

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

IN THE MATTER OF	)	
APPLICATIONS 54003 THROUGH	)	
54021, INCLUSIVE, FILED BY THE	)	
LAS VEGAS VALLEY WATER	)	RESPONSE TO SNWA'S
DISTRICT TO APPROPRIATE	)	MOTIONS TO DISMISS AND
WATERS OF SPRING VALLEY	)	TO EXCLUDE EVIDENCE
HYDROGRAPHIC BASIN, LINCOLN	)	
AND WHITE PINE COUNTIES,	)	
NEVADA.	)	

Abigail Johnson, Katherine and William Rountree, Toiyabe Chapter of the Sierra Club, John Tryon, and White Pine County ("Protestants") now respond to the motions of the Southern Nevada Water Authority ("SNWA") to dismiss certain of Protestants' claims, and to exclude certain of Protestants' evidence. For the following reasons, SNWA's motions should be denied.

**State** 'S EXHIBIT **49**  
DATE: **9-11-06**

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**I. SNWA's Argument, that the State Engineer Should Not Consider Environmental and Economic Impacts to Spring Valley, is Wrong**

Although many of SNWA's arguments regarding its motions to dismiss and to exclude evidence are misplaced, the most glaring misstatement of the law is that the State Engineer should not consider the environmental and economic impacts of SNWA's proposed interbasin transfer of ground water on Spring Valley, and that any evidence going to those points should be excluded. See Motion to Dismiss at 19-24; Motion to Exclude at 16-19. Protestants recognize that because they have presented evidence showing sever drawdowns that will have a devastating impacts on Spring Valley, and SNWA has presented no evidence even attempting to show that its applications will not have undue environmental and economic impacts, the success of SNWA's applications hinges on the State Engineer ignoring such impacts. However, SNWA's argument is flat wrong and must be rejected.

**A. The Statutory Language Requires the State Engineer to Consider Environmental and Economic Impacts to the Source Basin, and Reject Applications with Undue Harm**

The statute is crystal clear that not only may the State Engineer consider these impacts, but he in fact must do so. It states: "In determining whether an application for an interbasin transfer of ground water must be rejected pursuant to this section, the State engineer shall consider: [] whether the proposed action is environmentally sound as it relates to the basin from which the water is exported; [and whether it will] unduly limit the future growth and development in the basin from which the water is exported." N.R.S. 533.370(5) (emphasis added). Thus, the State Engineer "shall" consider these issues, and "must" reject applications that he

finds to not be environmentally or economically sound for the source basins, and has no discretion to do otherwise.

**B. The Legislative History Supports the Plain Language of the Statute, Not SNWA's Contrary Interpretation**

Against these unequivocal statutory commands, SNWA offers several arguments, none of which are correct. It first argues that the legislative history supports its position, citing the testimony of former State Engineer R. Michael Turnipseed where he stated that he did not consider himself “to be the guardian of the environment.” Motion to Dismiss at 20 (citation omitted). There are several reasons why this statement and the other legislative history do not contradict the plain language of the statute.

First, even if this statement were construed to mean that Mr. Turnipseed was opposed to the statutory changes adopted in 1999 that now require the State Engineer to consider environmental and economic impacts to the source basin for interbasin groundwater transfers, that position was rejected by the Legislature through passage of the 1999 amendments, adopting the statutory language that Mr. Turnipseed was addressing.

Second, the legislative history, including Mr. Turnipseed's statement, does not actually conflict with the plain language of the statute. As even SNWA's brief acknowledges, the legislative history confirms that the statute requires the State Engineer “to consider the environmental impacts on the basin of origin.” Motion to Dismiss at 21 (quoting Senator James). As Senator James later clarified, “Mr.

Turnipseed [was] saying the state water engineer should be responsible for the hydrologic environmental impact in the export of water in the basin of origin but should not be responsible for the environmental effects in the basin importing this water." Minutes of the Senate Committee on Natural Resources, Seventieth Session, March 8, 1999 (Exhibit A) at 5.<sup>1</sup>

Other testimony also supports the plain meaning of the statute and not SNWA's contrary interpretation:

Naomi Duerr, State Water Planner . . . said water transfers had contributed to the economic development, growth, and prosperity of Nevada, but the cost of conducting a basin transfer was very great and could potentially impact the following []:

- The rights of existing water users could be permanently effected.
- Reduction of instream flows.
- Decreased flow to wetlands and lakes downstream at points of diversion.
- Decreased recharge to aquifers
- Social, economic, and fiscal concerns regarding potential losses of taxable income, social stability, or future economic development as related to population impacts on growing urban areas.

\* \* \*

Steve Bradhurst, representing Nye, Lincoln, and White Pine Counties Boards of Commissioners, was called upon by Chairman de Braga to testify on S.B. 108. He explained the state engineer had to consider certain issues when reviewing applications for water transfers. He had to be certain there was

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<sup>1</sup>. The current views of Mr. Turnipseed as to the requirements of the statute are irrelevant, especially since he is now employed by SNWA, and the State Engineer should reject any testimony of Mr. Turnipseed (or anyone else) that SNWA might offer going to matters of statutory interpretation. Cf. Sullivan v. Finkelstein, 496 U.S. 617, 632 (1990) ("[V]iews of a legislator concerning a statute already enacted are entitled to no more weight than the views of a judge concerning a statute not yet passed.").

sufficient ground water available and if transferring water would adversely impact another party's water rights. The state engineer also had to determine if granting the transfer was in the public interest. Nye, Lincoln, and White Pine Counties were three rural counties who were involved in a water importation project since 1989. Their greatest concern was would there be enough water left in the basin from which the water came to ensure that basin would remain environmentally viable.

Mr. Bradhurst said there was need for a concise definition of what was required in order to ensure public interest would be protected regarding water rights laws, particularly as it applied to interbasin transfers. It was important to protect the future environment of basins in rural communities to ensure water would be available for future growth.

\* \* \*

[Committee member] Lee asked what Mr. Balliette's [representing Eureka County Board of Commissioners] main concerns were. Mr. Balliette said he wanted the interest of the public protected. That would be accomplished by including language into S.B. 108, which would ensure all proposed beneficial water uses were thoroughly reviewed during the permitting process to ensure the proposals were environmentally sound.

Minutes of the Assembly Committee on Natural Resources, Agriculture, and Mining, Seventieth Session, April 21, 1999 (Exhibit B) at 4-5. In fact, the legislative history confirms that even where “water transfers [would] contribute[] to the economic development, growth, and prosperity of Nevada” they should not be permitted where they are not environmentally sound in the source basin, or where they would unduly limit the future growth and development in the source basin.

See id.

In sum, the legislative history confirms the statute’s plain language that the State Engineer “shall” consider environmental and economic impacts to Spring Valley, and “must” reject applications with undue impacts to the environment and future economic growth there.

**C. Whether the State Engineer Should Conduct his Own Studies is Irrelevant to Whether he Must Consider Evidence of Impacts Submitted by Protestants**

SNWA next argues that because the U.S. Bureau of Land Management (“BLM”) is conducting an environmental impact statement (“EIS”) on the pipeline that would carry Spring Valley’s water to Las Vegas, he need not conduct his own studies, and therefore he should also not consider evidence of environmental and economic impacts submitted by Protestants. Motion to Dismiss at 21-23. However, this is an improper leap of logic, as whether the State Engineer should or should not conduct his own studies is irrelevant to whether he must consider evidence presented by any protestant, and base his rulings on such evidence and reject any application which has undue environmental or economic impact.

First, Protestants are heartened that SNWA acknowledges that the BLM pipeline EIS should consider the impacts from the water withdrawals themselves and not just the impacts of the pipeline *per se*, and that SNWA implicitly acknowledges that the State Engineer should not issue a decision on SNWA’s applications until the final EIS is issued (obviously, the State Engineer could not rely on the BLM EIS unless he deferred his decision until it was issued).

Protestants agree that the EIS will contain important information on environmental and economic impacts that the State Engineer should consider.

However, that the BLM will be doing its own studies does not relieve the State Engineer of his statutory duty to consider evidence presented by Protestants in the hearing, and to base his decision on all the evidence presented. That



Pyramid Lake Paiute Tribe of Indians v. Washoe County does not require the State Engineer to conduct his own separate studies is irrelevant to his duty to consider duly-filed evidence presented by Protestants. See Motion to Dismiss at 22, citing 112 Nev. 743, 918 P.2d 697 (Nev. 1996).

In sum, SNWA's argument that "[o]nce an environmental study is required by either the applicant or a governmental agency, there is no environmental determination that is required of the State Engineer" is simply unsupported, and must be rejected. See Id.

**D. The State Engineer Must Consider Impacts to Air and Water Quality in Spring Valley**

SNWA argues that because the State Engineer need not consider whether the applications would lead to violations of the Clean Air Act, Clean Water Act, or equivalent state statutes governing air and water pollution, he may not consider air or water pollution impacts at all. Motion to Dismiss at 23-24. However, that is wrong, as even though the State Engineer need not make a determination as to compliance with those pollution statutes, he must generally consider the environmental impacts to Spring Valley from the applications, which includes air and water quality impacts.

The State Engineer rulings cited by SNWA are not to the contrary. Ruling 5078 was on change in use applications, not on an application for an interbasin transfer of water where the "environmentally sound" provision was invoked, and so is not relevant. But even if it were, the ruling there was that there was no evidence

presented in that hearing that there would be undue air impacts, not that the State Engineer could never consider air impacts. Ruling 5078 at 33. Ruling 5465 may have held that enforcement of the Clean Air Act and similar laws is "entrusted to other divisions of government," but ensuring that an interbasin transfer of ground water is environmentally sound in the source basin is entrusted to the State Engineer, and he must consider air and water impacts as part of that duty, regardless of the fact that he need not determine whether particular provisions of the various pollution laws would be violated.

Lastly, SNWA alleges that Protestants have not provided any evidence of such impacts. However, Protestants have. For instance, as Dr. David Charlet stated:

There is also danger of desertification in the area of Baking Powder Flat. Here, here sand particles from devegetated areas naturally accumulate into sand dunes, the sand dunes could grow and become more mobile, rendering shrublands into sand dunes.

\* \* \*

Simplification of vegetation structure is devastating to semi-arid ecosystems and has occurred in similar systems in Iran (Charlet 2006b). A similar situation occurred in Owens Valley, California, after the Los Angeles Department of Water and Power drained the sources of the Owens River. In 1930, after the Los Angeles Aqueduct was only operating for 17 years, Owens Lake was dry. Now the Los Angeles Department of Water and Power is irrigating the lake in a \$451 million project designed to reduce the toxic particulates that the lake has been releasing in the past 70 years (Biland and Fasano 2006).

Exhibit 3030 at 19,21.

In any event, the State Engineer should take evidence at the hearing on these matters, and he can then reject any protest points if he believes the evidence

is not sufficient to sustain them. But because air and water quality impacts are relevant under the “environmentally sound” provision of the interbasin transfer statute, these protest points may not be dismissed as a matter of law.

**E. The State Engineer Should Consider Whether the Applications Would Cause an Unreasonable Lowering of the Water Table**

As SNWA acknowledges, the State Engineer should only permit a “reasonable lowering of the static water level,” yet argues that no evidence may be presented which shows that its applications are unreasonable. Motion to Dismiss at 32, citing State Engineer Ruling # 4943 at 6-7. However, because an unreasonable lowering of the water table may not be permitted, these protest points should not be dismissed.

SNWA implies that Protestants have not provided such evidence. However, Protestants have presented evidence that the water table will be lowered up to hundreds of feet in places within 100 years. Exhibit 3001 at 55-61. Whether this is “reasonable” can be determined by the State Engineer during the hearing and his deliberations, but this claim should plainly not be dismissed now.

**F. The State Engineer Should Consider Whether The Applications Would Result in Water Mining, i.e., Exceed the Perennial Yield**

“Water mining” is really just another way of referring to permitting water withdrawals that exceed the available perennial yield. SNWA can not deny that it is a valid protest point to allege that granting an application would cause the available perennial yield in a valley to be exceeded. In fact, Protestants have shown that the available perennial yield would be vastly exceeded by SNWA’s

applications, both in terms of SNWA's recharge estimates as well as to existing rights in Spring Valley. See Exhibit 3001 at 18-23; 3010 at 3-4. Therefore, the suggestion that this protest point should be dismissed is without merit. See Motion to Dismiss at 35.

**G. The State Engineer Must Consider Scenic and Recreational Values**

Contrary to the argument of SNWA, the State Engineer must consider the impact on scenic and recreational values as part of his duty to consider environmental and economic impacts under the interbasin transfer provision. See Motion to Dismiss at 39.

Both scenic and recreational values are routinely considered environmental values, and there is no doubt that they are economic values, for if the springs and phreatophytes of Spring Valley are dried up and destroyed, it would no longer be utilized for hunting, fishing, camping, and other recreational uses to nearly the extent it is now, uses which provide a large economic input to White Pine County. See Exhibits 3050-57. This is not to mention the impacts to private property values in Spring valley and its environs.

SNWA cites State Engineer Ruling No. 5011, which addressed whether the County of origin held such values in trust. However, that ruling did not address whether the "environmentally sound" and "unduly limit the future economic growth" clauses of N.R.S. §533.370(5) require a county of origin to hold such values in trust in some formal way in order for the State Engineer to consider them, and

the statute plainly does not. Accordingly, the State Engineer must consider these impacts, and the protest points must not be dismissed.

## **II. The Rountree Protests Should Not Be Dismissed**

SNWA has moved to dismiss the protests of William and Katherine Rountree, premised on the assertion that their property lies in Snake Valley and therefore their protests only go to SNWA's Snake Valley applications. Motion to Dismiss at 18-19; 1-2 at n.1. However, as Ms. Rountree explains, their property (the D-X Ranch) is in Spring Valley, not Snake Valley. Exhibit C. They have water rights in the drawdown zone that will be directly affected by SNWA's Spring Valley proposal, they have duly protested three applications in Spring Valley, and so their protests should not be dismissed. Id.

The confusion likely lies in the fact that the Intermediate Order labeled the Rountrees' protest of Application 54022 as Snake Valley, but inadvertently failed to label the first three applications as Spring Valley. See Intermediate Order at 5. Further, the Rountrees used to own the Silver Jack Motel in Baker (Snake Valley), and their attachment for their Snake Valley protest happened to be attached to their Spring Valley protests as well, but that does not affect the validity of the face of the Spring Valley protests which state that the Rountrees are concerned about the impact of the proposals on their D-X Ranch, which is in Spring Valley.

### **III. None of Protestants' Proffered Evidence or Witness Testimony Should Be Excluded**

Contrary to the suggestion of SNWA, all of Protestants' proffered evidence and witnesses are relevant to issues to be decided by the State Engineer, and so should not be excluded.

#### **A. SNWA's Exclusion Arguments Dependent on its Motion to Dismiss Should Be Rejected**

SNWA reiterates its motion to dismiss in its motion to exclude evidence. SNWA Motion to Exclude at 13-14. However, its motion to dismiss is addressed above and responsive arguments need not be repeated here.

SNWA does make one new argument in this section, to exclude "all evidence connected with the White Pine County plans [because n]one of the protestants represented by WELC raise any protest points addressing the White Pine County water resources plan, or any protest points related to any adverse consequences of the groundwater project on the White Pine County plans." *Id.* at 14-15. However, this argument is nonsensical. The plans are offered as evidence as to the impact of SNWA's proposed interbasin water transfer on the future economic growth of Spring Valley and White Pine County. The test of relevant evidence is not whether a proposal will have impact on the evidence itself, for if it were most of the documents submitted by all parties would be inadmissible. Rather, it is whether evidence is relevant to an issue to be decided by the State Engineer, and the plans are directly relevant to show what White Pine County's future plans are, which goes to show how the applications would affect those plans and future economic growth

of the County.

In another section of its motion, SNWA argues that “all evidence related to species and other environmental concerns should be excluded.” Motion to Exclude at 16-19. However, for the reasons addressed above in Section I, this motion to exclude should be rejected, as the State Engineer is of course required to consider environmental impacts from the proposed interbasin transfer of water.

**B. Protestants’ Submissions Comply with the Intermediate Order and Should Not Be Excluded**

All of Protestants’ evidence (with one de minimus exception) and proffered witnesses testimony comply with the Intermediate Order, and none should be excluded for that or any other reason. See Motion to Exclude at 15.

**1. Dr. John D. Bredehoeft**

SNWA argues Dr. Bredehoeft’s report and testimony should be excluded, because “Bredehoeft failed to rely on any actual data to form his opinions.” Motion to Exclude at 15. That is wrong. As Dr. Bredehoeft explains, he has been intimately involved in this case, has been working hand in hand with Protestants’ other hydrologist Dr. Tom Myers, and reviewed a great deal of “actual data” in preparing his report:

Tom Myers, like me, works alone. In this situation it is important to have a colleague to bounce your ideas off and to provide critical review of your investigation and analysis. I provide a colleague for Tom and criticism of his work—his conceptual ideas, his model analysis, his output, and his reports associated with Spring Valley. Tom has made major changes in his approach as a result of our discussions and my constructive criticism; he continues to make changes based upon our conversations. For instance, I requested that Tom provide the analysis of water from storage depletion that

I included in my June 30 statement. This was information he had not included in the first draft of his report.

I considered whether I should have been listed as a co-author of Tom's Spring Valley model report. Although it was a close call, I decided that it would be more accurate for me not to do so, as I am reluctant to co-author work in which I did not do a significant enough part of the analysis. However, I did provide oversight for Tom's work, and reviewed the data and methods upon which his report relies. Accordingly, I had a sufficient basis upon which to base my report to the State Engineer.

Exhibit D at 2.

Further, Dr. Bredehoeft relied on data sources summarized in his "References" Section including USGS reports, in addition to Dr. Myer's hydrology model. Exhibit 3010 at 7. Additionally, there is no requirement in the Intermediate Order or elsewhere requiring a hydrologist to prepare his own separate model. Dr. Bredehoeft provides his expert opinion on the accuracy of Dr. Myers' model and conclusions, and of the recharge estimates of both SNWA and Dr. Myers. This information is directly relevant and based on the appropriate data, and Dr. Bredehoeft's opinions will be invaluable to the State Engineer, and should not be excluded.

**2. Dr. Ronald M. Lanner, the Issue Of "Duplicative" Testimony, and Setting Particular Days for the Parties' Cases**

SNWA moves to exclude Dr. Lanner's report and testimony on two grounds: 1) it is duplicative of Dr. Charlet's report; and 2) because Dr. Lanner is not a hydrogeologist. Both grounds are faulty.



Taking the second issue first, Dr. Lanner is not offered as an expert in hydrogeology, but in botany, specifically as to the Spring Valley “swamp cedars.” WELC Evidence Exchange and Witness List at 2 ¶ 5; Exhibits 3040, 3041. His opinion is based on the hydrogeology findings of Dr. Myers. Dr. Lanner is plainly qualified for his opinions, as he has a Ph.D. in forestry and botany and is one of the foremost experts on Spring Valley swamp cedars in the country. Id. Accordingly, his testimony should not be excluded on this basis.

Second, there is no prohibition in the Intermediate Order on evidence or testimony that overlaps other evidence. If that were so, then many of SNWA’s fifty witnesses would need to be excluded. For instance, the first twenty-seven witnesses on SNWA’s list are offered to testify as to the Las Vegas area’s need for more water. While Protestants believe that that much repetition would be improper as there is limited time for the hearing,<sup>2</sup> they do not believe it is problematic to have two witnesses testify on related matters that might overlap. Dr. Lanner’s testimony is more specific than Dr. Charlet’s, and it is appropriate to have him testify.

In fact, in order to deal with this issue, Protestants suggest that the State Engineer assign specific days of the hearing to certain parties to present their case, and leave it to the parties to decide how to best use their time. Protestants suggest assigning the first half day to motions and procedural matters, the second half of

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<sup>2</sup>. Protestants hereby stipulate that Las Vegas will need more water to continue to grow at its current rate of growth and per capita water consumption. This stipulation could save the State Engineer many hours of testimony at the hearing.

the day for public comment, the remainder of the week plus Monday of the second week for SNWA, Tuesday and Wednesday of the second week to Protestants represented by WELC, Thursday and Friday of the second week and Monday of the third week for the federal government, Tuesday of the third week for remaining public comment, and the remainder of the third week for any remaining protests or other matters.

This would also benefit the public and the parties by providing certainty as to when certain testimony and public comment will occur. For instance, Protestants' experts need to know which days to attend the hearing. Likewise, because the hearings are scheduled far from Spring Valley, those who live in and around Spring Valley and would like to present public comment need to know which days to be at the hearing. Accordingly, it would be greatly appreciated by Protestants if the State Engineer could set such a schedule in advance of the hearing, and it would deal with the issue of repetitive testimony by putting the onus on the parties to select those witnesses whom they believe will best make their case in the time allotted.

### **3. Dr. Thomas R. Harris**

Contrary to the assertion of SNWA, Dr. Harris is offered as an expert in economics. See Motion to Exclude at 16. It is true that the undersigned neglected to include the word "expert" in their list of witnesses like they did their other witnesses, but it is clear from the submissions that Dr. Harris is offered as an expert and is well-qualified to do so, being a professor of economics at the

University of Nevada, Reno, and having previously prepared economic reports on White Pine County. See Exhibit 3050-3053. It should be noted that SNWA did not denote its expert witnesses as “experts” in its witness list at all. See SNWA Witness List at 10-13.<sup>3</sup>

#### **4. Ms. Karen Rajala**

SNWA has no reason to assert that Ms. Rajala “does not appear to be qualified to testify on any of the subject matter presented . . .” Ms. Rajala is the Coordinator for the White Pine County Economic Council, and is uniquely qualified to be a fact witness to testify about the makeup of the economy of White Pine County. See Exhibit 3054.

#### **C. All Evidence Related to Species and Other Environmental Concerns Must Be Considered**

This issue generally has already been adequately addressed above. However, SNWA makes some additional specific points which bear rebuttal.

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<sup>3</sup>. Dr. Harris did not provide a signed report written specifically for this proceeding as envisioned by the Intermediate Order. However, the same appears to be true for several of SNWA’s expert witnesses, including its economic experts. See SNWA Witness List at 10-13 (e.g. at 13, Keith Schwer and John Bonow). It bears noting that the documents submitted by Dr. Harris were prepared by him and essentially fulfill this role, while SNWA offers expert testimony by people who have not necessarily submitted any documents prepared by themselves. Protestants suggest that the State Engineer address the “signed report” requirement on a case-by-case basis during the hearing, and that it not be treated in a strict manner now that would result in the exclusion of relevant evidence.

1. **Dr. James Everett Deacon**

SNWA seeks to exclude Dr. Deacon's testimony because he "makes no claim about surface water being threatened by groundwater pumping in Spring Valley."

Motion to Exclude at 17. That statement is not correct. Dr. Deacon states, inter alia:

Probable adverse effects of the proposed SNWA groundwater development project on sensitive snail and fish species in Spring and Snake valleys is summarized in Table 1. The report by Myers (2006) indicates that the proposed SNWA groundwater project will result in drawdown of the water table at Shoshone Ponds and Sacramento Pass within 20 years. The drawdown of the water table is likely to be severe enough to cause the artesian well at Shoshone ponds to quit flowing, and the springs at Sacramento Pass to fail. As a consequence, the three endangered Pahrump poolfish populations at Shoshone ponds, the imperiled relict dace population at Shoshone ponds, and the critically imperiled bifid duct pyrg population at Sacramento Pass are likely to disappear within 20 years of implementation of the proposed SNWA project. Imperiled relict dace populations at Keegan Ranch and Stonehouse Spring are likely to disappear 200-1000 years following initiation of pumping. The imperiled relict dace population in springs along Spring Valley Creek in the northern part of Spring Valley will probably be unaffected.

Exhibit 3020 at 3.

SNWA next complains that only one of the three fish species that will have their populations wiped out in Spring Valley as a result of SNWA's proposal are listed under the Endangered Species Act ("ESA"). Motion to Exclude at 17.

However, that is irrelevant. The State Engineer is required to consider the impacts to all environmental factors, including all species, in Spring Valley, and is not limited to species listed under the ESA. In any event:

Under provisions of the Endangered Species Act, the Pahrump poolfish is listed as endangered, and the Bonneville cutthroat trout and relict dace are

listed as species of concern. The Nevada Natural Heritage Database, on 31 May 2006 (Table 1), listed the three species as follows: Bonneville cutthroat trout -- S1, G4 T2 (critically imperiled in Nevada; globally secure but of long-term concern, subspecies imperiled globally); Pahrump poolfish -- S1, G1, T1 (critically imperiled in Nevada, globally, and as a subspecies); Relict Dace -- S2, S3, G2, G3 (imperiled or vulnerable in Nevada and globally).

Exhibit 3020 at 3. It can not be accepted that the State Engineer should not consider impacts to species considered by both the state and federal government to be imperiled.

Lastly, SNWA argues that Dr. Deacon's testimony should be excluded because he is "not a hydrogeologist." Motion to Exclude at 17. However, just as with its argument regarding Dr. Lanner, SNWA appears to be confused about the role of different experts in this hearing. It is the role of the hydrogeologist to predict groundwater drawdowns as a result of groundwater pumping, and Protestants's hydrogeologists, Drs. Myers and Bredehoeft, have done so. It is then the role of biologists and ecologists to take those predictions, and apply them to predict the impact on biological components Spring Valley. Dr. Deacon is a Distinguished Professor Emeritus in Environmental Studies and Biology at the University of Nevada, Las Vegas. Exhibit 3021. He is well qualified for his opinions which relate to environmental studies and biology.

## **2. Dr. David Alan Charlet**

SNWA first argues in conclusory fashion that Dr. Charlet provides only "unsupported" opinions. Motion to Exclude at 17. However, Dr. Charlet thoroughly explains the basis for his opinions, and provides an extensive "Literature Cited"

section. Exhibit 3030. SNWA is free at the hearing to cross-examine Dr. Charlet if it believes any of his statements are in error, but it can not seek to exclude his testimony based on its incorrect and overbroad attack.

SNWA next complains that Dr. Charlet fails to address how “the groundwater pumping [would cause] any adverse affect [sic] on surface water conditions that these [plant] species depend on.” This complaint is misdirected, because it is not surface water runoff that the plants discussed by Dr. Charlet primarily depend upon, but groundwater that rises to near the surface. For example, as Dr. Charlet states:

The vegetation communities in the lowest elevations of the [dry] lake are halophytic facultative phreatophytes. That is, these plants can tolerate salt, and can draw on deep groundwater. The dominant shrub in these lowest vegetated areas of the valley is greasewood (*Sarcobatus vermiculatus*) (Figure 4). This is a tall shrub (up to 3 m), that is frequently accompanied by other tall phreatophytic halophytes such as four-wing saltbush (*Atriplex canescens*), and smaller, shallow-rooted halophytes such as shadscale (*Atriplex confertifolia*). Greasewood provides valuable winter forage for wildlife and livestock (Pratt et al. 2004). Grasses also occur in these shrublands, including valuable species such as Great Basin wildrye (*Leymus cinereus*) and saltgrass (*Distichlis spicata*) (Figure 5). Both species are important forage for wildlife and livestock and is common in greasewood shrublands, and saltgrass forms the drier edges of meadows near springs (Figure 6).

Exhibit 3030 at 3. Likewise, the Spring Valley “swamp cedars” rely on groundwater at or near the surface. *Id.* at 14; Exhibit 3040 at 2. Accordingly, the species of concern in the bottom of Spring Valley are phreatophytes which rely on groundwater.

In fact, SNWA’s entire application acknowledges and relies on this fact, relying upon taking the water which is now used by these phreatophytes and which

currently leaves Spring Valley through evapotranspiration. See Exhibit 505. For instance, as SNWA's evapotranspiration expert, Dr. Deavitt, finds:

We conclude that rainfall rather than groundwater use was the largest component of the water balance (valley floor) for the native plant communities in White River Valley but not in Spring Valley. [A]t specific sites such as site 2 in Spring Valley and site 1 in White River Valley, groundwater contribution may be a significantly higher part of the water balance . . . At other sites, although the ground water connection may not be strong on the scale of the plant community, individual species such as the phreatophytic shrub greasewood may be more tightly coupled with groundwater use . . .

Exhibit 505 at 3 (emphases added). See also Exhibit 509 at 8-1 (acknowledging that perennial yield estimates are based primarily on "groundwater discharge from ET."). Accordingly, SNWA's own evidence shows that it is relying on capturing evapotranspiration now used by the dominant phreatophytic vegetation in the valley floor of Spring Valley, confirming Dr. Charlet's testimony.

### **3. Dr. Ronald M. Lanner**

The same arguments addressed above apply here. SNWA's argument that "there is no evidence that the groundwater pumping will affect surface water" is unsupportable. See Motion to Exclude at 18. First, it is groundwater, not surface water, that is used by the swamp cedars- it is simply the upper two feet of groundwater used by the swamp cedars. Exhibit 3040 at 2. Second, Dr. Myer's and Dr. Bredehoeft's evidence shows sever drawdowns from the applications, which will of necessity draw down the upper two feet of groundwater, and again SNWA can not deny that its applications essentially rely on this drying of phreatophytes like the

swamp cedars in order to capture water that now constitutes their evapotranspiration. See Exhibits 3001 & 3010.

**4. Dr. Thomas R. Harris**

SNWA seeks to exclude the testimony and evidence presented by Dr. Harris because supposedly “[n]one of the Protestants represented by WELC raises claims about the importance of ranching and farming in Spring Valley or the potential adverse consequences.” Motion to Exclude at 18. However, this argument simply ignores the facts. The Protestants have in fact raised these issues in their protests. For instance, the White Pine County protests specifically assert that the applications would “threaten springs, seeps and phreatophytes which provide water and habitat critical to the use and survival of wildlife, grazing livestock and other surface existing uses,” and that “[d]iversion and export of such a quantity of water will deprive the county and area of origin of the water needed for its environment and economic well being and will unnecessarily destroy or damage environmental, ecological, scenic and recreational values . . .” White Pine County Protests at ¶¶5-6.

**5. Ms. Karen Rajala**

SNWA’s complaints that no Protestant has raised issues relating to economic or recreational impacts should be rejected for the reasons just discussed as to Dr. Harris. See Motion to Exclude at 19. Further, that some of the documents are drafts or “not public documents” is not a ground for excluding them. No rule of evidence says so, even if the formal rules of evidence applied here. They may or may not be self-authenticating, but as long as authentication is done at the hearing




that issue will become moot, and once authenticated there is no substantive problem with them being considered.

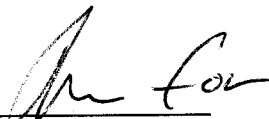
### Conclusion

For these reasons, none of Protestants claims or evidence should be excluded. Further, to the extent there are any claims not addressed in this brief, the State Engineer should wait until the hearing is complete to rule on whether they should be dismissed after receiving all the evidence and argument, just as envisioned in the stipulation between SNWA and the National Park Service filed on July 19<sup>th</sup> (at 3 ¶3) and pursuant to the State Engineer's previous practice.

Respectfully submitted July 20, 2006



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CERTIFICATE OF SERVICE

I certify that on July 20, 2006, I mailed a copy of this document and its exhibits to the following by First-Class, U.S. Mail and/or email:

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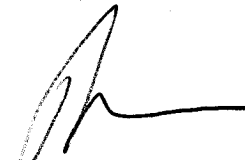
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\_\_\_\_\_  
Matt Kenna

**MINUTES OF THE**  
**SENATE Committee on Natural Resources**  
**Seventieth Session**  
**March 8, 1999**

The Senate Committee on Natural Resources was called to order by Chairman Dean A. Rhoads, at 1:45 p.m., on Monday, March 8, 1999, in Room 2144 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Dean A. Rhoads, Chairman

Senator Lawrence E. Jacobsen, Vice Chairman

Senator Mike McGinness

Senator Mark A. James

Senator Raymond C. Shaffer

Senator Bob Coffin

Senator Maggie Carlton

**STAFF MEMBERS PRESENT:**

Fred Welden, Committee Policy Analyst

Scott Corbett, Committee Secretary

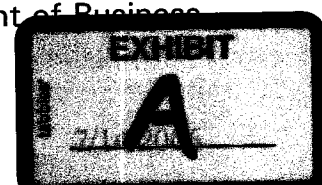
**OTHERS PRESENT:**

Jolaine Johnson, Chief, Bureau of Air Quality, Division of Environmental Protection,  
State Department of Conservation and Natural Resources

Joseph L. Johnson, Lobbyist, Sierra Club

Michelle M. Gamble, Lobbyist, Nevada Association of Counties

Don Henderson, Deputy Administrator, Division of Agriculture, Department of Business



and Industry

Stephanie D. Licht, Lobbyist, Elko County Commissioners, and Nevada Woolgrowers Association

C. Joseph Guild, Lobbyist, Nevada Cattlemen's Association

Doug Busselman, Lobbyist, Nevada Farm Bureau

Rey Flake, Chairman, Board of Commissioners, Lincoln County

Douglas N. Bierman, Lobbyist, Eureka County, Lander County, Lincoln County

Amy Halley Hill, Lobbyist, Barrick Goldstrike Mines Incorporated

R. Michael Turnipseed, State Engineer, Division of Water Resources, Department of Conservation and Natural Resources

Steve Bradhurst, Lobbyist, Planning Consultant, Nye, Lincoln and White Pine counties

Chairman Rhoads opened the hearing by asking for committee introduction on Bill Draft Request (BDR) 43-435, Bill Draft Request 26-429, and Bill Draft Request R-1663.

**BILL DRAFT REQUEST 43-435:** Revises provisions governing payment of storage fees for vessel stored to preserve evidence of crime. (Later introduced as Senate Bill 343.)

**BILL DRAFT REQUEST 26-429:** Revises provisions governing options of certain persons to purchase mineral interests owned by state in certain trust lands. (Later introduced as Senate Bill 344.)

**BILL DRAFT REQUEST R-1663:** Urges United States Senate to refrain from ratifying Kyoto Protocol to United Nations Framework Convention on Climate Change. (Later introduced as Senate Joint Resolution 14.)

SENATOR JAMES MOVED TO INTRODUCE BDR R-1663.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COFFIN VOTED NO.)

\*\*\*\*\*

SENATOR JAMES MOVED TO INTRODUCE BDR 43-435 AND

BDR 26-429.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\*\*\*\*\*

Chairman Rhoads opened the hearing on Senate Bill (S.B.) 269.

**Senate Bill 269**: Exempts older motor vehicles from provisions governing control of emissions from motor vehicles. (BDR 40-360)

Jolaine Johnson, Chief, Bureau of Air Quality, Division of Environmental Protection, State Department of Conservation and Natural Resources, spoke from prepared comments (Exhibit C) in opposition of S.B. 269. Ms. Johnson testified that even though vehicles 30 years and older, which would be exempt from emission controls in S.B. 269, only make a small percentage of the overall vehicle fleet they impede efforts to maintain air quality and health standards.

Senator James mentioned an elderly constituent of his wrote him a letter complaining about how difficult it is for her to have her older car pass an emission inspection. Senator James' constituent explained her problems stemmed from the inspection stations usually trying to charge her for undue repairs that her car did not need, and Senator James asked Ms. Johnson if there is an exemption for someone in her position. Ms. Johnson responded by saying there is an exemption for cars 20 years and older that meet certain criteria as a classic car and these cars are not subject to an annual inspection. Ms. Johnson added that S.B. 269 would not require these older cars to go through an emissions inspection or be subject to any pollution controlled regulations.

Senator McGinness asked Ms. Johnson if S.B. 269 would only affect Washoe and Clark counties because they are the only counties in the state that require an emission inspection and maintenance program. Ms. Johnson said Washoe and Clark counties are the only counties that would be affected and even parts of these counties are still exempt from emission regulations.

Senator McGinness pointed out people who own classic or old-timer type cars are concerned with the continued emission regulations keeping them from driving their cars at all.

Joseph L. Johnson, Lobbyist, Sierra Club, expressed opposition to S.B. 269 and addressed Senator McGinness' comment on classic or old-timer type cars. Mr. Johnson stated that restored classic cars or hobby cars are not their concern as these cars are usually maintained very well and do not pose any real problem because they are usually not frequently driven. Mr. Johnson went on to explain they are concerned with inclusion of all cars 30 years and older not being subject to emissions controls because these older cars are heavy polluters and this would defeat all of the progress in reducing air pollutants that has been made to date.

Chairman Rhoads closed the hearing on S.B. 269 and opened the hearing on Senate Joint Resolution (S.J.R.) 12.

**Senate Joint Resolution 12**: Encourages Congress to support establishment of working partnership between federal land management agencies and local governments on

issues relating to grazing of livestock on public lands. (BDR R-1248)

Michelle M. Gamble, Lobbyist, Nevada Association of Counties, testified in favor of S.J.R. 12 and commented S.J.R. 12 with Assembly Bill (A.B.) 291 would allow Nevada to see how, ". . . grazing trends affect the economic viability of many of our rural communities that are dependent on agriculture."

**ASSEMBLY BILL 291**: Makes appropriation to Division of Agriculture of Department of Business and Industry for development of statewide data base and economic analysis of grazing trends on public lands. (BDR 5-1490)

Ms. Gamble pointed out it may be more appropriate, because of A.B. 291, to change page 2, line 14 of S.J.R. 12 from "Nevada Association of Counties" to "Nevada Division of Agriculture."

Don Henderson, Deputy Administrator, Division of Agriculture, Department of Business and Industry, spoke in support of S.J.R. 12 and used a handout of a power point presentation on grazing trends in Nevada (Exhibit D) given in support of A.B. 291.

Chairman Rhoads mentioned he has heard people questioning the accuracy of the grazing trend studies outlined in Mr. Henderson's presentation and asked Mr. Henderson if he has double-checked the results. Mr. Henderson said the results given in his presentation came directly from the agency file and do not illustrate the reason for the reductions, but the study outlined in A.B. 291 would attempt to formulate the reasons for the reductions in Animal Units per Month (AUM) and economic growth.

Senator Coffin commented land-based protein sources should be increasing because of the reduction of fish stocks and increased regulation of the fishing industry. Mr. Henderson concurred with Senator Coffin's remark and added beef protein is a good and cheap source of protein for the country's population.

Stephanie D. Licht, Lobbyist, Elko County Commissioners, and Nevada Woolgrowers Association, spoke in support of S.J.R. 12 because it supports the economic diversification of rural counties and communication between the local and federal government regarding the livestock industries.

C. Joseph Guild, Lobbyist, Nevada Cattlemen's Association, said legislation like S.J.R. 12 which raises awareness for the need of local and federal government agencies to cooperate is needed, and that is why they support S.J.R. 12.

Doug Busselman, Lobbyist, Nevada Farm Bureau, spoke in support of S.J.R. 12 and mentioned there has been a strong emphasis over the past few years for local and federal agencies to cooperate. Mr. Busselman said S.J.R. 12 encourages and recognizes the current cooperation.

Rey Flake, Chairman, Board of Commissioners, Lincoln County, agreed with Mr. Busselman's comments and added how important it is for the rural counties to maintain cooperation with federal agencies since they have to work with them on many issues.

Douglas N. Bierman, Lobbyist, Eureka County, used a handout (Exhibit E) to outline the AUM and

economic reductions that have affected Eureka County. Mr. Bierman went on record for the people of Eureka County in support Senate Joint Resolution 12.

Chairman Rhoads closed the hearing on S.J.R. 12 and opened the work session on S.B. 108.

**Senate Bill 108**: Revises provisions governing interbasin transfers of water. (BDR 48-922)

Senator McGinness, Chairman of the subcommittee on S.B. 108, went over the two proposed amendments (Exhibit F) to S.B. 108. The first amendment was proposed by the subcommittee on S.B. 108 which was derived from language found in the State Water Plan, and the other proposed amendment by the Humboldt River Basin Water Authority which was found to be acceptable by the subcommittee members but not specifically voted on by the subcommittee. Senator McGinness added that Barrick Goldstrike Mines Inc. would like an additional amendment regarding mine dewatering activities.

Amy Halley Hill, Lobbyist, Barrick Goldstrike Mines Incorporated, said they had spoken with the State Water Engineer, R. Michael Turnipseed, in regards to the proposed amendment (Exhibit G) for mine dewatering activities not to be considered an interbasin transfer, and Mr. Turnipseed has found it to be acceptable.

R. Michael Turnipseed, State Engineer, Division of Water Resources, Department of Conservation and Natural Resources, said he has no problems with the three aforementioned proposed amendments to S.B. 108, but still is concerned with the part of the subcommittee's proposed amendment regarding the environment and his responsibilities to guarding it. Mr. Turnipseed stated:

We did have some additional discussion regarding bullet 2, whether the project is environmentally sound. I brought up the situation where we get caught in the chicken and the egg thing on whether an environmental impact statement should be done if required or whether I should take action on the water appropriations before they begin the environmental review process. I brought up my being comfortable with administering the water rights of the state or water resources of the state, but I didn't [did not] feel comfortable being the guardian of increased smog or increased traffic or increased crime if the water was to be exported to a municipality.

Senator James stated he thinks Mr. Turnipseed is saying the state water engineer should be responsible for the hydrologic environmental impact in the export of water in the basin of origin but should not be responsible for the environmental effects in the basin importing this water. ]

Fred Welden, Committee Policy Analyst, Research Division, Legislative Counsel Bureau, commented he needs clarification on the proposed amendment dealing with mine dewatering, in regards to it being drafted specific to the public interest discussed in *Nevada Revised Statutes* (NRS) 533.370 or to be inclusive of all portions of the statutes dealing with interbasin transfers of water. Mr. Turnipseed stated that the proposed amendment would address interbasin transfers of water as used in NRS 533.370 and would state that mine-dewatering activities that ultimately flow out of the basin of origin shall not be treated as interbasin transfers. Ms. Hill commented

that her understanding was this proposed amendment was to address NRS 533.370.

Senator James questioned if all mine-dewatering projects should be exempt per the proposed amendment from the Barrick Goldstrike Mine or should all mine dewatering projects be subject to the criteria outlined in the subcommittee's proposed amendment regarding environmental impact like any other interbasin transfer of water. Ms. Hill stated they are not asking that mine-dewatering projects be exempted from permits with respect to water, but mine-dewatering not be considered an interbasin transfer of water. Senator James responded by saying any amendment to NRS 533.370 (water permit requirements) needs to meet three requirements. One of these requirements involves public interest; i.e., an environmental impact study, and exempting mine dewatering from being subject to an environmental impact study could result in possible litigation. Ms. Hill stated that this is not their intention and they would like to address Senator James' concerns.

Chairman Rhoads stated the committee will take no action on S.B. 108 for other concerns to be addressed and asked if anyone else would like to testify on S.B. 108.

Steve Bradhurst, Lobbyist, Planning Consultant, Nye, Lincoln and White Pine counties, commented that the mine-dewatering issue may be solved by adding another part to the subcommittee's proposed amendment defining an interbasin transfer of water to be permanent and a mine-dewatering project as temporary. Since mines are temporary this might address the concerns of Senator James and allow for a differentiation of a mine-dewatering project (temporary) and an interbasin transfer of water (permanent). Mr. Bradhurst added he understands Senator James' point of the importance of an environmental impact analysis as related to mine dewatering, whether or not the permit is considered temporary or permanent.

Chairman Rhoads closed the work session on S.B. 108 and opened the work session on Senate Concurrent Resolution (S.C.R.) 15.

**Senate Concurrent Resolution 15:** Urges certain state agencies to use labor provided by offenders and volunteers for construction and maintenance of certain facilities and projects in Lake Tahoe Basin. (BDR R-315)

Senator Jacobsen talked in favor of S.C.R. 15 and referred to a report (Exhibit H) showing the amount of money saved in using inmate work crews.

SENATOR JACOBSEN MOVED TO ADOPT S.C.R. 15.

SENATOR JAMES SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

There being no further business before the committee, the meeting was adjourned at 2:45 p.m.



RESPECTFULLY SUBMITTED:

Scott Corbett,

Committee Secretary

APPROVED BY:

Senator Dean A. Rhoads, Chairman

DATE:

**MINUTES OF THE**  
**ASSEMBLY Committee on Natural Resources, Agriculture, and Mining**  
**Seventieth Session**  
**April 21, 1999**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 2:00 p.m., on Wednesday, April 21, 1999. Chairman Marcia de Braga presided in Room 3161 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All Exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mrs. Marcia de Braga, Chairman

Mrs. Gene Segerblom, Vice Chairman

Mr. Douglas Bache

Mr. John Carpenter

Mr. Jerry Claborn

Mr. Lynn Hettrick

Mr. David Humke

Mr. John Jay Lee

Mr. John Marvel

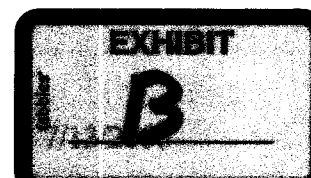
Mr. Harry Mortenson

Mr. Roy Neighbors

Ms. Genie Ohrenschall

Ms. Bonnie Parnell

**GUEST LEGISLATORS PRESENT:**



Señator Dean Rhoads, Northern Nevada Senatorial District

**STAFF MEMBERS PRESENT:**

Linda Eissmann, Committee Policy Analyst

Sharon Spencer, Committee Secretary

**OTHERS PRESENT:**

Amy Hill, Representing Barrick Goldstrick Mines

Naomi Duerr, State Water Planner

Steve Bradhurst, Representing Nye, Lincoln, and White Pine Counties Board of Commissioners

Pete Goicoechea, Chairman, Eureka County Board of Commissioners

John Balliette, Representing Eureka County Board of Commissioners

Karen Peterson, Representing Eureka County Board of Commissioners

Hugh Ricci, Deputy State Engineer, Nevada Division of Water Resources

Doug Bierman, Representing Humboldt River Basin Water Authority

Chris Weiss, Representing Southern Nevada Water Authority

Joe Guild, Representing Newmont Gold Company

Pamela Wilcox, Administrator, Nevada Division of State Lands

After roll was called, the Chairman opened the hearing on S.B. 108.

**Senate Bill 108: Revises provisions governing applications for use of water. (BDR 48-922)**

Senator Dean Rhoads of the Northern Nevada Senatorial District was the first to testify in support of the proposed legislation. He explained interbasin transfers of water had been addressed in Nevada for many years and was an issue of great importance to both urban and rural areas of the

state. During the 1997 Legislative Session, S.B. 454 was introduced, but did not receive the attention it deserved because it was introduced late in the session. Therefore, it was recommended that the Committee on Public Lands investigate the subject in greater depth prior to the 1999 Legislative Session.

Senator Rhoads pointed out the measure outlined the criteria the state engineer must consider when reviewing an application for an interbasin transfer of ground water. The proposed legislation provided a statutory definition of interbasin transfer of ground water and clarified the responsibilities of the state engineer, which must be determined in order to consider if additional studies were needed prior to postponing action on an application. The criteria for determining the need for additional studies, which was developed from the 1993-1994 Interim Legislative study of the state water plan in consideration of the use, allocation, and management of water, was as follows:

- Whether the applicant had justified the need to import water to another basin.
- Whether the applicant had demonstrated that a conservation plan had been adopted and was being effectively carried out in the basin into which the water was being imported.
- Whether the proposed action was environmentally sound as it related to the basin from which the water was exported.
- Whether the proposed action was an appropriate use that did not unduly limit the future growth and development in the basin from which the water was being exported.
- Any other factors the state engineer determined to be relevant to the issue.

Senator Rhoads concluded his testimony by urging the committee to support S.B. 108. The senator's entire testimony was included in Exhibit C.

Amy Hill, representing Barrick Goldstrick Mines, was the next proponent of the proposed legislation to testify. She said the mining industry supported the measure. She pointed out the proposed legislation would not exempt the mining industry from review by the state engineers or from the criteria established by the interim committee for the review process.

The Chairman asked Ms. Hill if the mining industry had initially been exempted from the proposed legislation, to which Ms. Hill responded in the negative. She added interbasin water transfer permit requirements were the most strictly enforced for the mining industry. The mining industry wanted an exact definition of interbasin water transfer to be included in the measure, but had never requested or received an exemption from the permitting process.

Mr. Mortenson asked who comprised the legislative interim Committee on Public Lands. Ms. Hill explained it was a statutory committee and the committee members were Mr. Neighbors, Ms. Ohrenschall, Mr. Marvel, and others including members of the public.

Naomi Duerr, State Water Planner, spoke as a proponent of the proposed legislation. She said the measure was the result of a great deal of effort and consensus. The timing and development of the measure preceded the interim committee, she pointed out. The issue went back into the history of the state and was an integral part of the settlement of Nevada. It involved the withdrawing either of groundwater or surface water from one basin or county for beneficial use in another basin or county. Growing urban areas were looking for ways to purchase and transfer existing water rights and change them to municipal use water rights as a way of augmenting instream flows.

Ms. Duerr said water transfers had contributed to the economic development, growth, and prosperity of Nevada, but the cost of conducting a basin transfer was very great and could potentially impact the following (Exhibit D):

- The rights of existing water users could be permanently effected.
- Reduction of instream flows.
- Decreased flow to wetlands and lakes downstream at points of diversion.
- Decreased recharge to aquifers
- Social, economic, and fiscal concerns regarding potential losses of taxable income, social stability, or future economic development as related to population impacts on growing urban areas.

Ms. Duerr pointed out section (b) of the proposed amendment to the legislation submitted by Eureka County (page 2 of Exhibit E) was inaccurate and should be reworded. It stated *if the state engineer determines that a plan for conservation* was needed regarding interbasin water transfers. The statement was incorrect because Nevada Revised Statutes (NRS) 540 required the conservation plan be presented, and therefore, was not a requirement "to be determined by the state engineer."

Mr. Neighbors asked if she had requested the Senate amend the language of Eureka County's amendment. Ms. Duerr replied in the negative.

Mr. Hettrick asked why it was necessary to restate in the proposed amendment the requirement that conservation plans had to be submitted if that requirement already appeared in statute. Ms. Duerr responded that the state water plan was about to be adopted. After its adoption, no additional regulations could be included in the plan. It was important to address all concerns before the plan was approved.

Steve Bradhurst, representing Nye, Lincoln, and White Pine Counties Boards of Commissioners, was called upon by Chairman de Braga to testify on S.B. 108. He explained the state engineer had to consider certain issues when reviewing applications for water transfers. He had to be certain there was sufficient ground water available and if transferring water would adversely impact another party's water rights. The state engineer also had to determine if granting the transfer was in the public interest. Nye, Lincoln, and White Pine Counties were three rural

counties who were involved in a water importation project since 1989. Their greatest concern was would there be enough water left in the basin from which the water came to ensure that basin would remain environmentally viable.

Mr. Bradhurst said there was need for a concise definition of what was required in order to ensure public interest would be protected regarding water rights laws, particularly as it applied to interbasin transfers. It was important to protect the future environment of basins in rural communities to ensure water would be available for future growth.

Mr. Marvel asked if Clark County had withdrawn its applications, to which Mr. Bradhurst responded in the negative, adding Clark County had 121 applications filed in the three rural counties he represented.

Pete Goicoechea, Chairman of the Eureka County Board of Commissioners, testified as a proponent of the proposed legislation. He said he was concerned the language of the proposed amendment would exempt the mining industry for the proposed criteria and strict guidelines of the language relating to interbasin water transfers. He said he was specifically concerned that the language stated the beneficial use of the water transferred occurred at the point of dewatering and the balance of the water would be considered wastewater. Over 2 million acre-feet of water would be discharged as wastewater at the three mines in northern Eureka County. He asked if all that water was actually wastewater. He said if it was wastewater, there was no logic in discharging it into Eureka County rivers. Eventually the water would leave the county entirely. Mr. Goicoechea presented the committee with a proposed amendment to the legislation along with his testimony and a map, which showed mine dewatering discharge locations in the Humboldt River Basin (Exhibit E).

John Balliette, representing Eureka County Board of Commissioners, was called upon to testify on the issue of mine dewatering. He said mine dewatering was not legally an interbasin water transfer, the end result was an interbasin water transfer. He used the Humboldt-Carson Sink as an example of such a transfer and added both areas were at record levels. He predicted negative environmental influences would occur in areas included in the transfer process as well as long-term negative impacts on surrounding areas.

Mr. Lee asked what Mr. Balliette's main concerns were. Mr. Balliette said he wanted the interest of the public protected. That would be accomplished by including language into S.B. 108, which would ensure all proposed beneficial water uses were thoroughly reviewed during the permitting process to ensure the proposals were environmentally sound.

DECLARATION OF KATHERINE KAISER ROUNTREE

1. My name is Katherine Kaiser Rountree. I live with my husband William R. Rountree, and own the property known as the D-X Ranch in Spring Valley, Nevada. Our mailing address is HC64 Box 64510, Ely, NV 89301. The following is the legal description of our property: Parcel #'s 2, 3, 4, 5, 6, & 7. SE ¼ of Section 17, T.15N., R68 E., M.D. B. & M. of the large Parcel Map filed in the White Pine Co. Recorder's Office. The attached maps shows where our property is located.

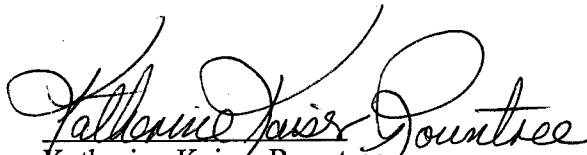
2. We also own spring water rights in Spring Valley associated with this property, Permit # 5546, certificate 714.

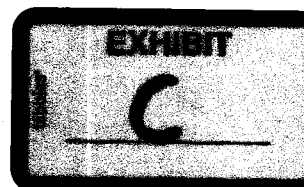
3. I have continuously lived here since 1972, William since 1986. We use our water for irrigation, stock watering and domestic purposes.

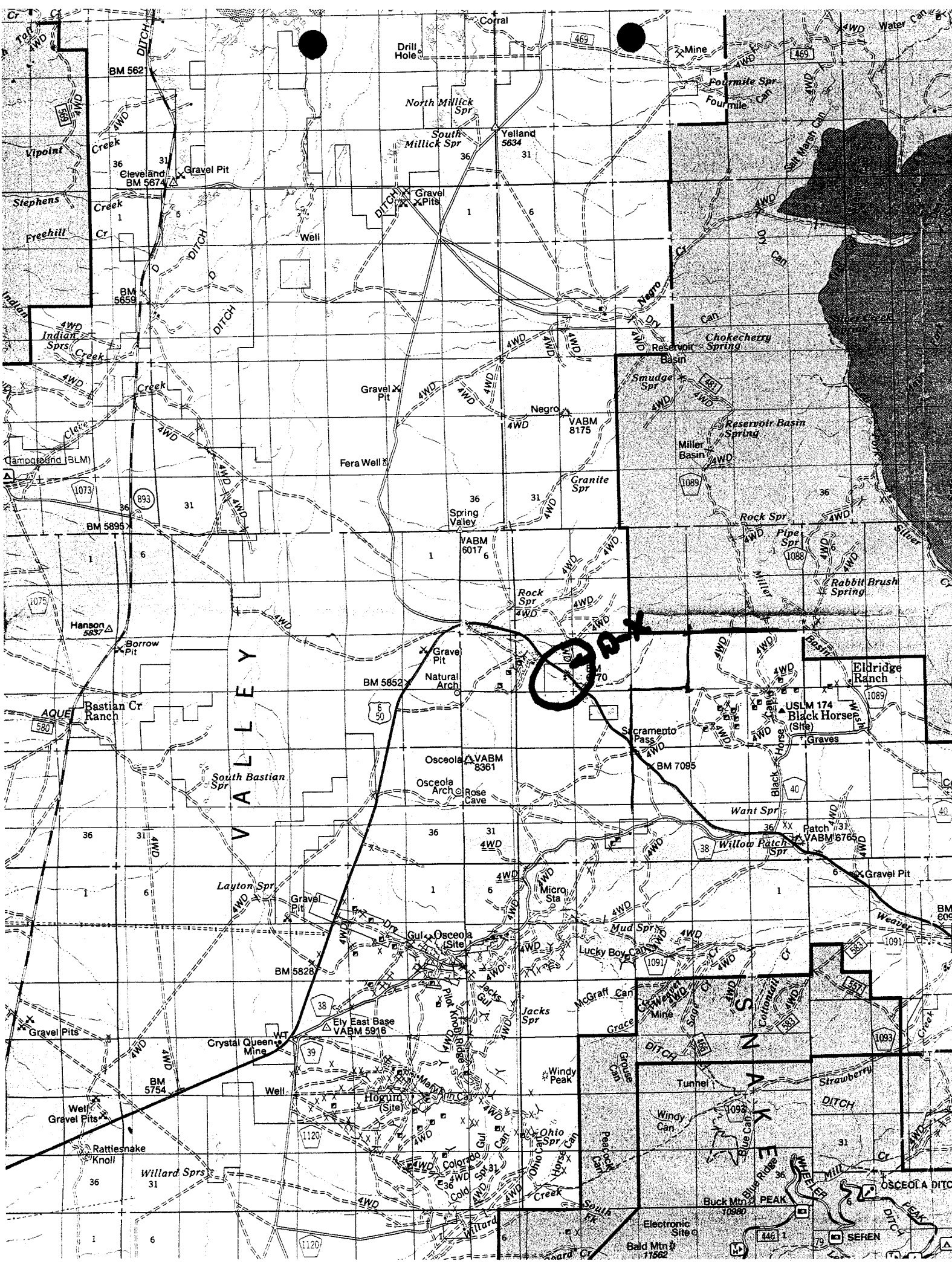
4. The applications we protested are down hill from the ranch and very close to us. It appears based on the available evidence that the volume SNWA is asking for will drawdown the water table so as to deplete or dry up our springs, as our property lies in the drawdown zone for the applications (see Exhibit 3001 at 52-63). Accordingly, we are protesting SNWA's applications in Spring Valley.

I declare under penalty of perjury that the forgoing is true and correct.

7/16/06  
Date

  
Katherine Kaiser Rountree







## DECLARATION OF JOHN BREDEHOEFT

I, John D. Bredehoeft, do declare as follows:

1. I have wide experience in the hydrogeology of Nevada. My Ph.D. dissertation, entitled *The hydrogeology of the lower Humboldt River Valley*, was published as Technical Report 3 of the Desert Research Institute (DRI), University of Nevada (Bredehoeft, 1963), and in part as a refereed journal article (Bredehoeft and Farvolden, 1963).

2. There were a number of original ideas in these two papers that have found their way into the general practice of hydrogeology in Nevada. We were the first to demonstrate:

- a. The driller's logs contained rock texture information that could be used to interpret the subsurface geology. Prior to our work the driller's logs were thought to be of such poor quality as to be of little value.
- b. The more permeable deposits in the valley-fill were found to be near the center of many, if not most valleys in northern Nevada. They were out near the toe of the present day alluvial fans and beneath present day playas. These are areas where the present day deposits are fine grained—generally less permeable. The permeable deposits are buried stream gravels that reflect a much wetter period, during the Pleistocene, when there were larger, through flowing streams in many of these valleys. This observation revised the ideas of where to look for the most permeable deposits in the valley fill.
- c. The hydraulic conductivity of the permeable gravel deposits could be fit to a lognormal distribution—a new idea at the time. (In his model Durbin fits the hydraulic conductivity of the geologic units to a lognormal distributions.)

3. In 1968, George Pinder and I published the first widely used digital groundwater model (Pinder and Bredehoeft, 1968); it was one of the earliest digital model analyses. The paper won the Horton Award of the American Geophysical Union.

4. My partner, Michael King, and I are the principals in the Hydrodynamics Group, LLC. We provide oversight on the Yucca Mountain Nuclear Repository for Inyo County, California. Our concern has been the potential transport of contaminants from the repository through the carbonate aquifer into Death Valley where water from the aquifer discharges in a number of major springs in the vicinity of Furnace Creek. The carbonate aquifer is known to underlie Yucca Mountain and provide one of the potential pathways radionuclides to reach the biosphere. I published an analysis (Bredehoeft, 1997) that provided an estimate of the permeability of faults that penetrate the carbonate aquifer beneath Yucca Mountain. Recently, I modeled groundwater flow through the carbonate aquifer in the Funeral Mountains, and through the alluvial sediments associated with the major Furnace Creek springs. Our Group supervised drilling deep exploratory drill holes to the carbonate aquifer in the lower Amargosa Valley area, north of the Funeral Mountains. We are in the process of completing two deep holes as carbonate observation wells. I am engaged in evaluating the applicability of the USGS-16 layer groundwater model as it applies to the carbonate aquifer in the Yucca Mountain/Amargosa Valley/Death Valley flow system.



5. I provide hydrologic expertise to the Western Environmental Law Center in its mediation of water from the Walker River for Walker Lake.

6. These activities demonstrate a continued involvement with the hydrogeology of Nevada, dating back to 1963—more than 40 years.

#### **INTERACTION WITH TOM MYERS FOR OUR SPRING VALLEY REPORTS:**

7. Tom Myers, like me, works alone. In this situation it is important to have a colleague to bounce your ideas off and to provide critical review of your investigation and analysis. I provide a colleague for Tom and criticism of his work—his conceptual ideas, his model analysis, his output, and his reports associated with Spring Valley. Tom has made major changes in his approach as a result of our discussions and my constructive criticism; he continues to make changes based upon our conversations. For instance, I requested that Tom provide the analysis of water from storage depletion that I included in my June 30 statement. This was information he had not included in the first draft of his report.

8. I considered whether I should have been listed as a co-author of Tom's Spring Valley model report. Although it was a close call, I decided that it would be more accurate for me not to do so, as I am reluctant to co-author work in which I did not do a significant enough part of the analysis. However, I did provide oversight for Tom's work, and reviewed the data and methods upon which his report relies. Accordingly, I had a sufficient basis upon which to base my report to the State Engineer.

I declare under penalty of perjury that the forgoing is true and correct.



John D. Bredehoeft  
18 July 2006

#### **REFERENCES**

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