

Central Nevada Regional Water Authority
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STATE ENGINEERS OFFICE

October 20, 2017

Susan Joseph-Taylor, Deputy Administrator
Nevada Department of Conservation and Natural Resources
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250

Public Comment on the Southern Nevada Water Authority Water Right Applications Hearing on Remand in the Matter of Protested Applications 53987, 53988 (Cave Valley - Basin 180), 53989, 53990 (Dry Lake Valley - Basin 181), 53991, 53992 (Delamar Valley - Basin 182), and 54003 through 54021 (Spring Valley - Basin 184).

Dear Deputy Administrator Joseph-Taylor:

On behalf of the Central Nevada Regional Water Authority (CNRWA), I respectfully submit the following public comments regarding the Southern Nevada Water Authority (SNWA) water right applications hearing on remand. The CNRWA Board of Directors unanimously approved these comments at their meeting this morning.

CNRWA is an eight-county unit of local government that collaboratively and proactively addresses water resource issues common to all eight counties. The Authority has a 21-member board of directors appointed by the boards of county commissions of Churchill, Elko, Esmeralda, Eureka, Lander, Nye, Pershing and White Pine Counties. Collectively, these counties cover approximately 65 percent of Nevada's land area. CNRWA's formal protest of SNWA's applications heard on remand is consistent with, and in support of, its mission which is "to protect the water resources in member counties so these counties will not only have an economic future, but their valued quality of life and natural environment is maintained."

Nevada is the driest state in the nation, and its traditional sources of water are at best limited and at worst diminishing due to drought. It is risky and expensive to base the future of urban Clark County on the transfer of an unproven groundwater resource from an aquifer where the hydrology is not clearly understood. For example, there is no groundwater flow model that could be used to predict the impact that different pumping schemes will have on senior water rights at specific locations or an understanding of groundwater flow relationships between shallow and deep groundwater systems. Moreover, an interbasin transfer of this magnitude has never been considered by the State Engineer before making it nearly impossible to anticipate potential adverse impacts of massive pumping. Other options for SNWA to meet its future water demands including; conservation wastewater reclamation, graywater reuse, rainwater capture, and desalination should be considered instead.

SNWA's Water Exportation Will have Significant Impacts on the Sustainability of Communities in the Affected Counties.

This groundwater mining project is based on a flawed monitoring, management and mitigation (3M) plan that will pump water needed by future generations of Nevadans. The rural communities and counties within that vast affected area depend on the agricultural, recreational and other economic values supported by the water rights and groundwater resources in the affected basins. So, the fact that the scientific evidence does not support the availability of the groundwater SNWA seeks to pump, combined with the impacts that will result from such large-scale groundwater mining, means that approving SNWA's applications for its ground water development project (GWDP) and allowing SNWA to mine this groundwater would pose a mortal threat to the survival of those rural communities and counties.

In addition to the specific economic, environmental and recreational losses that the affected counties will suffer, the State of Nevada stands to lose an invaluable part of its social and cultural heritage and richness. These rural communities and their land-based ways of life represent an important part of Nevada's social and economic diversity that are vital to the State's long-term resiliency. SNWA's proposed groundwater pumping and export gravely imperils the future viability of rural Nevada communities and the values that those communities provide to the State.

SNWA's proposed intercounty water transfers will invariably impact property values and future economic opportunities in the affected areas. White Pine County, which is directly affected, has already imposed the maximum allowable property tax rate. Any reduction in property values would severely compromise the County's ability to protect the public health and safety of their residents which they are mandated to do by state law.

Approval of SNWA's Water Rights Application Will Set a Terrible Precedent

Approval of SNWA's water rights application will set a precedent for allowing future exportation of water from rural Nevada even when there is significant concern and substantial evidence that there will be adverse environmental impacts and harm to domestic well owners, senior water rights holders and groundwater dependent natural resources. The State Engineer must bear in mind that these applications represent only Phase One of a Three-Phase project that SNWA plans to use to extract and export groundwater from much of rural Nevada. Approval of these applications will set a terrible precedent for the fate of all of rural Nevada.

SNWA has Not Complied with the District Court's Order

State District Court Judge Estes' December 10, 2013 remand Order is unambiguous. The State Engineer must "Define standards, thresholds or triggers so that mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley, Cave Valley, Dry Lake Valley and Delamar Valley."

Judge Estes concluded that “If there is insubstantial evidence and it is premature to set triggers and thresholds, it is premature to grant water rights. As stated in the Plan, a definition of an unreasonable adverse effect, i.e. a trigger, a standard, a threshold must be defined. Absent a thorough plan and comprehensive standards for mitigation, any mitigation, (or lack thereof) is subjective, unscientific, arbitrary and capricious.”

During the hearing on remand SNWA provided no additional evidence or testimony to define objective standards, thresholds or triggers so that “mitigation of unreasonable effects from pumping of water are neither arbitrary nor capricious in Spring Valley, Cave Valley, Dry Lake Valley and Delamar Valley.” While SNWA described the basic elements of its 3M it failed to meet the requirements contained in the Order.

The SNWA 3M Plan was developed without consideration of the conflicted water rights holders and does not include stakeholder review or oversight. Approving the applications places a significant and new burden on an existing water right holder and/or domestic well owner to demonstrate that impacts to their water rights are being caused by SNWA. They will need to spend considerable time and money in order to protect themselves. The new burden of protection means an existing water right holder and domestic well owner will have to be involved in the water right hearing case, spend time and money in providing input to a 3M plan, spend time and money monitoring impacts of groundwater pumping by the applicant, and spend time and money addressing adverse impacts created by the groundwater pumping with the State Engineer and the courts. This is not consistent with the Prior Appropriation Doctrine and NRS 533.024 which states that it is the policy of this State to recognize the importance of domestic wells as appurtenances to private homes, to create a protectable interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated.

There has been substantial testimony and public comment about SNWA’s poor record of communicating or working with senior water right holders in a respectful or honest manner. Ranchers and farmers who have had to deal with SNWA and its property managers in rural valleys, including Spring Valley and Dry Lake Valley, have frequently experienced interference with their longstanding operations and intimidation when they have sought to protect their water rights and senior water uses. This testimony clearly betrays SNWA’s promises to protect those same water rights holders’ interests in the future. In addition, SNWA’s refusal to do the kind of up front scientific analysis necessary to support concrete, effective protections for the environmental resources that will be impacted by its GWDP pumping belies SNWA’s pretense of being a serious steward of the environment in the broad affected region. Mitigation measures in a 3M Plan will not substitute for environmental and aesthetic losses to a remote community resulting from a massive exportation of water to satisfy the demand of a large and growing population. Abandoned homes and shuttered businesses can be the undesirable result of a few cents increase metropolitan water rates. We believe that the evidence before the State Engineer does not support any approval of SNWA’s applications in reliance on the 3M Plans that have been presented.

The proposed data for establishing baseline conditions and action triggers in the SNWA 3M plan is inadequate and does not accommodate well known long-term trends in wet and dry climatic cycles. The 3M plan does not recognize the fact that the SNWA GWDP is partially based on groundwater mining and as such the groundwater levels and spring fluxes will not recover after mitigation measures are enacted. The SNWA 3M plan is not based on an understanding of groundwater flow relationships between shallow and deep groundwater systems. SNWA should have constructed a groundwater flow model that could be used to predict the impact that different pumping schemes will have on senior water rights at specific locations, and then used that model to test the feasibility of a 3M plan and its effectiveness at protecting senior water rights.

SNWA has Not Demonstrated That It Can Effectively Mitigate the Widespread, Destructive Impacts That its Proposed Groundwater Development Project Pumping Would Cause

Judge Estes found that SNWA's 3M Plan is flawed in several respects, most notably that there are no objective standards as to when mitigation would take place and questions about what the actual mitigation might be.

SNWA has not presented evidence on which the State Engineer could rely to make a determination that its 3M approach would be feasible, or in other words that it could actually protect existing rights or the environment.

It has been stated that under specific conditions SNWA will be required to modify or curtail pumping. It is unrealistic that SNWA would curtail or even reduce pumping groundwater after making an investment of billions of dollars in infrastructure to support additional growth in its service area.

SNWA also proposes to provide replacement/substitute water as a mitigation option. In this case mitigation can only be acceptable if it involves providing water from a basin or groundwater flow system that is not connected to the one in which mitigation is required, otherwise they would just be moving the problem from one location to another. However, SNWA has not provided any details related to where such replacement water could be obtained or how it would be supplied.

SNWA's representatives have indicated that their groundwater export project's environmental impacts, and their monitoring and mitigation plan, have been fully evaluated and approved by the appropriate federal agencies in the environmental impact statement (EIS) for their main pipeline right of way. This is misleading as the federal agencies have expressly stated that they cannot evaluate the impacts until SNWA does basin specific modeling and that they will need to rely on the State Engineer to fully consider the project's actual impacts as part of deciding how much water can be appropriated. In fact, Federal District Court Judge Gordon on August 23, 2017 remanded the Final EIS for this project back to the Bureau of Land Management for their failure

to provide certain mitigation measures required under the both the Federal Clean Water Act and Federal Land Policy and Management Act (FLPMA).

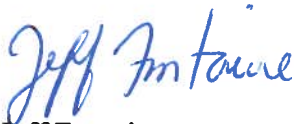
Due to Identified Conflicts Denial of Applications Is the Only Option

The State Engineer has a duty to manage Nevada's vital and severely limited water resources to maintain the long-term integrity of those resources. Many things may change in Nevada's future, but one thing that will not change is the fact that human habitation and economic activity in the State depends on ensuring that our groundwater resources are sustainably available for a variety of uses. Permitting SNWA's GWDP will lead to the inevitable long-term depletion of groundwater resources across a large portion of the State. This would contravene the longstanding mandate to protect the long-term integrity of the State's groundwater resources.

Based on the identified conflicts, impacts and legal implications the SNWA applications would create if approved, the Central Nevada Regional Water Authority urges the State Engineer to apply the District Court's decision and Nevada water law and deny SNWA's applications.

Thank you for considering the aforementioned comments on this matter of great importance to CNRWA and our member counties.

Sincerely,



Jeff Fontaine
Executive Director
Central Nevada Regional Water Authority

- Cc: CNRWA Board of Directors
Chairman, Churchill County Commission
Chairman, Elko County Commission
Chairman, Esmeralda County Commission
Chairman, Eureka County Commission
Chairman, Lander County Commission
Chairman, Nye County Commission
Chairman, Pershing County Commission
Chairman, White Pine County Commission