

In The Matter Of:

In Re: Applications 53987-53992

*Pre-Hearing Conference
August 28, 2007*

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STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES
BEFORE SUSAN JOSEPH-TAYLOR, HEARING OFFICER

IN RE:
53987-53992.

TRANSCRIPT OF PROCEEDINGS
PRE-HEARING CONFERENCE
TUESDAY, AUGUST 28, 2007
CARSON CITY, NEVADA

Reported by:

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[1] CARSON CITY, NEVADA, TUESDAY, AUGUST 28, 2007, 9:00 A.M.
[2] -oOo-

[3]
[4] **HEARING OFFICER JOSEPH-TAYLOR:** Let's be on the
[5] record. As set forth in the notice of July 13th, 2007, this
[6] is the time and place noticed for a pre-hearing conference on
[7] protested applications 53987 through 53992.

[8] For the record, my name is Susan Joseph-Taylor
[9] and I'm Chief of the Hearing Section of the Division of Water
[10] Resources. With me is State Engineer Tracy Taylor, Deputy
[11] State Engineer Bob Coache, Deputy State Engineer Kelvin
[12] Hickenbottom, Deputy State Engineer Jason King, and Chief
[13] Hydrologist Rick Felling.

[14] Appearances for the record, please, applicant.

[15] **MR. TAGGART:** Good morning. My name is Paul
[16] Taggart. I'm representing the Southern Nevada Water
[17] Authority.

[18] **MR. ENTSMINGER:** John Entsminger, Southern Nevada
[19] Water Authority.

[20] **MR. TAGGART:** Also with us today is Ken Albright.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you
[22] Mr. Herksovits.

[23] **MR. HERKSOVITS:** Madam Hearing Officer, I'm
[24] Simeon Herksovits with Advocates For Community & Environment.
[25] I'm here on behalf of a number of protestants, including

APPEARANCES:
For the State:

TRACY TAYLOR, State Engineer
JASON KING, Deputy State
Engineer
ROBERT COACHE, Deputy State
Engineer
KELVIN HICKENBOTTOM, Deputy
State Engineer
RICK FELLING, Chief
Hydrogeologist

For the Applicant:

TAGGART & TAGGART
Attorneys at Law
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Carson City, Nevada
JOHN ENTSMINGER, SNWA
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Las Vegas, Nevada

For the Protestants:
(See Text Body)

SIMEON HERKOVITZ
Advocates for Community
Development
129-C Kit Carson Road
Toas, New Mexico

For the Protestants -
Federal Bureaus:

OFFICE OF THE SOLICITOR
BY: STEPHEN PALMER
2800 Cottage Way, Room E1712
Sacramento, California

For the Protestants -
White Pine and Nye Counties,
Alamo Sewer & Water
District:

GEORGE BENESCH
Attorney at Law
190 West Huffaker Lane
Reno, Nevada

For the Protestant -
Moapa Band of Paiutes:

ZIONTZ, CHESTNUT, VARNELL,
BERLEY & SLONIM
Attorneys at Law
BY: RICHARD BERLEY
2101 Fourth Ave., Ste. 1230
Seattle, Washington
KILPATRICK, JOHNSTON & ADLER
Attorneys at Law
BY: ROBERT G. JOHNSTON
412 North Division Street
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[1] White Pine County, Nevada, Inyo County, California, the Alamo
[2] Sewer & Water District, the Lund Irrigation Company, Preston
[3] Irrigation Company, the Carter Cattle Company, the Quarter
[4] Circle 5 Ranch, James I. Lee, Frank Delmue, Virginia
[5] Kreimeyer, John Wadsworth, the Toiyabe Chapter of the Sierra
[6] Club, the Nevada Cattlemen's Association, Eastern Unit.

[7] And there are two or three other protestants who
[8] have expressed an interest in having my representation. I'm
[9] not sure that I really am authorized to say that I represent
[10] them at this time. Do you want to know their names or not?

[11] **HEARING OFFICER JOSEPH-TAYLOR:** Please, because
[12] had a phone call yesterday.

[13] **MR. HERKSOVITS:** One of them is a protestant
[14] listed as Debra Lani. She's now returned to her maiden name,
[15] Debra Whipple. Another is a gentleman named Chet Johnson who
[16] is one of two joint protestants, Chester Johnson is his name
[17] in the service list, and last is a protestant named Steven
[18] Klomp.

[19] **HEARING OFFICER JOSEPH-TAYLOR:** I had a phone
[20] call yesterday from a former board member of Citizen Alert
[21] who said they were going to contact you. I told them that
[22] they needed to make an appearance here today to participate
[23] in the hearing because this is the time to make your
[24] appearance. Are you acting on behalf of Citizen Alert or is
[25] there a possibility you will be?

[1] **MR. HERKSOVITS:** I was contacted by a board
[2] member of Citizen Alert yesterday morning and was told that
[3] that was their intention. We planned to speak again later
[4] yesterday and it didn't happen as I traveled, but yeah, I
[5] actually neglected to mention them, but as far as I
[6] understand it, Citizen Alert and actually one other original
[7] protestant have both expressed, board members or directors,
[8] have expressed an interest in having me represent them.

[9] In addition to Citizen Alert, the Las Vegas Fly
[10] Fishing Club is interested in moving forward, and they have
[11] been I don't know if I should say transformed into or
[12] absorbed into Trout Unlimited. So it's one of the Nevada
[13] Chapters of Trout Unlimited now. But again, they contacted
[14] me yesterday and they had spoken with me earlier as well
[15] about the likelihood of them wanting to proceed with their
[16] protest and having me represent them.

[17] **HEARING OFFICER JOSEPH-TAYLOR:** I want to for the
[18] record, Citizen Alert's mail came back at our last
[19] pre-hearing conference a year and a half ago as addressee
[20] unknown which is why they were not on the service list. I
[21] was not going to waste the taxpayers' money sending certified
[22] mail to addresses I know are going to come back.

[23] The same is true of Las Vegas Fly Fishing Club,
[24] and maybe you and I should touch base on your other clients
[25] afterwards because I didn't get all their names because a lot

[1] Mr. Benesch.

[2] **MR. BENESCH:** George Benesch here representing
[3] White Pine County, Nye County and Alamo Sewer & Water
[4] District. We have some overlap that we'll straighten out
[5] between us.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** Go ahead,
[7] Mr. Herksovits.

[8] **MR. HERKSOVITS:** I'm sorry. Yeah, we are
[9] co-counseling at least with regard to some of the
[10] protestants, White Pine County in particular. Madam Hearing
[11] Officer, there are a number of individuals and entities that
[12] are not formally listed as protestants but have also asked me
[13] to appear on their behalf if that's appropriate at this time
[14] because they're either -- in once instance they filed
[15] protests recently because they only recently became aware and
[16] also recently although a little bit longer ago acquired land
[17] and water rights.

[18] So for whatever reasons they have, they went
[19] ahead and filed protests. I'm not sure if you received them
[20] yet, but I don't know if you want to know about individuals
[21] and entities that are at least on the horizon expecting to
[22] submit applications or petitions to be recognized as
[23] interested persons for purposes of the hearing.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** I think this is a
[25] little late for that. It was 30 days before any pre-hearing

[1] of mail is coming back and they need to get their addresses
[2] corrected in our files if they want notice.

[3] **MR. HERKSOVITS:** Madam Hearing Officer, if I
[4] could, because we've been contacted by people who have said
[5] they want to maintain their protests and are looking for
[6] representation and have spoken directly with me or through
[7] second and third parties have contacted me for that purpose,
[8] one of the requests I have for the State Engineer's staff was
[9] if protestants who have not managed to put in an appearance
[10] today can be given an additional period of time to formally
[11] make their appearance in order to preserve their right to
[12] participate in or present a case in chief at the hearing.

[13] The reason being that there are a number of these
[14] original protestants who, for reasons that probably don't
[15] need to be enumerated, have gotten elderly, they've moved or
[16] things have changed with their personnel. So sometimes the
[17] mail isn't reaching them or they're hearing through some of
[18] the protestants I already represent about this opportunity,
[19] and it's just proving to be a bit laborious to track them
[20] down and make sure I know if and when they actually want to
[21] use me as their lawyer for legal representation.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** I am setting
[23] another date on something else as September 21st,
[24] Mr. Herksovits. If they have not made an appearance by
[25] September 21st they will not participate in the hearing.

[1] conference.

[2] **MR. HERKSOVITS:** I believe the provision in the
[3] code actually says 30 days before either a pre-hearing
[4] conference or the hearing itself.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** I intended to mean
[6] the pre-hearing conference because not every hearing has a
[7] pre-hearing conference. By the 21st, Mr. Herksovits, all of
[8] you submit a notice of representation.

[9] **MR. HERKSOVITS:** Including people who are
[10] seeking --

[11] **HEARING OFFICER JOSEPH-TAYLOR:** And we'll flush
[12] that out, I just want a list of where you say everybody you
[13] say you're representing by the 21st date.

[14] I first want to begin today with the issue of
[15] protest allegations. State Engineer Taylor has really been
[16] making an effort to streamline these hearings, eliminate what
[17] are considered frivolous protest issues or protest issues not
[18] related to Nevada water law and policy.

[19] Steve, I'm sorry, I skipped right over you.

[20] **MR. PALMER:** You can always come back to me.
[21] Steve Palmer, U.S. Department of the Interior representing
[22] the Bureau of Land Management, United States Fish and
[23] Wildlife Service, the National Park Service and the Bureau of
[24] Indian Affairs.

[25] **HEARING OFFICER JOSEPH-TAYLOR:** You're wearing

[1] lots of hats today. Back to the protest allegations. As I
[2] mentioned, State Engineer Taylor is really trying to
[3] streamline these hearings and eliminate issues that are not
[4] related to Nevada water law and Nevada policy.

[5] I know people often put everything under the
[6] kitchen sink in a protest and hope to throw it against the
[7] wall and see if something sticks. Well, we're going to ask
[8] you to not do that anymore. We want you to refine your
[9] protests, look through them carefully and make sure
[10] everything is related to Nevada water law and policy.

[11] For example, there's been a protest issue on
[12] changing plumbing fixtures. Well, the State Engineer is not
[13] the regulator of plumbing fixtures, so we're not going to get
[14] into low-flow plumbing fixtures and things like that.

[15] We're going to ask you by that same September
[16] 21st date to review your protests and to voluntarily drop any
[17] protest issues not related to Nevada water law and Nevada
[18] policy. You may not add protest issues, we're just refining
[19] protest issues. Thank you.

[20] **MR. TAGGART:** Ms. Taylor, if I can, we actually
[21] believe that there's a number of protest issues that have
[22] been ruled upon conclusively in other rulings, and we've
[23] prepared a request that the State Engineer apply those prior
[24] rulings to those protest issues.

[25] **HEARING OFFICER JOSEPH-TAYLOR:** If you'd want to

[1] First let's talk about, Mr. Taggart, the previous
[2] rulings because I believe you've been working on something
[3] and then we'll talk about incorporating the record.

[4] **MR. JOHNSTON:** Madam Chairman, if it's
[5] appropriate, Robert Johnson, Kilpatrick, Johnston & Adler
[6] appearing on behalf of the Moapa Band of Paiute Indians and
[7] with me today is Richard Berley with the firm of Ziontz,
[8] Chestnut, Varnell, Berley & Slonim, and we will be making a
[9] motion for association pursuant to Supreme Court Rule 42.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you. Was
[11] there anyone else wanting to make an appearance? Richard,
[12] you can speak.

[13] **MR. BERLEY:** Richard Berley. It didn't seem that
[14] all the appearances had been taken on record.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** Nobody raised
[16] their hands and they aren't up here. That's why I'm asking
[17] now, is there anyone else wanting to make an appearance?
[18] Mr. Garabedian.

[19] **MR. GARABEDIAN:** Yes. Agriculture and Water
[20] Science Forum filed a protest today in three of the
[21] applications before you. We hope those protests will be part
[22] of this hearing.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Benesch, you
[24] had something else to say?

[25] **MR. BENESCH:** I believe Mr. Gardner wanted to

[1] seconds, that's my next paragraph. That's right where I'm
[2] going.

[3] Along similar lines to protest issues, the State
[4] Engineer has previously ruled on nearly every one of the
[5] protest issues in these protests because the protests were
[6] almost identical across the board, and we've heard much of
[7] the same evidence that would be presented here and the State
[8] Engineer is asking me to try to streamline these hearings.

[9] They're extremely time-consuming, they're
[10] extremely expensive and like Mr. Herksovits, your group is
[11] probably a nonprofit group, so we're trying to figure out how
[12] to make them go faster, smoother and not cost as much.

[13] I'd like to have a discussion, Mr. Taggart, on
[14] protest issues previously ruled on and incorporating some of
[15] the record from the Spring Valley hearing which covers many
[16] of the statutory criteria and protest issues.

[17] For example, I do not believe we need to repeat
[18] the testimony and evidence from the applicant on the need for
[19] water unless you want to supplement the record, the financial
[20] ability to build the project, conservation plans, we don't
[21] want to hear groundwater modeling 101 and topics like that.

[22] They were covered in-depth. Mr. Herksovits,
[23] Mr. Benesch, you were here representing people, it's public
[24] record in this agency. I want to do two things here,
[25] gentlemen.

[1] note that he was here on behalf of his ranch.

[2] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you.
[3] Anyone else wanting to make an appearance on the record?
[4] Hearing none, thank you. Mr. Taggart, let's go to protest
[5] issues previously ruled on.

[6] **MR. TAGGART:** Thank you, Ms. Hearing Officer. We
[7] have asked in our letter to you requesting a hearing that
[8] certain protest issues and certain statutory criteria be
[9] conclusively determined because in prior cases we've gone
[10] over and over and over the same issues, and we've prepared a
[11] letter that outlines what these issues are.

[12] We believe that this is not a motion to dismiss,
[13] this is simply a statement of what issues have been ruled
[14] upon in prior decisions. We did not list every possible
[15] protest issue that's been ruled on in the past that we think
[16] could be conclusively determined now. We just took the ones
[17] that are obvious and we don't think there's any dispute
[18] about.

[19] There's multiple decisions and rulings in Tikapoo
[20] Valley and Three Lakes Valley, there's decisions in the
[21] Spring Valley ruling, there's decisions in the Garnet and
[22] Hidden Valley rulings and also in the California Wash ruling
[23] that all cover the same bases.

[24] So what we've done is we've outlined what those
[25] issues are and we've cited to the ruling and the page in that

[1] ruling where we think that this issue has been decided, and
[2] we have a letter and copies of it for everyone to give out.

[3] For instance, we covered some of the same ones
[4] that you just discussed; the need for the water, and these
[5] are statutory criteria, the need for the water, the
[6] conservation plan in the importing basin, financial ability,
[7] good faith and reasonable diligence. And we just took
[8] information directly out of prior rulings where these issues
[9] have been ruled upon.

[10] These applications are in the same project as
[11] those rulings we're addressing, so we think the same
[12] reasoning should apply. The protest issues that we're
[13] talking about are protest issues like the applications were
[14] inadequate. We've been dealing with that protest issue over
[15] and over again since 1989, and so we think that we should
[16] just be told that you don't need to put on any evidence about
[17] these protest issues and we can avoid a lot of conflict.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** Let's stop and
[19] pass that out for people. The applicant informed me that
[20] they were coming with this request, so I asked them to make
[21] copies of this letter for as many of you as possible.

[22] **MR. TAGGART:** While it's being handed out, our
[23] intent is not to again file a motion to dismiss, start a
[24] motion practice on these issues. You've already requested
[25] that the protestants respond by September 21st. If the

[1] **HEARING OFFICER JOSEPH-TAYLOR:** And we're going
[2] to approach this hearing differently too on not repeating the
[3] same evidence over and over. Mr. Herksovits, Mr. Berley,
[4] Mr. Benesch and Mr. Palmer just saw this. Do you want an
[5] opportunity to look at this and respond to it, or what's your
[6] pleasure, gentlemen?

[7] **MR. HERKSOVITS:** Madam Hearing Officer, if I may,
[8] we would like an opportunity, the parties that I represent,
[9] to review the letter and to respond to it in writing. We
[10] agree that a number of statutory criteria and in all
[11] likelihood at least some protest issues probably do not need
[12] to be repeated or do not need to be dealt with anew in this
[13] upcoming hearing.

[14] We're in favor of trying to streamline the
[15] process whenever it is possible and doesn't run contrary to
[16] preventing the presentation of specific evidence relevant to
[17] the basins at issue in the upcoming hearing and the specific
[18] impact of water rights involved there and so forth.

[19] So we're not opposed to this idea, we just want
[20] an opportunity to review it and to respond to it in writing.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you.
[22] Mr. Benesch, Mr. Palmer?

[23] **MR. BENESCH:** I'd echo the same comments.

[24] **MR. PALMER:** Yes. It looks like the majority of
[25] the protest issues identified we would probably agree need

[1] protestants don't agree that some of these issues have been
[2] previously decided, then certainly indicate that.

[3] We don't intend for this to be anything but a
[4] recitation of clearly decided issues. It's almost a
[5] statement of fact about what has happened, the law of the
[6] case in the larger groundwater project that we're dealing
[7] with.

[8] So on page two of the letter, we start with the
[9] statutory criteria that we think have been previously
[10] decided, and again, we took these headings right out of the
[11] Spring Valley ruling and then we went to other rulings and
[12] found where the same issue had been addressed in other
[13] rulings.

[14] On page three are the same thing you mentioned
[15] earlier, and also on page three are the types of protest
[16] issues that we see the rulings having to address in every
[17] case.

[18] So we really tried to stay away from issues where
[19] there might be a challenge or a position on the other side
[20] that's valid. So what we're asking for the State Engineer to
[21] do is to issue some sort of an intermediate order prior to
[22] the hearing to indicate that these issues have been
[23] conclusively decided in prior rulings and that will assist us
[24] in streamlining our case and not having to put on evidence
[25] about financial ability and on and on. It should save time.

[1] not have further evidence presented. There are two or three
[2] that I see on here that I would like to review the citations
[3] to be sure exactly what that protest issue encompasses before
[4] we can say absolutely for certain that we don't need to offer
[5] anything further.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Johnston
[7] you haven't complied with the rules yet, Mr. Berley, so I'm
[8] going to talk to Johnston.

[9] I know you have haven't participated. We've all
[10] been in three or four of these hearings together. I know you
[11] stipulated out of the last one, so I assume you would want an
[12] opportunity to look through all this also. I don't know if
[13] you're aware of it, all these rulings are on the State
[14] Engineer's web page, so it's easy for you to go look at them.

[15] Are you in the same boat?
[16] **MR. JOHNSTON:** We would like an opportunity to
[17] review and respond.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** Is the September
[19] 21st, same date, acceptable to everyone, three weeks from
[20] now? Same date, okay, September 21st to respond to the
[21] letter of Mr. Taggart.

[22] **MR. ENTSMINGER:** If I may, a couple of things.
[23] We've said a couple different times we didn't intend this to
[24] be a motion to dismiss. Whatever the State Engineer decides,
[25] we want to go back over these statutory criteria, we want to

[1] go over these protest issues, that's perfectly fine with SNWA
[2] and we'll just add a number of witnesses and however much
[3] time to the hearing.

[4] This was meant solely to cull down the issues for
[5] judicial economy, but on this point, we didn't brief this.
[6] We didn't draft this as a motion to dismiss. We're not
[7] expecting to see reply briefs with legal arguments.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** I'll tell you
[9] that's not what the State Engineer wants. The motions game
[10] is really getting way far afield from what we think our job
[11] is to accomplish here, and I'll just tell you what I picture
[12] for this hearing. We want to hear hydrology, geology,
[13] long-term growth in the basin, environmentally sound and
[14] maybe one or two other issues.

[15] We're really going to try to streamline these and
[16] make them more efficient. They guys are really, really busy.
[17] We have to maximize their time, make sure they come out of
[18] here saying I got what I needed.

[19] So you're going the start seeing hearings where
[20] we may say to you I want to hear Bill Van Lieu and I want to
[21] hear Andrew Burns and that's what we'll hear and then we'll
[22] go. We're not going to keep doing these whole giant cases
[23] over and over and over.

[24] I personally have heard all this testimony I
[25] think four times now, I don't need it, and we're going to try

[1] refer to those.

[2] We would not intend to bring the entire record
[3] into this hearing, particularly if some of these issues
[4] are -- if we're told some of these issues have been already
[5] decided, the financials of the Southern Nevada Water
[6] Authority aren't going to be into the new record.

[7] What we'd like to do is identify those particular
[8] documents and then we won't have to recopy a lot of documents
[9] that are already in the Spring Valley record. You have them,
[10] you have a couple copies of them. Since there was no appeal
[11] filed, those documents are still in your custody, and if an
[12] appeal came, which has always been a concern, we want to make
[13] sure there are enough documents in the record for sending up
[14] to a court in the event of an appeal, you have that
[15] information, you have those documents now.

[16] So we think we can refer to a lot of those. We
[17] were talking about it yesterday. There will be obviously
[18] evidence that we submit that's new for these valleys,
[19] Delamar, Dry and Cave, but that's what we'd like to do. It's
[20] a little bit different than what's been done before because
[21] of the need to establish a new record every time, but that's
[22] the extent that we want to refer to a prior record is to the
[23] Spring Valley record

[24] **HEARING OFFICER JOSEPH-TAYLOR:** My thoughts are
[25] and I'll let you gentlemen respond, I would want to know that

[1] to save everybody money and time and just make these a lot
[2] more efficient. So that's what I'm going to end up talking
[3] about today, what we think we want to do at a hearing and
[4] some we're not even doing hearings, we're just having them
[5] pre-file evidence, we're looking at the evidence, we're doing
[6] oral argument and we're going from there.

[7] We're really trying new things to maximize
[8] everybody's time and resources. So the 21st is the same to
[9] respond and it's just a letter response, gentlemen, it's not
[10] briefings, do you agree, and if we think there's issues that
[11] we need to go over more -- it's like the need.

[12] I don't need to hear the same testimony, but
[13] things might have changed. You might want to add on top of
[14] that or the conservation plans, they may have added more or
[15] something like that. So we'll let you guys kind of shake
[16] this out but that's where we're thinking of going. So we're
[17] going to respond to that.

[18] Now let's talk about incorporating records from
[19] other hearings. I would really like to see -- most of this
[20] is already in the Spring Valley hearing. Have you thought
[21] about this, Mr. Taggart?

[22] **MR. TAGGART:** Yes, we have. What we suggest is
[23] that when we submit our first evidence exchange, we identify
[24] documents that are in the Spring Valley set of documents, the
[25] Spring Valley record, and indicate that we would like to

[1] before the first exchange, maybe a couple weeks, three, four
[2] weeks before so that they can be thinking along those lines
[3] because you're all preparing your stuff at the same time, and
[4] then maybe do the exchange. Your thoughts, gentlemen?
[5] Mr. Herksovits.

[6] **MR. HERKSOVITS:** Madam Hearing Officer, I do
[7] think that last suggestion of yours makes a lot of sense.
[8] There's probably no reason that we on our side and folks for
[9] the Water Authority on their side couldn't identify those
[10] types of administrative record materials a bit, and I don't
[11] have a time frame in mind, but perhaps a couple of weeks
[12] before the first evidentiary exchange or something along
[13] those lines.

[14] I think what Mr. Taggart outlined also sounds
[15] like a reasonable and efficient way to try and make use of
[16] and identify materials in previous administrative records.

[17] In addressing which issues have been dealt with
[18] conclusively, we may eliminate the need to even go back over
[19] them in that regard, and where there are new sort of fact
[20] specific differences or issues pertinent to these three
[21] basins, some material from previous administrative records
[22] may be relevant and useful, but there still may be need for
[23] new specific evidence.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** So, based on
[25] are your thoughts?

[1] **MR. BENESCH:** Pretty much the same thing, it will
[2] streamline the process and most of us have access to that, so
[3] it shouldn't be a problem.

[4] **HEARING OFFICER JOSEPH-TAYLOR:** You don't want
[5] another 20 feet of paper coming in also? I know I do.

[6] Mr. Johnston and Mr. Berley, you have not
[7] participated in these previous hearings. Thoughts?

[8] **MR. BERLEY:** Madam Hearing Officer, it sounds
[9] like most of the issues that we're talking about are not
[10] directed to hydrological issues, they're more need and so on,
[11] background.

[12] **HEARING OFFICER JOSEPH-TAYLOR:** Correct.

[13] **MR. BERLEY:** I don't anticipate a problem. I
[14] think we agree with the other folks who addressed it.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** They are public
[16] record in this agency and if your clients wanted copies, I'm
[17] sure we could work somehow to get a set to them on what's
[18] identified, but I've got two sets here, so I sure would like
[19] not to see another 20 feet of paper. I've got quite a lot of
[20] it back there right now.

[21] **MR. PALMER:** If I could just comment quickly?
[22] Because the Department of the Interior and the Bureaus did
[23] not participate in the last hearing, but as to the issues
[24] that relate to what Mr. Taggart rattled out earlier and in
[25] their letter, need for water, financial ability and

[1] another set of those. Is that a technical term?

[2] **MR. ALBRIGHT:** Doesn't everybody have the CDs
[3] also?

[4] **HEARING OFFICER JOSEPH-TAYLOR:** The Moapa Tribe
[5] does not.

[6] **MR. TAGGART:** We can get those done if they want
[7] them.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** Rich, you just
[9] decide what you want because everything was prefiled,
[10] prestamped on CDs and we put it on our web page for the
[11] public to review. So you can get the whole hearing in a
[12] stack about that big, but for the court reporter's
[13] transcript. You have to work with Mary on that.

[14] **MR. BERLEY:** All the prefiled material is
[15] available through the web site?

[16] **HEARING OFFICER JOSEPH-TAYLOR:** Not anymore
[17] It's been down off the web site for a while, but it's on
[18] disk, every piece of evidence is on disk except the power
[19] points probably.

[20] **MR. TAGGART:** The disks would be what was
[21] submitted, not necessarily what was admitted.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** Correct. You
[23] have to take the disk and the exhibit list and put them
[24] together, but it's not that huge of a deal to get a set of
[25] exhibits, except for the power points.

[1] conservation, those types of issues, I don't see that we
[2] would need to see that in the record again and I presume
[3] identifying those documents ahead of time would allow us to
[4] determine what's appropriate or not.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** Don't you settle
[6] prior to the evidentiary exchange? Did you have all that
[7] served on you?

[8] **MR. PALMER:** Yes, we have all the documents and
[9] we also filed our documents and a few of them were made part
[10] of the record but not all of them. Again, it was focused
[11] more on the resource issues and not these other issues which
[12] by and large have not been our protest issues.

[13] But not having participated in the prior hearing
[14] it would be helpful to know somewhat ahead of time what these
[15] documents are so we can familiarize ourselves with them.

[16] **HEARING OFFICER JOSEPH-TAYLOR:** A lot of them
[17] you've seen, Ken and Kay talking about the resource plans and
[18] that sort of stuff. Mr. Berley, I'd be happy to give you a
[19] copy of the exhibit list, just remind me or call me.

[20] Mr. Benesch?

[21] **MR. BENESCH:** Maybe to streamline this, I
[22] remember getting those on a CD-ROM. Perhaps Paul could just
[23] send the CD-ROM over to the Moapa Tribe.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** That's true. All
[25] the documents were pre-filed on CDs so we can probably burn

[1] **MR. PALMER:** You mentioned about an exhibit list.
[2] Is that available? The final exhibit list of those that were
[3] admitted, how do we get a copy of that?

[4] **HEARING OFFICER JOSEPH-TAYLOR:** You just ask me
[5] and I'll make one available to you. In fact, I'll make some
[6] before you leave today.

[7] **MR. PALMER:** One additional comment. Are we just
[8] talking about the documents that were submitted by the
[9] applicant or are we also talking about documents submitted by
[10] protestants?

[11] **HEARING OFFICER JOSEPH-TAYLOR:** All of them.

[12] **MR. PALMER:** So we need to review the entire
[13] record to determine what is and is not relevant?

[14] **HEARING OFFICER JOSEPH-TAYLOR:** Absolutely. You
[15] can do the same thing and say we want this part of our record
[16] adopted. The applicants just had to prove their case.
[17] Anything we've already done, and that's where I want you guys
[18] talking to each other or just suggesting it. I know I'm
[19] asking you to do a lot by the September 21st. Do you want a
[20] little more time on that? I think so too. Let's look at the
[21] calendars.

[22] **MR. TAGGART:** On what a issue?

[23] **HEARING OFFICER JOSEPH-TAYLOR:** Incorporating
[24] previous records.

[25] **MR. TAGGART:** I want to clarify. My intent was

[1] to suggest that things that have been previously admitted we
[2] could reference. Things that were submitted to your office
[3] but were not admitted at the hearing we should not be
[4] allowing in.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** I agree it's
[6] just the hearing record, the transcript from that hearing and
[7] exhibits that were in that hearing. What's your pleasure,
[8] Mr. Herksovits?

[9] **MR. HERKSOVITS:** Are we talking about a deadline
[10] for all the purposes that you named?

[11] **HEARING OFFICER JOSEPH-TAYLOR:** September 21st
[12] you have to make your appearances and you make an appearance
[13] by then or you're not part of the hearing, refining your
[14] protest issues by September 21st and responding to the Water
[15] Authority's letter on issues previously ruled on.

[16] Now we're moving on to other records that we want
[17] adopted into this hearing so we don't redo it and everybody
[18] can look at the testimony, the evidence from any side.

[19] **MR. HERKSOVITS:** Madam Hearing Officer, I think
[20] the middle of October would be adequate time for that. I'm
[21] thinking either the 12th or the 19th of October just to use
[22] Fridays.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** Let's go the
[24] 12th.

[25] **MR. TAGGART:** Each one of these decisions has

[1] putting on cases, are you looking to stipulate out. All of
[2] these guys have been here, but you haven't.

[3] **MR. BERLEY:** Madam Hearing Officer, Richard
[4] Berley for the record. I don't anticipate that this will be
[5] a problem for us as long as we get the CD in a timely
[6] fashion. Whatever issues we have in the course of the
[7] hearing will be focused probably on the local hydrological
[8] issues as opposed to these global background issues.

[9] **HEARING OFFICER JOSEPH-TAYLOR:** John, do you guys
[10] still have all the CDs?

[11] **MR. ENTSMINGER:** Yes.

[12] **MR. TAGGART:** Yes, we do.

[13] **HEARING OFFICER JOSEPH-TAYLOR:** Can you get
[14] Mr. Berley a copy of that by Friday, September 7th? That's
[15] two weeks. You'll have it in two weeks, Mr. Berley.

[16] **MR. TAGGART:** Yes.

[17] **HEARING OFFICER JOSEPH-TAYLOR:** Deputy State
[18] Engineer King has asked me to put the exhibit list on the
[19] Spring Valley web page because I believe it still exists, so
[20] that's where you can find it, Steve. I'll copy it and put it
[21] on the web page.

[22] **MR. TAGGART:** Our ability is to provide the lists
[23] of the SNWA exhibits.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** That's right
[25] I'll take care of it, Richard, it will come from here. I've

[1] ramifications on their ability to prepare the submittal.

[2] **HEARING OFFICER JOSEPH-TAYLOR:** I know I said
[3] have to give adequate time and we're going to save a lot of
[4] time by doing this. Mr. Benesch.

[5] **MR. BENESCH:** The October 12th date takes the
[6] place of the September 21st for all those purposes?

[7] **HEARING OFFICER JOSEPH-TAYLOR:** Yes, no, no, that
[8] is a different date. October 12th, I'd like if you could to
[9] have a stipulation as to incorporating other parts of the
[10] record. If you can all agree on something, that would be
[11] terrific.

[12] **MR. TAGGART:** I think we can definitely do that.
[13] We'll work with other counsel to do that and I think we can
[14] even tentatively identify documents that would have to come
[15] in if you did not conclusively determine that conservation
[16] plan issues have already been covered.

[17] So we could ID all the documents that we all know
[18] need to come in that have nothing to do with the issues in
[19] this letter we submitted, but there's also documents that
[20] would only come if the conservation plan is still an issue
[21] that we have to consider, just all of these issues are still
[22] in play.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** The one I'm more
[24] concerned about is the Moapa Tribe here. I'm not sure how
[25] active a role you're going to play in this, would you be

[1] got everybody's. Can I just put them back on the web page?

[2] **DEPUTY STATE ENGINEER KING:** We can resurrect
[3] that link, cull through it and get rid of the stuff that
[4] probably doesn't apply and we can do that within a week
[5] probably.

[6] **MR. BENESCH:** So the exhibit list and the
[7] exhibits will be --

[8] **HEARING OFFICER JOSEPH-TAYLOR:** Going back on the
[9] web page. Mr. Berley, when you go on our public web site,
[10] you go to the right and there's like boxes on the right and
[11] one of them says Spring Valley. That's where it's going to
[12] be, and we've been putting our orders up there, we've been
[13] putting rulings up there, we've had the exhibits up there for
[14] months so everybody could look at it, so we'll put that back
[15] on so don't you worry about it, we'll handle it from here.

[16] **MR. TAGGART:** We won't worry about it.

[17] **HEARING OFFICER JOSEPH-TAYLOR:** It's off your
[18] list.

[19] **MR. BERLEY:** Madam Hearing Officer, is the
[20] October 12th due date a due date for a stipulation or is this
[21] a due date to identify documents?

[22] **HEARING OFFICER JOSEPH-TAYLOR:** I'm hoping you
[23] have a stipulation on incorporating the previous record. If
[24] not, just tell me what you want to incorporate and if
[25] somebody -- I can't see any objection to it unless you think

[1] there's some issue we need to go over further.
[2] What our focus is going to be, Mr. Berley, is the
[3] local hydrology. We've done everything else which is what
[4] you want your focus to be also. You're looking at me
[5] puzzled, Mr. Herksovits.

[6] **MR. HERKSOVITS:** No, that's not a look of
[7] puzzlement. It's hard for me to imagine why we wouldn't be
[8] able to stipulate to these I think by the 21st. If there's
[9] some sort of dispute whether an issue was in or out, that
[10] will be identified and if the State Engineer will let us know
[11] pretty quickly and I'm not sure whether the two really affect
[12] each other.

[13] **HEARING OFFICER JOSEPH-TAYLOR:** *Let's be off the*
[14] record.

[15] (A discussion was held off the record.)

[16] **HEARING OFFICER JOSEPH-TAYLOR:** *Lets be on the*
[17] record. We've been having a discussion up here that we think
[18] we may be actually creating more work for you than we need to
[19] because you're not going to know what issues we think are
[20] already ruled on, and let's just put it out there and ask.

[21] Everybody get your letters from the Water
[22] District, please. Maybe we can take care of some of this
[23] stuff here and then you're not even looking at the record for
[24] it and we're going to try to streamline this a little more.
[25] I'm on page two of the letter.

[1] I'll can just give you my perspective,
[2] Mr. Herksovits and Mr. Palmer. I think there's no issue of
[3] good faith and reasonable diligence, intent to construct,
[4] justifying the need, financial ability, I think those are all
[5] ruled on.

[6] Do you have any problem with the State Engineer
[7] saying we don't even have to look through the record on those
[8] issues?

[9] **MR. PALMER:** Not on those specific ones you just
[10] mentioned, no.

[11] **HEARING OFFICER JOSEPH-TAYLOR:** *Just on the first*
[12] ones, Mr. Benesch?

[13] **MR. BENESCH:** No problem.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** *Mr Herksovits?*

[15] **MR. HERKSOVITS:** I would agree with that as well.

[16] **HEARING OFFICER JOSEPH-TAYLOR:** *So Mr Taggart,*

[17] we are not reviewing good faith and reasonable diligence,
[18] good faith intent to construct, financial ability, reasonable
[19] expectation to perfect, justify need to import the water,
[20] don't even look for the record, we're just going to adopt the
[21] previous ruling, okay?

[22] What about conservation plans? That's the State
[23] Engineer's ruling, right?

[24] **STATE ENGINEER TAYLOR:** Yes.

[25] **MR. BENESCH:** No problem.

[1] **MR. PALMER:** Not our issue.

[2] **MR. HERKSOVITS:** Madam Hearing Officer, I think
[3] the State Engineer has ruled on this now twice and it's
[4] fairly conclusively been dealt with. I guess if the Water
[5] Authority intends to reopen the issue by supplementing it in
[6] some way, then we would ask the Court to review and respond
[7] to that.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** *Do you want to*
[9] adopt the previous ruling?

[10] **MR. TAGGART:** We have no intent to add more.

[11] **HEARING OFFICER JOSEPH-TAYLOR:** *Mr. Berley?*

[12] **MR. BERLEY:** We have no problem with that
[13] particular issue.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** *We're adopting*
[15] the previous ruling on the conservation plan. Does anyone
[16] else have an issue with bringing up the conservation plan?
[17] Again, the State Engineer has ruled on it.

[18] **MR. HERKSOVITS:** Madam Hearing Officer, at least
[19] as far as the protestants who I can check with right now, I'm
[20] sure that that's okay. I'm just wondering, I don't know how
[21] many other issues -- I'd like to just confirm that with some
[22] of the other clients, and I would not require a lot of time,
[23] probably something like a week.

[24] **DEPUTY STATE ENGINEER COACHE:** *How about an hour?*

[25] **MR. HERKSOVITS:** There are a number of people to

[1] contact.
[2] **HEARING OFFICER JOSEPH-TAYLOR:** *I'm going to*
[3] leave conservation plan open. You have one week and then you
[4] need to tell Mr. Taggart what the issue is, if it's adopting
[5] previous rulings or not.

[6] **MR. HERKSOVITS:** I don't anticipate one, I just
[7] want to talk to all the clients.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** *So that is set*
[9] for September 4th.

[10] **MR. TAGGART:** After he communicates that to me,
[11] we'll let you know. We're going to take a 15-minute break
[12] and give you all an opportunity to look at this. Let's go
[13] through this and see what we can weed out because as I see
[14] most of them, they are nonissues, let's just deal with them
[15] right now and you're not looking for evidence and adopting
[16] previous records.

[17] We'll be in recess until ten o'clock.

[18] (A recess was taken.)

[19] **HEARING OFFICER JOSEPH-TAYLOR:** *Lets be on the*
[20] record. We're going to step back and start over a little
[21] bit. Mr. Herksovits, today was the day to make appearances.
[22] It went out a long time ago. You have one week to tell us
[23] who your clients are, and that's an unusual exception.
[24] September 7th, appearances in or out.

[25] Any decision we're making here today, we're not

[1] talking to clients, we're not going away, we're not coming
[2] back in a week or two, we're ruling on these things today,
[3] okay?

[4] Refine your protest issues by September 21st, so
[5] that will give you some time on that. Please eliminate the
[6] ones that are not related to Nevada water law and policy.

[7] As to the Taggart letter, we're going through it
[8] right now, we're going through all the issues. The State
[9] Engineer has already ruled, and we thank you for agreeing
[10] that we're adopting the previous decision on good faith and
[11] reasonable diligence, good faith intent to construct,
[12] financial ability, reasonable expectation to perfect, justify
[13] the need to import the water.

[14] Mr. Benesch.

[15] **MR. BENESCH:** Before we leave appearances, I had
[16] a brief discussion with you at the break that Mr. Gardner was
[17] having a hard time hearing in the back and I just wanted it
[18] clear on the record that he's here representing himself. He
[19] is making an appearance.

[20] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Gardner
[21] state your name for the record, please. I had a discussion
[22] with Mr. Gardner. State your name for the record.

[23] **MR. GARDNER:** Steve Gardner, dba Carter Cattle
[24] Company is who I am representing.

[25] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Gardner

[1] additional information that you would need or do you have
[2] anything that hasn't been presented that you do want to
[3] present?

[4] **MR. HERKSOVITS:** No, Mr. Taylor, Mr. State
[5] Engineer. I've discussed it with the protestants that are
[6] here and also their understanding of the other protestants
[7] that I'm representing, and we would be willing to agree that
[8] this has been conclusively determined. We may not think the
[9] conservation plan is all it could be, but we understand what
[10] that issue is.

[11] **HEARING OFFICER JOSEPH-TAYLOR:** Are you adopting
[12] your previous ruling, Mr. Taylor?

[13] **STATE ENGINEER TAYLOR:** I am.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** Adequacy of the
[15] applications. This has been ruled on multiple times.
[16] Mr. Berley.

[17] **MR. BERLEY:** Madam Hearing Officer, we don't have
[18] a problem with that as a protest issue, we're not complaining
[19] that they're inadequate. We think that as part of the
[20] Authority's case they should probably give some kind of
[21] updated plan of use.

[22] When this was originally filed in 1989, that was
[23] a long time ago and we would just appreciate as part of their
[24] presentation they should probably speak to what their plans
[25] are first.

[1] offered you to move up closer. I'll offer it again.

[2] **MR. GARDNER:** I can hear you because I'm looking
[3] at you. I don't want to get involved.

[4] **HEARING OFFICER JOSEPH-TAYLOR:** Just pull up a
[5] chair here so you can hear everything. I'd much rather you
[6] be able to hear, Mr. Gardner.

[7] **MR. GARDNER:** Thank you.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** You're welcome
[9] Mr. Gardner. Thanks for bringing it to my attention.

[10] **MR. HERKSOVITS:** For the record, this is
[11] Mr. Carter, Steven Carter from Carter Cattle Company. There
[12] is a Mr. Gardner in the back as well.

[13] **HEARING OFFICER JOSEPH-TAYLOR:** For every time
[14] the worst on names as you have figured out. Friday,
[15] September 7th, five o'clock, appearances, and in the future
[16] appearances are to be made at the pre-hearing conference.
[17] There's no afterwards.

[18] Refine your protest issues by September 21st.
[19] We're going to continue through the Southern Nevada Water
[20] Authority's letter on previous rulings. We were on
[21] conservation plans. Mr. Herksovits, we are not going to
[22] leave these open. We are going to decide these today.

[23] The State Engineer believes he has enough
[24] information on conservation plans. Go ahead, Mr. Taylor.

[25] **STATE ENGINEER TAYLOR:** Do you have any

[1] **HEARING OFFICER JOSEPH-TAYLOR:** That's all in the
[2] Spring Valley hearing, Mr. Berley. They went through quite a
[3] bit of testimony on that. When you look at stipulating
[4] what's in that hearing, it's there.

[5] **STATE ENGINEER TAYLOR:** Is there any additional
[6] information?

[7] **MR. TAGGART:** Our intent at this time is to not
[8] add any information on this point. We want to focus on the
[9] issues that were described earlier. There are power points
[10] and testimony from the prior hearing that we would be relying
[11] on now.

[12] **MR. ENTSMINGER:** The type of change our
[13] conservation plan has seen since the Spring Valley ruling,
[14] we're paying \$2 a square foot for turf removal instead of \$1.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** You switched
[16] subjects. The State Engineer has already adopted the
[17] previous decision on conservation. We're taking about the
[18] project and the project was adequately described in the
[19] previous applications, but I'm focusing on this protest
[20] issue, the adequacy of the applications.

[21] The State Engineer has repeatedly found that they
[22] were adequate. Are you going to adopt your previous ruling
[23] on the adequacy of the applications?

[24] **MR. BERLEY:** I think the point is if the plan for
[25] these particular applications is the exact same as for Spring

[1] Valley, that may be the answer to my question. If there's
[2] some different program because they're located in a different
[3] place or different timing or a different development scheme,
[4] we would like to hear that from the Authority.

[5] **MR. TAGGART:** When we prepare our case in detail
[6] getting ready for the evidence exchange we'll obviously
[7] decide to present evidence like that if we think there's new
[8] evidence that's necessary to tell the whole story.

[9] If what we said in Spring Valley is sufficient in
[10] our mind to tell everyone what these waters are for, we'll
[11] bring more information. The last thing we want to do is have
[12] people scratching their heads about what this project is all
[13] about. That's the first thing we always cover in every
[14] hearing.

[15] So we will go through that check list in our
[16] preparation and if we think we need to add something, we
[17] will, but we're going to try to stay away from that.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** We're covering
[19] two different topics. One is what does the project look like
[20] now. This issue is were the applications adequately filed.

[21] **MR. TAGGART:** Well, I'm responding to what he was
[22] asking about.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** I know, I'm
[24] trying to focus you back on this.

[25] **STATE ENGINEER TAYLOR:** I think we want

[1] additional information on the project if you have it.

[2] **HEARING OFFICER JOSEPH-TAYLOR:** This is was the
[3] application filled out properly, does the application have
[4] enough information.

[5] **STATE ENGINEER TAYLOR:** The application wouldn't
[6] go to publication if it wasn't adequate. I am adopting my
[7] previous ruling.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** Back to your
[9] separate subject, Mr. Berley. There's a lot of information
[10] in the Spring Valley hearing on where they picture pipelines,
[11] they have been told if you plan on filing change apps we want
[12] to see them now because they're going to be ruled on as
[13] filed, such as interference with existing rights,
[14] accessibility, things like that.

[15] So the Water Authority has already been told
[16] that, so these applications, we will look at the points of
[17] diversion, where they are now, how they fit into their
[18] pipeline. We had pictures of the pipeline in the Spring
[19] Valley hearing. I think much of that you will find is there,
[20] and if you don't, raise it. I guess I don't know what your
[21] problem is.

[22] **MR. BERLEY:** Madam Hearing Officer, I don't think
[23] I have a problem. Because of the way this is described, I
[24] think I agree with what Mr. Taggart and with what the State
[25] Engineer just said, that in the course of the process we'd

[1] just like some affirmative description of the project as
[2] currently contemplated and it seems likely to occur. We
[3] don't see this as a protest issue from our standpoint at this
[4] point.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** Great Thank
[6] you. Mr. Herksovits, you wanted to say something?

[7] **MR. HERKSOVITS:** Yes, Madam Hearing Officer. I
[8] understood this issue to be just as you described it a little
[9] while ago in clarifying what it attempts to dispose of and we
[10] have no problem with that whatsoever.

[11] I have a suggestion that might speed this process
[12] along if it suits the State Engineer's staff, which is we can
[13] agree to all of these and simply raise questions or inquiries
[14] about two of them and not have to go through all of that.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** It may be the
[16] same two that we're not going to adopt. What two are yours?

[17] **MR. PALMER:** We have three.

[18] **STATE ENGINEER TAYLOR:** That might be a better
[19] way to go. Can you match his?

[20] **MR. PALMER:** I haven't looked at his, I don't
[21] know.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** Mr Palmer, what
[23] three issues would you leave open?

[24] **MR. PALMER:** The first one we would leave open is
[25] very limited, it is on page four, second issue, fail to

[1] provide relevant information. We agree that the majority of
[2] that is true, but there's one issue in particular that we
[3] feel has not been adequately identified and that's for each
[4] point of diversion what is the source aquifer, and that's
[5] very important to know whether they intend to pump from the
[6] alluvium or the carbonate aquifer.

[7] So to the extent this protest issue might involve
[8] that, that's one issue we've identified that should not be
[9] dismissed and be subject to further evidence.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** Let's go to that
[11] issue because that's one we have problems with too.

[12] **MR. PALMER:** On this same issue, I don't
[13] understand the reference to the Garnet and Hidden Valley
[14] ruling 508 at page 29. That doesn't seem to be relevant to
[15] this issue. Part of the concern is I wanted to point out the
[16] particular ruling that I think is most relevant to deciding
[17] this issue as we go through them as well.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** It was in every
[19] one of the rulings because the protests were just Xeroxed and
[20] people signed off, so it's addressed in every ruling.

[21] **MR. PALMER:** When we get to each one, they were
[22] addressed differently in each one of these rulings and I
[23] think it's important to look at how they were addressed in
[24] certain rulings and adopt the one that most comprehensively
[25] addresses the issue.

[1] **HEARING OFFICER JOSEPH-TAYLOR:** The State
[2] Engineer is not going to accept the previous rulings on that
[3] issue. We're going to leave this issue open. Is that one of
[4] yours, Mr. Herksovits?

[5] **MR. HERKSOVITS:** That's one we would agree with.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** This is being
[7] left open. What's your next one, Mr. Palmer?

[8] **MR. PALMER:** On the same page, need for
[9] comprehensive planning, we wanted to make a comment on that
[10] issue. We are in agreement with dismissing that issue as it
[11] is described in the Tikapoo and Three Lakes ruling, 5465 at
[12] page 20, which states that -- I think it goes to whether an
[13] independent entity is to perform comprehensive planning and
[14] that the issues that are encompassed there are for the State
[15] Engineer to decide, and we agree with that, so that that
[16] should be part of this hearing.

[17] I think it's important to reference how this
[18] issue is comprehensively described, and we think the Tikapoo
[19] ruling is the most comprehensive discussion of how the State
[20] Engineer decided to handle that, and we would concur with
[21] that expression of this process and adopt that rule.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** The State
[23] Engineer had already decided he's leaving that issue open for
[24] the hearing. Is that one of yours, Mr. Herksovits?

[25] **MR. HERKSOVITS:** It's not actually.

[1] doesn't change the fact that the statutory criteria have to
[2] be satisfied and we have to establish that water is available
[3] for appropriation, that there won't be impacts, there will be
[4] information provided to you on that, there will be scientific
[5] information provided to you on that.

[6] But what we're saying is we don't have to get
[7] into the question of whether a study should have been done
[8] before the applications go to hearing, an environmental
[9] impact type study.

[10] So the nature of the protest issues is what was
[11] focused on when they were dismissed, and I'm concerned that
[12] you're thinking this is going to curtail your discretion on
[13] the statutory criteria, and it's not.

[14] **STATE ENGINEER TAYLOR:** I think the statements
[15] are a lot broader than that. There's not a need for
[16] additional studies, and if I need an additional study, I need
[17] to be able to tell you that and I don't want an appeal saying
[18] you dismissed that at the pre-hearing conference.

[19] So, yeah, if an EIS is required and that's what
[20] they're arguing, I can stop that right then and say that's
[21] not under my purview, but I don't want to just blindly
[22] dismiss every study that may be needed.

[23] **MR. TAGGART:** Our intent was not to foreclose
[24] your discretion under the statutory criteria, like the
[25] ability to require a hydrologic study if you wanted one. Our

[1] **HEARING OFFICER JOSEPH-TAYLOR:** Your third one
[2] Mr. Palmer?

[3] **MR. PALMER:** The last one on page four, further
[4] study, inadequate scientific information. I'll just stop.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** We agree that
[6] one is not going to be ruled on.

[7] **MR. TAGGART:** Can I just respond to that?

[8] **HEARING OFFICER JOSEPH-TAYLOR:** You sure can

[9] **MR. TAGGART:** These protest issues as they were
[10] stated in the protests, I do not think they are raising the
[11] types of issues you're thinking of raising. When you go to
[12] the way you dismissed them in the past, the concern with need
[13] for comprehensive planning, that question was raised along
[14] the lines of you have to do an environment impact statement
[15] before you will allow these applications to be drilled upon,
[16] and in the intermediate order before we went to the Spring
[17] Valley hearing you dismissed that issue and said there's no
[18] requirement, the State Engineer has discretion to order
[19] additional studies, but there's no requirement that
[20] additional studies be done, and that was the nature of both
[21] the need for comprehensive planning and for the inadequate
[22] scientific information rulings.

[23] So on both of those, that's what the protest
[24] issue was raising. By saying that these protest issues have
[25] already been ruled on and should not be raised again, that

[1] intent was just to go directly to the way the protest issues
[2] were addressed in prior rulings and have these protest issues
[3] disposed of.

[4] **HEARING OFFICER JOSEPH-TAYLOR:** The need for
[5] comprehensive planning, the protest issues are, they state
[6] that granting the applications in the absence of
[7] comprehensive water resource development planning, included
[8] but not limited to environmental impacts, socioeconomic
[9] impacts, long-term impacts, threatens to prove detrimental to
[10] the public interest, some of those tie right into the
[11] criteria on the interbasin transfer statute and water
[12] planning is part of the Division of Water Resources.

[13] The State Engineer in discussion said let's leave
[14] that one open and see if anything else comes up, and if
[15] anything else doesn't come up, we'll look at the previous
[16] rulings on how it was ruled upon.

[17] Mr. Herksovits, you wanted to say something?

[18] **MR. HERKSOVITS:** Yes, I did, and I don't want to
[19] engage in debating the semantics of what's a statutory
[20] criterion as opposed to a protest issue. I think as a
[21] practical matter, these sweeping claims or protests, protest
[22] allegations that there need to be global studies done to
[23] establish all kinds of things before any decision can be
[24] made, that probably is an appropriate thing to be dispensing
[25] with and we believe that's been ruled on and we understand

[1] that.
[2] On a more case specific level, it seems as though
[3] what you wouldn't want to rule out by leaving this issue off
[4] or dismissing it out of hand, you wouldn't want to preclude
[5] protestants from presenting evidence that there may be
[6] inadequate information, hydrologic data or something else in
[7] a particular basin or in the local area and that, therefore,
[8] there may be a need for an additional study of some sort or
[9] additional information to be gathered.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** And that's not
[11] what we're going to rule out.

[12] **MR. HERKSOVITS:** So that's a practical
[13] consideration there. I think what you just said about
[14] comprehensive planning makes a lot of sense in that to the
[15] extent that those allegations have tied themselves right into
[16] the statutory criteria, you're not intending to preclude
[17] these, but obviously sort of big generic arguments about
[18] there needs to be comprehensive planning done either by the
[19] Water Authority or some other third party before this can be
[20] ruled on, it makes sense to dispense with those two since
[21] those have already been resolved.

[22] **STATE ENGINEER TAYLOR:** This doesn't limit you
[23] from discussing and agreeing that these protest issues are
[24] gone or if they want to withdraw those issues, that's fine,
[25] but that doesn't preclude me from asking the questions and

[1] **HEARING OFFICER JOSEPH-TAYLOR:** we need to know
[2] yours also.

[3] **MR. HERKSOVITS:** Another criterion that we at
[4] least wanted to get some clarification on is the air
[5] pollution. We understand the State Engineer's previous
[6] rulings.

[7] However, by the same token under the
[8] environmentally sound criterion for interbasin transfers, we
[9] feel that there may be -- if there is no additional evidence,
[10] there will be nothing presented and no argument made on this
[11] issue, but there may be evidence developed and presented that
[12] relates to potential impacts to vegetation and the potential
[13] for there to become a serious problem with dust emissions in
[14] the region.

[15] So we would request that that issue be kept open
[16] on that level.

[17] **HEARING OFFICER JOSEPH-TAYLOR:** The protest issue
[18] was air pollution in Vegas.

[19] **MR. HERKSOVITS:** That's a separate issue entirely
[20] of course.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** We're not doing
[22] air pollution in Vegas but it doesn't preclude what comes
[23] into the environmentally sound because we've just done our
[24] first hearing and ruling on that, so that's a brand new area.

[25] This one I would assume the State Engineer would

[1] dealing with them.

[2] **MR. TAGGART:** I think we would stipulate that
[3] nothing is intended to limit the State Engineer's discretion.
[4] What we're -- I'm looking at your intermediate order in the
[5] Spring Valley hearing, intermediate order number 4 at page
[6] eight, and this is on the comprehensive planning issue, "The
[7] State Engineer finds it has previously been held there is no
[8] provision in Nevada water law that requires comprehensive
[9] planning prior to granting a water right application. The
[10] claim is not supported by Nevada water law and dismisses the
[11] protest claim."

[12] All we're asking is that that same finding be
[13] incorporated into this hearing and we won't go over this
[14] ground again. We weren't intending it to be any broader than
[15] that.

[16] **HEARING OFFICER JOSEPH-TAYLOR:** At the last
[17] hearing you didn't present anything on it anyway. I just
[18] don't want to -- there may be a tweak in one of these
[19] protests that I'm not aware of. We're going to leave that
[20] one open. It has not been a big issue at any hearing and
[21] we're leaving open further study and inadequate scientific
[22] information. All others, the State Engineer --

[23] **STATE ENGINEER TAYLOR:** Was there a different one
[24] that you had?

[25] **MR. HERKSOVITS:** There is, but when you're ready.

[1] adopt his previous ruling.

[2] **STATE ENGINEER TAYLOR:** That's correct, air
[3] pollution in Las Vegas.

[4] **MR. HERKSOVITS:** May I raise a question on one
[5] other of these protest grounds? We don't have a problem or
[6] objection to the protest issue labeled lock-up resources and
[7] overstate future demand. I do want to just clarify, lock-up
[8] resources is a very sort of broad-sweeping allegation and we
[9] don't think that that needs to be kept in there.

[10] We want to make sure that a ruling to drop this
[11] issue or to dismiss it out of hand doesn't in any way impinge
[12] on the prong of the criteria for interbasin transfer that
[13] goes to future demand in basins of origin.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** It can't. He
[15] still has to consider that process issue.

[16] **STATE ENGINEER TAYLOR:** Correct.

[17] **MR. HERKSOVITS:** That's it.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** Of these,
[19] Mr. Taylor and Mr. Taggart, you are adopting the State
[20] Engineer's previous rulings on all of them but for fail to
[21] provide relevant information, need for comprehensive
[22] planning, further studies, scientific information, all right?

[23] **MR. ENTSMINGER:** Thank you. Could I ask one
[24] question and this relates to why we put this letter together
[25] trying to streamline this process. I want to make sure I'm

[1] clear because I think I heard a little bit different thing
[2] from the Hearing Officer who I think said we want to hear
[3] about hydrology, geology, long-term growth in the basin of
[4] origin and environmental soundness.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** We're not quite
[6] there yet because I want to hear what others have to say on
[7] that.

[8] **MR. ENTSMINGER:** But I hear from the State
[9] Engineer if you have an update on your project, we want to
[10] hear about that, your water resource planning, we may want to
[11] hear about that. I just want to make sure we're very clear
[12] on what it is you want to hear so we can be more responsive
[13] to you.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** We're going to
[15] get there. That's why we're all here. So back to dates,
[16] September 7th, notice of appearance, September 21st, refine
[17] your protest issues, September 21st, stipulation on previous
[18] record or your suggestion. I'm changing it and moving it up.
[19] September 21st is also for the previous record.

[20] **STATE ENGINEER TAYLOR:** Does anybody have issues
[21] with changing that to September 21st? Okay.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** Because we just
[23] got rid of so much stuff. That's instead of the October 12th
[24] date, adopting the previous record. That's what stopped us
[25] and the bosses started talking to me about let's deal with

[1] **MR. TAGGART:** January 16th, I believe. It's a
[2] four-day week. Okay, 14th through the 18th.

[3] **HEARING OFFICER JOSEPH-TAYLOR:** Does that work
[4] for everyone?

[5] **MR. PALMER:** No. I don't know if this is the
[6] appropriate time to bring it up. We also intend to have
[7] modeling data to present and evidence, and we just were
[8] discussing that we believe that we can have that ready to
[9] exchange in the November time frame, mid November I think I
[10] heard a date, so we could try to work with that.

[11] To allow enough time, I don't know how much time,
[12] what might be needed to review that information, but I was
[13] thinking that at a minimum we need 45 days. If we're going
[14] to have two simultaneous exhibit/testimony exchanges, there
[15] would need to be at least 45 days minimum from the first one
[16] to the second one and at least 30 days if not 45 days from
[17] that to the hearing.

[18] So a hearing at the earliest would be somewhere
[19] toward March 1st, the end of February in order to accommodate
[20] this data exchange and allow enough time. I don't know what
[21] other issues might arise, but that seems to me to be the
[22] minimum amount of time in order to accomplish this.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** Response,
[24] Mr. Taggart?

[25] **MR. TAGGART:** We think that the first exchange

[1] this to narrow it down.

[2] The next topic I want to discuss is modeling.
[3] Are you anticipating modeling evidence in this hearing?

[4] **MR. TAGGART:** The Southern Nevada Water Authority
[5] does not intend to present modeling evidence at this hearing.
[6] We will present impact analysis based on the Theis equation,
[7] but we will not be providing modeling per se.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Herksovits,
[9] what about you?

[10] **MR. HERKSOVITS:** We do intend to present
[11] hydrologic evidence regarding the proposed pumping from these
[12] basins and my understanding is that that will involve the use
[13] of a model.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** There has to be
[15] plenty of time to review models. Where are you at, because
[16] you can't hand somebody a model and in two weeks as you know
[17] say you've had time to review it. It has to be months in
[18] advance, unless you agree to a shorter time. We can actually
[19] sort of work this backwards. Mr. Herksovits?

[20] **MR. HERKSOVITS:** I suppose we could work this
[21] backwards. I was asking Dr. Meyer and he was requesting
[22] until November 16th to conclude the modeling work.

[23] **HEARING OFFICER JOSEPH-TAYLOR:** Let's start
[24] looking at calendars and going backwards. The Water District
[25] requested a hearing January 14th to 18th?

[1] could be made by November 16th. I'm not aware of what
[2] modeling work the federal government is planning, but we're
[3] prepared to present all of our evidence to the other side on
[4] the 16th of November.

[5] That would give 60 days before a hearing date in
[6] mid January and there would be an intermediate exchange. So
[7] our suggestion is November 16th, do the first exchange,
[8] somewhere about 30 days later do the second exchange and then
[9] have the hearing in January, so there would be 30 days in
[10] between the exchanges.

[11] **HEARING OFFICER JOSEPH-TAYLOR:** If we went
[12] November 16th for the first exchange, five weeks is December
[13] 21st, let everybody breathe for Christmas, would be the
[14] second exchange. I don't think two weeks particularly with
[15] the Christmas and New Year's holiday is adequate time to
[16] allow everybody to review the rebuttal evidence, and those of
[17] you with small children, if you're not there for Christmas,
[18] you're in trouble. I'm looking at these two. Santa still
[19] comes to your house I bet.

[20] **MR. ALBRIGHT:** My three kids would kill me if I
[21] didn't make it.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** We're actually
[23] talking early February would be even better, like the week of
[24] February 4th through the 8th. That gives everybody time for
[25] Christmas and New Year's, that gives you four full weeks,

[1] Mr. Palmer, which is what you're asking for.
[2] **MR. PALMER:** I'm sorry, four full works for what?
[3] **HEARING OFFICER JOSEPH-TAYLOR:** To look at the
[4] rebuttal evidence after the Christmas/New Year's holiday.
[5] The second exchange would be December 21st, five weeks after
[6] the first exchange. November 16th is the first exchange,
[7] December 21st is the second and I'm just proposing these.
[8] Mr. Herksovits.

[9] **MR. HERKSOVITS:** I do have to raise a request
[10] for -- I guess request is the best way to put it. The
[11] protestants feel strongly that the State Engineer should not
[12] schedule this hearing or hold a hearing on Delamar, Dry Lake
[13] and Cave Valleys until the pending appeal before the Nevada
[14] Supreme Court on the due process claims and the reopening of
[15] the protest period is ruled on.

[16] There's a mediation session scheduled for early
[17] September. If that can be settled and resolved it may affect
[18] in some way this particular hearing and we would know that
[19] better in September at some point, shortly after the 6th.

[20] If it cannot, we would certainly intend to move
[21] for an expedited a schedule as possible for briefing,
[22] argument and decision from the Supreme Court, but because a
[23] decision from the Supreme Court could open this and force an
[24] odd situation where people with water rights or heirs and
[25] successors in interest to protest, there might be an order

[1] We think that we'll have a discussion of the
[2] Supreme Court case. If for some reason there's a way to
[3] resolve that, Mr. Herksovits suggested that we have a
[4] mediation. Certainly all of these schedules can be
[5] addressed, but we don't think that we should wait to schedule
[6] hearings. We have to go forward with this project and we're
[7] willing though go forward with it in light of the Supreme
[8] Court case.

[9] **STATE ENGINEER TAYLOR:** I think this was brought
[10] up at the last legislative session also and they actually
[11] passed a bill that explained protest issues, future protests,
[12] and I think we're within those bounds of what the legislature
[13] approved. I don't really want to wait until the Supreme
[14] Court decision.

[15] **MR. HERKSOVITS:** With respect, I'll just point
[16] out that the legislation that was passed in this most recent
[17] session doesn't actually affect or constrain the
[18] constitutional claims that have been raised or the Court's
[19] ability to decide those on that basis.

[20] I understand the State Engineer has the
[21] discretion to proceed here if he feels it's appropriate. I
[22] understand Mr. Taggart's client is interested in being
[23] comfortable and interested in moving forward as quickly as
[24] possible and not wanting to take account of that or dealing
[25] with the possible fallout of that decision.

[1] requiring that they be given an opportunity to in effect
[2] present their own cases and evidence and move forward in a
[3] similar process.

[4] We would urge the State Engineer to consider
[5] postponing scheduling a specific date for this hearing until
[6] there's been a ruling from the Supreme Court or given our
[7] intent to try and move that process forward, to delay the
[8] hearing for at least a period of a few more months.

[9] It seems to me that the briefing and decision
[10] from the Supreme Court can take place within six months from
[11] now. Nobody controls the Supreme Court and how it works, but
[12] we certainly feel like there's going to be a very strong
[13] possibility that if the Supreme Court decides that there's a
[14] need to reopen the process, that it's going to interfere and
[15] create a conflict with this hearing having already gone
[16] forward.

[17] I need to present that and urge you to consider
[18] that and postpone it for that reason.

[19] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Taggart?

[20] **MR. TAGGART:** First of all, we're confident that
[21] the State Engineer will prevail in that Supreme Court case,
[22] so we're comfortable in going forward. The suggestion that
[23] we put off scheduling a hearing until the State Supreme Court
[24] has ruled we think is inappropriate because that could be
[25] years.

[1] However, if the decision is to move forward with
[2] the hearing regardless of the timing that the State Supreme
[3] Court is operating under, then I do just want to point out
[4] that that may have ramifications for the finality of the
[5] decision reached by the State Engineer in this hearing or the
[6] ability to follow through and complete the process.

[7] **HEARING OFFICER JOSEPH-TAYLOR:** We're aware of
[8] that, Mr. Herksovits, but we're going forward with the
[9] hearing.

[10] **STATE ENGINEER TAYLOR:** With every decision I
[11] make that's there.

[12] **MR. HERKSOVITS:** With that understood, we don't
[13] have a problem with the February date.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** February or so
[15] we need a week? We're not doing another three-week hearing.
[16] You're never going to see another one here. We can't afford
[17] them, nobody has the time.

[18] **MR. TAGGART:** How much time it will take us
[19] depends on a few things. Obviously what we just covered on
[20] the protest issues, but we also think that it's appropriate
[21] for the protestants to go first in the hearing and for the
[22] Southern Nevada Water Authority to go second, which is the
[23] rules under the Administrative Code.

[24] We varied from that in the first hearing because
[25] there hadn't been a complete discussion of the project in

[1] many years and so we did that, but we think that now that
[2] we've had a full-blown hearing like we had in Spring Valley,
[3] it's now appropriate to go back to the way it was at other
[4] hearings where the protestant goes first.

[5] If that were to happen we think we can do our
[6] case in a day and a half or two days. If we have to go first
[7] it will add time because we have to anticipate what might
[8] come from the protestants. It really does put us at a
[9] disadvantage if we have to go first because we don't know
[10] what protest issues they're going to put evidence on.

[11] We either have to have a rebuttal case afterwards
[12] or we have to add things in in our case in chief if we know
[13] we're not going to have a rebuttal case. So we do request
[14] that we go second and if that's the case, then the most time
[15] we would need is a day and a half to two days.

[16] **HEARING OFFICER JOSEPH-TAYLOR:** Let's go back to
[17] the issues we think need to be addressed at this hearing;
[18] hydrology, geology.

[19] **MR. FELLING:** Impact analyses, basin of origin
[20] issues, environmental growth.

[21] **MR. BENESCH:** Environmental what?

[22] **HEARING OFFICER JOSEPH-TAYLOR:** Growth in the
[23] basin, the environmentally sound, the interbasin transfer,
[24] long-term growth and development in the basin of origin and
[25] is it environmentally sound for the basin of origin.

[1] results, just to be clear. These were issues that we had six
[2] years ago and apparently most of them have been solved.

[3] **HEARING OFFICER JOSEPH-TAYLOR:** I think
[4] Mr. Felling has solved most of those, making it so that
[5] everybody can review the model, understand the model, have an
[6] opportunity to have their input into it and when we had all
[7] those different kinds of models it was very difficult.

[8] So he through the State Engineer said everything
[9] is in MODFLOW.

[10] **MR. BERLEY:** We anticipate that the Tribe may
[11] present modeling evidence or it may respond to modeling
[12] evidence, but we're not sure at this moment.

[13] **HEARING OFFICER JOSEPH-TAYLOR:** So you see a
[14] fairly narrow role for the Tribe, just on hydrology?

[15] **MR. BERLEY:** We believe the Tribe will be active
[16] just in the narrow issue of Nevada water law as they apply to
[17] the Tribe.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you
[19] Response to they want to go second? Hold on, Mr. Berley.
[20] Mr. Palmer.

[21] **MR. PALMER:** I would suggest that the applicant
[22] should continue to go first. Some of the reasons Mr. Taggart
[23] suggested, that they won't know what the applicant's case is
[24] going to be, we're going to have two evidence exchanges which
[25] presumably should outline pretty conclusively what each

[1] So it's not going to be you just coming in with
[2] everything. We're going to tell you what we want to spend
[3] our time on and focus on. These gentlemen are going to walk
[4] out getting the information they think they need to have on
[5] this hearing.

[6] Mr. Berley, does your client picture playing an
[7] active role in this hearing and bringing forward witnesses?

[8] **MR. BERLEY:** I suspect we may have one witness on
[9] hydrology. I don't know how active we'll be. The Tribe has
[10] had a pattern of trying to narrow issues and has stipulated
[11] often, but we will probably be involved in the hydrology
[12] discussions.

[13] I would like to bring up a point on modeling. I
[14] know we're kind of speaking on a few things here, but
[15] modeling was brought up and we do have a suggestion of what
[16] might be included in the State Engineer's order that follows
[17] this pre-hearing conference.

[18] We would suggest that if there is modeling
[19] evidence that's going to be presented, that it use public
[20] domain software, public domain type code.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** Everything is
[22] required to be in MODFLOW before the State Engineer now.

[23] **MR. BERLEY:** Ah, okay, and that the disclosure of
[24] modeling information should include the data files, the code
[25] itself, I guess that may no longer be necessary, and the

[1] party's case is going to be so they'll know going in what
[2] they need to prepare for.

[3] Because there's three basins involved here and
[4] potential interbasin issues, I think it's important to hear
[5] the applicant's presentation first.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** Any comment
[7] Mr. Benesch?

[8] **MR. BENESCH:** We're looking at ways to try to
[9] streamline this and against that backdrop I'm trying to
[10] decide whether or not it would be more efficient for one or
[11] the other to go first and I think it's pretty much a tossup.
[12] You can make arguments either way, so I'll defer to the other
[13] parties.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Herksovits'

[15] **MR. HERKSOVITS:** To a large degree I agree with
[16] what Mr. Benesch just said, but I also do believe Mr. Palmer
[17] has some valid points. With the exchange of evidence in
[18] advance, I don't think that the applicant is going to bear a
[19] particular burden of sort of doing a blanket presentation on
[20] a world of issues beyond what's specified by State Engineer
[21] and his staff. I think all of the parties can target their
[22] evidence towards those issues.

[23] There's one other issue that I think wasn't
[24] mentioned but I'm assuming is also going to be considered
[25] appropriate which is evidence establishing existing vested

[1] water rights or other things like that that go directly to
[2] the availability of water for appropriation.

[3] But in terms of the order of the parties, I think
[4] it could go either way. Because of the complexity of the
[5] multiple basins involved here and the issue of interbasin
[6] flow and the presumed alteration of the traditional or
[7] historic perennial yield estimate in these valleys that
[8] underlies the applications, it does seem as though it would
[9] make more sense for the Water Authority to present its
[10] evidence first than have the protestants in order coming
[11] afterwards in order to try to rebut that.

[12] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Berley.

[13] **MR. BERLEY:** We agree with Mr. Palmer. We think
[14] multiple State Engineers have already ruled that it's
[15] appropriate for the proponent to go first in these
[16] multi-basins, these 1989 applications. The general rule
[17] within the regulations that protestants usually go first I
[18] think had in mind a much smaller type application.

[19] It just seems appropriate that as far as
[20] availability of resources and so on, I think the Authority
[21] has adequate resources to make a good presentation and to
[22] respond to anything that arises.

[23] We don't anticipate much in the way of surprises
[24] with the information exchange, so we would suggest that they
[25] go first.

[1] **HEARING OFFICER JOSEPH-TAYLOR:** I think you
[2] pretty adequately summarized the rules. When the rules were
[3] written hearings like this were never pictured. I drafted
[4] the rules and I didn't know what I was doing. I was a brand
[5] new baby lawyer.

[6] **STATE ENGINEER TAYLOR:** This is on record.

[7] **HEARING OFFICER JOSEPH-TAYLOR:** And I think that
[8] was the contemplation, but the multiple State Engineers in
[9] these larger projects and asserting higher perennial yields
[10] have had the applicants go first. It's really up to the
[11] State Engineer. You can finish, Mr. Taggart, but it will be
[12] Mr. Taylor's call.

[13] **MR. TAGGART:** I want to share a little
[14] perspective. If we're interested in streamlining I can just
[15] tell you that as the applicant if we have to go first we feel
[16] we need to present more. People can debate whether or not
[17] you know what's going to happen.

[18] When we see their case and see what they've put
[19] on and they've gone first it truncates what we've put on.
[20] Every time I've done one of these and the protestant goes
[21] first we don't put on as much as we would have.

[22] We had one hearing that ended a couple days early
[23] because we did it that way. So I understand the reason
[24] originally was this is a big project, it hasn't been
[25] discussed, the applicant should go first.

[1] If we're really interested in streamlining I can
[2] tell from your experience we will truncate our case if we go
[3] after we know what they've presented. We'll be nervous going
[4] into it wondering what are they going to bring up. You can
[5] say all you want the evidence exchanges are there and
[6] everything else. We'll feel like we need to put more
[7] information into the record.

[8] **HEARING OFFICER JOSEPH-TAYLOR:** And they probably
[9] feel the same way. Go ahead.

[10] **DEPUTY STATE ENGINEER KING:** I just want to say
[11] there's a lot of talk about streamlining and I know you're
[12] not implying this, Mr. Taggart. I don't want anyone to get
[13] the idea that we want to streamline to the detriment of the
[14] resource. I don't want anyone walking away from this room
[15] feeling that because if we felt that it truly would take
[16] three weeks which we don't to hold a hearing to look at this,
[17] then we'll do that.

[18] There's a lot of talk about streamlining, yes, we
[19] want to do that, but not to the detriment of the resource.
[20] So I guess it just makes sense that the applicants go first.
[21] We can rule after the September 21st submittal.

[22] **HEARING OFFICER JOSEPH-TAYLOR:** Let's be off the
[23] record.

[24] (A recess was taken.)

[25] **HEARING OFFICER JOSEPH-TAYLOR:** Let's be on the

[1] record. Mr. Taylor, we were having a discussion of who goes
[2] first and what we'd like to ask you, if you go first, how
[3] many days do you need, Mr. Herksovits?

[4] **MR. HERKSOVITS:** Well, I think that just with the
[5] applicant if we go first we may need to assume that we will
[6] present more. So I would say if we go first, maybe three
[7] days. If we are to go second, maybe one and a half to two.

[8] **MR. PALMER:** We were thinking on the order of
[9] five days.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** Cut that in half.

[11] **MR. PALMER:** If we go second we might be able to.
[12] I still think five days is reasonable just for our case but
[13] we can pare it back to perhaps four if we're not going first,
[14] but if we go first I think we need five.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Taggart, if
[16] you go first you need what?

[17] **MR. TAGGART:** Three.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** If you go second?

[19] **MR. TAGGART:** Two.

[20] **HEARING OFFICER JOSEPH-TAYLOR:** What do you need
[21] five days for, Mr. Palmer?

[22] **MR. PALMER:** We have four Bureaus, we have a lot
[23] of resources that can be affected potentially by these
[24] applications in several different basins, so we need to
[25] present that information.

[1] We intend to present modeling, we think it might
[2] be good to present the modeling, there's hydrology and
[3] geology. We look at four days at least to be on the safe
[4] side to present all that information.

[5] **STATE ENGINEER TAYLOR:** Does that overlap with
[6] the other protestants?

[7] **MR. PALMER:** I don't know. Certainly some of
[8] modeling and hydrology obviously will overlap with all the
[9] parties, but I can't tell you exactly how we could refine
[10] that at this point.

[11] **STATE ENGINEER TAYLOR:** Simeon?

[12] **MR. HERKSOVITS:** Madam Hearing Officer, I think
[13] that in streamlining it's not just a question of the order in
[14] which the parties go, but there's also a question of
[15] excessive, redundant and not particularly effective cross-
[16] examination being allowed to continue.

[17] There's a lot of us lawyers that do as much as
[18] possible to pick at, vet and point out the flaws of other
[19] evidence, but during the Spring Valley hearing the State
[20] Engineer's staff did a very effective job at pinpointing and
[21] identifying those issues, and a lot of time seemed to be
[22] consumed with examination by lawyers that didn't necessarily
[23] really add to the evidence that had already been admitted.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** You hit our
[25] frustration on the head.

[1] **MR. PALMER:** I'm estimating four, but once we see
[2] all the information and get closer to the time it's better to
[3] estimate whether that can be pared to three, but I can't say
[4] much more than that. We have a fair amount to present
[5] considering there's three basins involved and a lot of other
[6] issues that relate to that.

[7] **HEARING OFFICER JOSEPH-TAYLOR:** We're going to
[8] take a short break.

[9] (A short recess was taken.)

[10] **HEARING OFFICER JOSEPH-TAYLOR:** Let's be on the
[11] record.

[12] **STATE ENGINEER TAYLOR:** I didn't really hear a
[13] lot of information that says which person should go first
[14] that helps me decide that, so I think we'll just stay with
[15] the same format. I think it would probably be the most
[16] efficient way. The applicants will go first and then the
[17] protestants, but ten days sounds like a lot of time for this
[18] information because there's a lot we're not hearing and we're
[19] limiting it to certain issues.

[20] We'll probably look at your evidence and your
[21] witness list and we'll make a ruling on the amount of days
[22] you have to present your case at that time, but I really want
[23] you to get together and try to streamline your presentations.
[24] I don't want to hear the same thing from the federal
[25] government as the other protestants. Any questions on that?

[1] **STATE ENGINEER TAYLOR:** That won't happen.

[2] **HEARING OFFICER JOSEPH-TAYLOR:** I'm going to
[3] looking at some of the Spring Valley stuff recently and
[4] Mr. Taylor said, "I get that models are uncertain. If you
[5] can't give me anything more, move on."

[6] We as staff will move that along. Because you're
[7] right, lawyers have to hit every point and ask a question
[8] about it, and to be frank, it doesn't really add that much
[9] value for us often. That's part of my job is to move things
[10] along. Mr. Berley told me probably maybe one witness.

[11] **MR. BERLEY:** I think if we had to go first it
[12] would be less than a day and if we had to go second it would
[13] be less than a half a day.

[14] **HEARING OFFICER JOSEPH-TAYLOR:** Thank you
[15] Mr. Carter, do you plan on bringing witnesses and putting on
[16] a case?

[17] **MR. CARTER:** I plan on working with Simeon there.

[18] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Benesch?

[19] **MR. BENESCH:** I'll be working with Simeon as
[20] well.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** Anyone else?
[22] Mr. Taylor, where are we at?

[23] **STATE ENGINEER TAYLOR:** We are at ten days.

[24] Mr. Palmer, if you go second, how long would it take you;
[25] still four days?

[1] **MR. TAGGART:** Yes. If we go first we need to
[2] have rebuttal time even if it's just a half a day. We need
[3] to know that we can come back with information and not be
[4] limited to just cross-examination.

[5] **STATE ENGINEER TAYLOR:** Would that reduce the
[6] number of days up front if you had half a day rebuttal?

[7] **MR. TAGGART:** Not necessarily. It may.

[8] **STATE ENGINEER TAYLOR:** What's the purpose, if
[9] you're going to give us everything you have up front?

[10] **MR. TAGGART:** If we knew we had rebuttal time we
[11] wouldn't be as nervous about getting it all in ahead of time,
[12] but quite frankly, there's a due process problem if you don't
[13] give us the right to put on a rebuttal case after they put on
[14] their case.

[15] If we have to go first, they are the protestants
[16] and they're supposed to prove the case and we should have a
[17] chance to respond to that. In the past you've said the way
[18] the exchange has gone and the bifurcated exchange dates helps
[19] that problem and it does, but we're not asking for three days
[20] rebuttal time.

[21] I just think half a day of rebuttal time for us
[22] to say the things we have to say. We may not use it, but if
[23] we have to go first we need that.

[24] **STATE ENGINEER TAYLOR:** Comments?

[25] **MR. HERKSOVITS:** I understand Mr. Taggart's

[1] concern and the interest of having an opportunity for
[2] rebuttal. With the exchanges of evidence ahead of time and
[3] the narrowing and focus of the issues, I don't agree that
[4] there would necessarily be a due process problem if there
[5] were not a separate opportunity for rebuttal.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** I agree,
[7] Mr. Herksovits. Mr. Berley?

[8] **MR. BERLEY:** We don't object to a reasonable
[9] short rebuttal.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** We have really
[11] avoided doing it because we are trying not to turn this into
[12] a civil trial court, and that's the dual exchange. You get
[13] to see the other side's evidence, you get to come in. We are
[14] really, really going to resist and I don't see a due process
[15] problem, Mr. Taggart. You're not even entitled to a hearing.
[16] It's at the State Engineer's discretion.

[17] **MR. TAGGART:** Wait. Once you decide you're going
[18] to have a hearing then you've established something. I
[19] understand your point that you have the discretion to decide
[20] whether to have a hearing or not, but once you give them the
[21] right to present modeling evidence, for instance, and it will
[22] be the only modeling evidence that's presented and it comes
[23] in on the protestant's case only, and we have no opportunity
[24] to put a witness on to rebut that?

[25] **HEARING OFFICER JOSEPH-TAYLOR:** You absolutely do

[1] in your second exchange. You get to review the evidence and
[2] if you need a rebuttal witness that's what you put in your
[3] second exchange and second witness list.

[4] **MR. TAGGART:** I've said only a half a day. I
[5] don't think it's asking a lot, but practically speaking, to
[6] expect us to rebut their model in an evidence exchange and
[7] not be able to rebut their testimony as presented by their
[8] model, that's not sufficient. We should have an opportunity
[9] to have a witness testify.

[10] **HEARING OFFICER JOSEPH-TAYLOR:** You have it.
[11] You're just putting it on when you present your case.

[12] **STATE ENGINEER TAYLOR:** You can't do that in
[13] cross-examination?

[14] **MR. TAGGART:** We can try in cross-examination,
[15] but if we get too far off in cross-examination we get
[16] criticized for turning it into a civil trial.

[17] **STATE ENGINEER TAYLOR:** I'm not going to cut
[18] anybody off if I think it's valid information that I need to
[19] make the right decision and I don't think I've ever done
[20] that.

[21] **MR. TAGGART:** Well, then, we're going to have to
[22] put a witness on in our case in chief to rebut a model that
[23] hasn't even been admitted into evidence yet.

[24] **MR. HERKSOVITS:** Unless I'm mistaken, that's what
[25] was done in the Spring Valley hearing and it seems to me

[1] A half day should be adequate.

[2] **STATE ENGINEER TAYLOR:** I don't think we need
[3] time for rebuttal, but again, I'm going to get all the
[4] information I need out of the hearing. If I feel that there
[5] wasn't enough presented, I have the ability to ask for
[6] additional evidence to be submitted after the hearing.

[7] So if I feel like I need that, I can provide
[8] that.

[9] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Taylor, what
[10] are you looking at in dates? Were you wanting to keep it
[11] confined to that one week, were you wanting to have everybody
[12] look at additional time?

[13] **STATE ENGINEER TAYLOR:** I see too many days here
[14] for one week.

[15] **HEARING OFFICER JOSEPH-TAYLOR:** Shall we block
[16] off the next week to make sure your calendars are blocked?
[17] The 11th through the 15th also? As Mr. Taylor noted, he may
[18] look at your evidence and say this is who I want to hear, and
[19] I don't even know what space I can provide. Maybe here
[20] judging by the size of the crowd.

[21] Other issues we need to deal with? Do any of you
[22] have issues you need to raise? Mr. Herksovits.

[23] **MR. HERKSOVITS:** I'm not sure if, Madam Hearing
[24] Officer, at the end of the issues you have listed to cover
[25] but there are a few matters. One is it was really great and

[1] greatly appreciated public access provided at the last
[2] hearing, the Spring Valley hearing, and I'm speaking
[3] particularly of both posting of the evidentiary exchange
[4] material and support on the web site so that people could
[5] access and read them without coming to Carson City.

[6] **HEARING OFFICER JOSEPH-TAYLOR:** We'll do the
[7] same.

[8] **MR. HERKSOVITS:** And the web cast of the hearing
[9] itself was followed with great interest by people in the
[10] eastern part of the state. So if that can be provided again,
[11] that would be very valuable and appreciated by the
[12] protestants.

[13] There are two other things in a related vein.
[14] One is that the public comment opportunity, I know it's
[15] burdensome, but there are a number of very elderly
[16] protestants and people who would want to give comment from
[17] Lincoln County and White Pine County who in practical terms
[18] some of them aren't able to make the trip to Carson City and
[19] for others it would just be burdensome.

[20] So again, if at least two locations can be set up
[21] for that kind of two-way or incoming video link, that would
[22] be very helpful. I think in Lincoln County, although there's
[23] a problem of some inconvenience between Alamo on the
[24] Pahranaugut side, if Pioche or Panaca were selected that would
[25] probably be sufficient.

[1] I will attempt to do the same thing. I hope to
[2] set up another little web page that has the exhibits. The
[3] exhibits will be scanned. If we're adopting exhibits from
[4] Spring Valley those are already here. We'll try to do that
[5] same thing.

[6] As to the public comment video access, I'm at the
[7] mercy of working with the people over there. They really
[8] went out of their way. Of course I will try again. I have
[9] no idea what kind of connections they may have in Pioche and
[10] Panaca and Lund. I'd be surprised if they have them. That
[11] may not happen. It depends on what's happening in those
[12] buildings at that time, but of course I'll work with them on
[13] that.

[14] That's me dealing with a whole other agency.
[15] That was not our doing, that was people helping us. So I
[16] will look at that. I don't know that I would do that big
[17] hearing room again. I know the lawyers don't like how they
[18] sit. If we had the room where we did the Tikapoo/Three
[19] Lakes, you were sitting facing out and you don't like that.
[20] Do you have a preference of one room or the other?

[21] **MR. TAGGART:** You'll never satisfy everyone.
[22] **HEARING OFFICER JOSEPH-TAYLOR:** rm glad you
[23] figured that out. We try.

[24] **MR. TAGGART:** We obviously think there's a need
[25] for space for folks to come and watch and we end up having a

[1] Then we have of course the communities of Lund
[2] and Preston, Sunnyside and even farther up, so perhaps Ely
[3] because I think Lund and Preston have very little in the way
[4] of infrastructure but Ely might be another location for that
[5] and that's just with regard to public comment.

[6] I have one other question which is there are at
[7] least two or three protestants who are very elderly who may
[8] want to actually testify, and I don't know how that can be
[9] addressed if they're not healthy enough to make the trip to
[10] Carson City.

[11] Again, some sort of video testimony might be
[12] possible or I suppose written testimony, but I'm sure
[13] Mr. Taggart is going to want an opportunity to cross-examine
[14] them. I'm not sure the information they would provide would
[15] be that controversial, but they may view it as vital that
[16] they at least have the opportunity to testify about their
[17] water rights and their perspective on the growth in the three
[18] basins and surrounding areas and water use in the affected
[19] valleys.

[20] **HEARING OFFICER JOSEPH-TAYLOR:** Going over the
[21] things you just discussed, I was very fortunate last time to
[22] be able to get the legislature. I do not know if that will
[23] happen again. That costs money to run those camera people.
[24] I'm not sure there's a budget for that, it's not in the
[25] budget but we'll look into it.

[1] lot of people, so we need enough room for the people we have
[2] and other things, the documents and so on. We could do it at
[3] either one of the rooms over there. If we had our preference
[4] it would be the one on the second or third floor.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** Because it
[6] dwindles after a day or two and we're taking up that huge
[7] space. So I'm at the mercy of finding if any of those spaces
[8] work at that time.

[9] We hear you, Mr. Herksovits. We got incredibly
[10] wonderful feedback from people on the process and how we went
[11] overboard to try to make it as accessible as possible, so of
[12] course we'll try to do that again.

[13] As to video testimony and a few elder people, I
[14] don't know about doing video testimony. I would maybe think
[15] you could talk to Mr. Taggart, show him the testimony in an
[16] affidavit, see if you have a problem with it or have you got
[17] any suggestions?

[18] **MR. TAGGART:** We can work together. We could do
[19] that, if there's some prepared testimony we could view it.
[20] We could even go out there, if someone from your office was
[21] willing to go, we could go out there and have a mini hearing
[22] of just that testimony. There's options that we could work
[23] on that way.

[24] **HEARING OFFICER JOSEPH-TAYLOR:** Work with
[25] Mr. Taggart on that. I know he'll be accommodating. I don't

[1] want to have senior citizens traveling if they don't need to.
[2] **MR. ENTSMINGER:** There were a number of
[3] individual protestants in Spring Valley not represented by
[4] counsel that we didn't cross-examine at all.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** And I'm
[6] anticipating that would be the same thing. So if you could
[7] early in the process maybe show something to them and they
[8] may agree to just allow it to come in as an exhibit as an
[9] affidavit so those people get to be heard.

[10] **MR. HERKSOVITS:** Frankly I don't think we're
[11] talking about a lot people and again, the type of input, some
[12] of it will be factual that shouldn't be very hard to be clear
[13] about what's accurate and what's not, and some of it may be
[14] somewhat subjective. There's not much point to us examining
[15] on that.

[16] **HEARING OFFICER JOSEPH-TAYLOR:** Just from our
[17] perspective we really appreciate how cooperative you're all
[18] being today, how you're trying to help us streamline. I know
[19] for you, Mr. Albright and your staff, it probably takes a
[20] huge chunk out of your time preparing for these and we
[21] appreciate the suggestions and figuring out how to make these
[22] go better.

[23] Mr. Herksovits and Mr. Palmer, I really
[24] appreciate how cooperative you're being on these hearings. I
[25] think we could have a better hearing, a more focused hearing

[1] has been admitted, but most of your witnesses, Mr. Taggart,
[2] multiple times have been admitted, so we would ask that you
[3] work on those kind of issues before the hearing and maybe
[4] come up with a stipulation on who is going to be experts but
[5] we're adopting a lot of that same testimony. I'm assuming
[6] Andrew is going to be -- didn't you do recharge last time,
[7] Andrew, is that what you did?

[8] Those are the kind of things we're really working
[9] on streamlining too, not sitting through an hour of
[10] curriculum vitae.

[11] **MR. TAGGART:** If we do stipulate --

[12] **HEARING OFFICER JOSEPH-TAYLOR:** Mr. Coche is
[13] alerting that we may not automatically accept them. There
[14] haven't been that many not qualified over the years and you
[15] guys are well informed enough. They can come to some
[16] agreement but the State Engineer still has to decide whether
[17] he's going to accept them or not. You try to do this job
[18] with all these guys whispering in your ear.

[19] **MR. TAGGART:** I don't have any other comments and
[20] that's what I was going to ask about.

[21] **HEARING OFFICER JOSEPH-TAYLOR:** The more things
[22] we can resolve in advance, it's more effective for us and we
[23] are paying attention to what we really think is important.
[24] Mr. Herksovits.

[25] **MR. HERKSOVITS:** One last thing, Madam Hearing

[1] and it will work better for everyone.
[2] Any other issues, Mr. Berley, Mr. Carter,
[3] anybody, something they need to bring up?

[4] **MR. TAGGART:** Can I clarify one thing?

[5] **HEARING OFFICER JOSEPH-TAYLOR:** Sure.

[6] **MR. TAGGART:** In the past or at least in Spring
[7] Valley we had a process for admitting the expert reports and
[8] we just suggest we follow that same process. If we have a
[9] report that multiple people worked on, we'll have all of them
[10] sign that report and we've established that through the
[11] Spring Valley process, so that's one item.

[12] The other is that when we cite to a large
[13] document, what we started to do in the last hearing was
[14] include in the exhibits the pages of the document that we
[15] think are important and then make the entire document
[16] available to the other side if they want the entire document
[17] but not having to submit the entire document as evidence.
[18] We'd like to follow that as well.

[19] **HEARING OFFICER JOSEPH-TAYLOR:** Great suggestion

[20] We're talking about qualifying expert witnesses and most of
[21] the witnesses that people use have already been qualified. I
[22] bring my little notebook in. We don't go through that whole
[23] thing again. We're asking people to try to stipulate to
[24] their experts prior to the hearing.

[25] I know Mr. Van Lieu has been admitted, Mr. Burns

[1] Officer. It may not considered terribly helpful or useful to
[2] those on the State Engineer's staff, but we would request
[3] that some reasonable opportunity be provided for opening and
[4] closing arguments.

[5] **HEARING OFFICER JOSEPH-TAYLOR:** I always offer

[6] that. Let's make sure we're all on the same page. We have
[7] blocked February 4th through 15th for hearing. The applicant
[8] is going first. Notice of appearances, deadline is September
[9] 7th. After that, no additional parties. Protestants will be
[10] actively putting on cases.

[11] September 21st, refine your protest issues.
[12] September 21st, stipulation to citation to the previous
[13] record. I need to get the Spring Valley exhibit list and
[14] exhibits on the web page. November 16th is the first
[15] evidentiary exchange, December 21st is the second exchange.

[16] Am I missing anything, folks? On the August 27th
[17] letter from the Southern Nevada Water Authority, the State
[18] Engineer has ruled he is accepting and adopting his previous
[19] ruling as to all issues but for fail to provide relevant
[20] information, need for comprehensive planning, further study,
[21] inadequate scientific information. Those three as additional
[22] information, he will accept it.

[23] Have I covered everything?

[24] **MR. BENESCH:** Would you give us the three again,
[25] please?

[1] HEARING OFFICER JOSEPH-TAYLOR: Page 81-82
[2] sorry. Page four, fail to provide relevant information,
[3] that's the second, the fifth, comprehensive planning, and the
[4] last issue, further study. All other issues are accepting
[5] the previous rulings.

[6] MR. TAGGART: That includes the statutory
[7] criteria that are outlined in that letter as well, correct?

[8] HEARING OFFICER JOSEPH-TAYLOR: From not following
[9] you.

[10] MR. ENTSMINGER: We're just concerned that you
[11] verbally state that the ruling included the four statutory
[12] criteria, the ones in the letter.

[13] HEARING OFFICER JOSEPH-TAYLOR: Yes, reasonable
[14] diligence, good faith, need, conservation plan.

[15] MR. ENTSMINGER: We thought you just said the
[16] protest issues were to specify the statutory criteria.

[17] HEARING OFFICER JOSEPH-TAYLOR: That's why I
[18] wanted to make sure I was following you. Mr. Herksovits?

[19] MR. HERKSOVITS: We'd like to address that the
[20] public comment period be provided at the close of the
[21] hearing.

[22] HEARING OFFICER JOSEPH-TAYLOR: That's the normal
[23] procedure. What I have done is I have in trying to
[24] accommodate people, I've done it earlier because we often
[25] don't know when a hearing is going to be over and if I'm

[1] STATE OF NEVADA,)
[2]) ss.

[3] CARSON CITY.)
[4] I, MARY E. CAMERON, Official Court Reporter for the
[5] State of Nevada, Department of Conservation and Natural
[6] Resources, Division of Water Resources, do hereby certify:

[7] That on Tuesday, the 28th day of August, 2007, I
[8] was present at 901 South Stewart Street, Second Floor, Carson
[9] City, Nevada, for the purpose of reporting in verbatim
[10] stenotype notes the within-entitled public hearing;

[11] That the foregoing transcript, consisting of pages
[12] 1 through 82, inclusive, includes a full, true and correct
[13] transcription of my stenotype notes of said public hearing.

[14] Dated at Carson City, Nevada, this 4th day
[15] of September, 2007.

[16]
[17]
[18]
[19] MARY E. CAMERON, CCR, RPR
[20] Nevada CCR #98

[1] trying to schedule videoconferencing, I can't just leave it
[2] open like that. So I will probably pick a date like at the
[3] end of the first week again.

[4] It's just too difficult to schedule and those
[5] people are treating me really well over at LCB and I don't
[6] want to burn that bridge, and who knows what's going to be
[7] available. Last time I had to work with what was going on
[8] with the hospital and the school and sometimes it's a guess
[9] on where it's going to be.

[10] Did we cover the bases, kids? Thank you,
[11] appreciate all your time. We'll be off the record.

[12] (The proceedings concluded at 11:39 a.m.)
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[25]

[1] Mary E. Cameron
[2] Capitol Reporters
[3] 410 E. John St., Ste. A
[4] Carson City, NV, 89706
[5] (775) 882-5322

[6] STATE OF NEVADA
[7] DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
[8] DIVISION OF WATER RESOURCES
[9] In Re: 53987-53992.

[10] AFFIRMATION

[11] Pursuant to NRS 239B.030

[12] The undersigned does hereby affirm that the following
[13] document DOES NOT contain the social security number of
[14] any person:
[15] 1) Pre-hearing Conference, 8/28/07

[16] -OR-

[17] The undersigned does hereby affirm that the document
[18] Named below DOES contain the social security number of
[19] A person as required by state or federal law or for the
[20] Administration of a public program or for an application
[21] For a federal or state grant:

[22] MARY E. CAMERON

[23] DATE
[24]
[25]

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