WRFS, must be understood. When the Remand Order references “conflicts,” it does not mandate a new
6 conflicts analysis. Nor is there any indication in the Remand Order that the court was requesting that a
7 hydrologic study be performed. Rather, the Court was simply concerned that the same water may have
8 been appropriated twice. This concern is properly addressed by performing an accounting analysis of
9 the perennial yield of the upgradient basins in the flow system and the committed water rights located
10 therein.

11 SNWA was the only party that properly performed such an accounting analysis during the
12 remand proceedings. To be properly performed, an accounting analysis of this type requires the services
13 of a licensed, professional water surveyor with expertise in Nevada water rights. Michael Stanka,
14 SNWA’s expert was so qualified but no expert witness proffered by any of the Protestants possessed
15 these necessary qualifications.

16 **B. Analysis of the entire WRFS or its constituent basins shows sufficient water is**
17 **available to supply all committed groundwater rights**

18 An inventory and accounting of the basins in the WRFS was performed by Mr. Stanka.¹¹² In a
19 prior ruling,¹¹³ the State Engineer determined that the two basins at the southern end of the WRFS would
20 be jointly administered with three adjacent basins.¹¹⁴ The State Engineer further determined that 39,000
21 afa flowed from the upgradient basins of the WRFS into Coyote Spring Valley and the five jointly-
22 administered basins.¹¹⁵ Accordingly, Mr. Stanka was able to complete his relevant analysis by limiting
23 the inventory and accounting to the upper 11 basins of the flow system.¹¹⁶ Based on Ruling 6255, as
24 long as 39,000 afa remains available as inter-basin flow into Coyote Springs Valley, appropriations in

25 ¹¹² Exhibit No. SE_141.

26 ¹¹³ Ruling 6255.

27 ¹¹⁴ Exhibit No. SE_141.

28 ¹¹⁵ Exhibit No. SE_141.

¹¹⁶ Exhibit No. SNWA_483; 2017 Transcript Vol.1 p. 51:1-19 (Stanka).

1 the up-gradient basins will not conflict with down-gradient water rights or result in a ‘double-
2 appropriation’ of these water resources.

3 Mr. Stanka’s analysis used estimates of inter-basin inflow that were based on prior State
4 Engineer rulings and the precipitation recharge quantities previously approved by the State Engineer.¹¹⁷
5 Because these prior State Engineer determinations were not disturbed by the District Court, they remain
6 valid and outside the scope of these remand proceedings.¹¹⁸ For example, Mr. Stanka’s analysis included
7 6,700 afa of unappropriated water that flows into the WRFS from southern Butte Valley.¹¹⁹ In Ruling
8 6165, the State Engineer formally adopted this inflow estimate.¹²⁰ This factual determination was not
9 set aside by the District Court in the Remand Order and, therefore, remains valid. Because this water
10 has not previously been appropriated in its basin of origin, it remains available for appropriation within
11 the WRFS without having the same water appropriated twice within the same flow system.

12 Mr. Stanka’s analysis also identified 4,100 afa of water that flows from Pahrangat Valley to
13 Tikapoo Valley.¹²¹ In Ruling 5465, the State Engineer established the perennial yield of Tikapoo Valley
14 without including any inter-basin flows from Pahrangat Valley.¹²² Accordingly, the 4,100 afa of water
15 flowing from Pahrangat Valley to Tikapoo Valley remains available for appropriation in Pahrangat
16 Valley without conflicting with down-gradient existing rights.

17 Finally, Mr. Stanka quantified the total amount of groundwater available for appropriation at
18 104,402 afa.¹²³ From this amount, he subtracted the total amount of committed groundwater rights
19 within the 11 basins. Mr. Stanka accounted for the committed groundwater rights by identifying all
20 rights, including rights sourced from certain springs, in the 11 basins and adjusted for: (1) groundwater
21 rights that are supplemental to other groundwater rights, (2) groundwater rights that are supplemental to
22 surface water rights, (3) the estimated percentage of the supplemental rights actually used, and (4) the
23

24 ¹¹⁷ Exhibit No. SNWA_483; Exhibit No. SE_142.

25 ¹¹⁸ Exhibit No. SE_118.

26 ¹¹⁹ Exhibit No. SNWA_483, p. 1-3.

27 ¹²⁰ Exhibit No. SE_141, p. 64.

28 ¹²¹ Exhibit No. SNWA_483

¹²² Ruling 5465, p. 44.

¹²³ Exhibit No. SNWA_483.

1 amounts actually consumed by irrigation and domestic use.¹²⁴ Mr. Stanka determined that the total
2 quantity of committed rights with a priority date on or before October 17, 1989, which includes SNWA's
3 proposed appropriations, is 80,234.19 afa.¹²⁵ If groundwater rights with a priority date after October 17,
4 1989 are included, then the total quantity of existing rights totals 95,628.85 afa.¹²⁶ Both amounts include
5 the awards to SNWA and are less than the 104,402 afa that is available in the 11 basins and therefore
6 SNWA's approved appropriations do not represent an overallocation of water within the DDC basins or
7 the WRFS. To be clear, SNWA believes that the prior appropriation doctrine should apply and that only
8 rights with a priority date before October 17, 1989 should be included.

9
10 **C. Sufficient water exists to supply committed groundwater rights down-gradient of**
11 **the White River Flow System**

12 The fourth remand instruction focuses upon the question of the availability of water in the upper
13 11 basins of the WRFS to satisfy the flow to the down gradient basins. The prevailing gradient in Dry
14 Lake and Delamar Valleys is to the south toward the Pahrangat Shear Zone ("PSZ") and Coyote Springs
15 Valley.¹²⁷ The evidence indicates that the interbasin flow from Delamar Valley to Pahrangat Valley is
16 geologically likely to occur at the southernmost end of those valleys through multiple faults in the PSZ
17 with the most significant flow likely through the PSZ's Maynard Lake Fault.¹²⁸ The hydraulic potential
18 between Delamar Valley and Pahrangat Valley is 350 feet, and the potential between Delamar Valley
19 and Coyote Springs Valley is between 1,550 and 1,280 feet.¹²⁹ The hydraulic potential between
20 Pahrangat Valley and Coyote Spring Valley is approximately 1,400 feet.¹³⁰

21 In 2011, Dr. Myers utilized a model that assumes pumping by SNWA at a greater amount than
22 actually approved in the DDC basin.¹³¹ Dr. Myers testified that the model showed that after 4,000 years

23
24 ¹²⁴ Exhibit No. SNWA_483; 2017 Transcript Vol.1 p. 68:14-87:9 (Stanka).

25 ¹²⁵ Exhibit No. SNWA_613.

26 ¹²⁶ Exhibit No. SNWA_613; 2017 Transcript Vol.1 p. 129:5-7 (Stanka).

27 ¹²⁷ Exhibit No. SNWA_258.

28 ¹²⁸ Exhibit No. SNWA_258.

¹²⁹ Exhibit No. SNWA_258.

¹³⁰ Exhibit No. SNWA_258.

¹³¹ Exhibit No. GBWN_4.

1 of sustained pumping by SNWA the impact to the Muddy River Springs was less than 0.5 cfs or 362
2 afa.¹³² This represents less than one percent of the 39,000 afa of water that currently is estimated to flow
3 to the down-gradient basins.¹³³ This is, of course, also consistent with the determination of the State
4 Engineer that there will be no conflict caused by this water use.

5 Mr. Stanka's analysis shows that 47,773 afa of groundwater remains available in the upper 11
6 basins. This is far more than the 39,000 afa required as outflow to the five jointly managed basins¹³⁴
7 and provides substantial evidence to support SNWA's request. Accordingly, the State Engineer should:
8 (1) reaffirm the pumping duties and staged development process approved in Ruling 6164 (Spring
9 Valley), (2) reaffirm the pumping duties approved in Ruling 6166 (Dry Lake Valley) and 6167 (Delamar
10 Valley), and (3) determine that additional water is available for appropriation in those basins,
11 particularly Cave Valley.

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ¹³² 2017 Transcript Vol.9 p. 1972:18-19 (Myers); Exhibit No. GBWN_4.

26 ¹³³ 2017 Transcript Vol.9 p. 1979:15-19 (Myers).

27 ¹³⁴ Exhibit No. SNWA_483, pp. 1-3 to 1-10; Exhibit No. SNWA_613, p. 19. Precipitation recharge for the 11 up-gradient
28 basins, 136,702 afa, plus 6,700 afa of subsurface inflow at Jakes Valley, less total committed groundwater rights, 95,628.85
afa, leaves 47,773.15 afa available.

CONCLUSION

1
2 For the reasons provided herein, and those outlined at the remand hearing and in previous briefs
3 on file in this case, SNWA respectfully requests the State Engineer reaffirm the pumping duties and
4 staged development process approved in Ruling 6164 and 6165 and the pumping duties approved in
5 Ruling 6166 and 6167.

6 Respectfully submitted this 19th day of January, 2018.

7
8 By: 

9 PAUL G. TAGGART, ESQ.
Nevada State Bar No. 6136
10 DAVID H. RIGDON, ESQ.
Nevada State Bar No. 13567
11 TIMOTHY D. O'CONNOR, ESQ.
Nevada State Bar No. 14098
12 TAGGART & TAGGART, LTD.
108 North Minnesota Street
13 Carson City, Nevada 89703
14 (775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

15 STEVEN C. ANDERSON, ESQ.
Nevada State Bar No. 11901
16 SOUTHERN NEVADA WATER AUTHORITY
1001 South Valley View Boulevard, MS #480
17 Las Vegas, Nevada 89153
18 (702) 875-7029 – Telephone
19 (702) 259-8218 – Facsimile

20 ROBERT A. DOTSON, ESQ.
Nevada State Bar No. 5285
21 DOTSON LAW
22 One East First Street, Sixteenth Floor
23 Reno, Nevada 89501
(775) 501-9400 – Telephone
24 ***Attorneys for SNWA***

25
26
27
28
Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775) 882-9900 – Telephone
(775) 883-9900 – Facsimile

Taggart & Taggart, Ltd.
108 North Minnesota Street
Carson City, Nevada 89703
(775)882-9900 - Telephone
(775)883-9900 - Facsimile

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 mail, addressed as follows:

Severin A. Carlson
Kaempfer Crowell
50 West Liberty Street, Suite 700
Reno, Nevada 89501
scarlson@kcnvlaw.com

Paul R. Hejmanowski
Hejmanowski & McCrea LLC
520 South 4th Street, Suite 320
Las Vegas, Nevada 89101
prh@hmlawlv.com

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

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

J. Mark Ward
3004 W. Sweet Blossom Drive
South Jordan, Utah 84095
wardjmark@gmail.com

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

Aaron Waite
Weinstein, Pinson & Riley P.S.
6785 S. Eastern Avenue #4
Las Vegas, Nevada 89119
AaronW@w-legal.com

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

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

Paul Tsosie
Tsosie Law, PLLC
5912 Feldspar Way
West Jordan, UT 84081
paul@tsosielaw.com

DATED this 19th day of January, 2018.



Employee of TAGGART & TAGGART, LTD.