

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

IN THE MATTER OF APPLICATIONS 54022)
THROUGH 54030, INCLUSIVE, FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS OF THE SNAKE VALLEY)
HYDROGRAPHIC BASIN (195), WHITE)
PINE COUNTY, NEVADA.)

**INTERIM ORDER
NO. 2 AND
SCHEDULING ORDER**

GENERAL

I.

In 1989, the Las Vegas Valley Water District filed 148 water-right applications (Applications 53947 – 54092, 54105, 54106) to appropriate ground water in 30 different hydrographic basins throughout Nevada (Tikapoo Valley – Northern Part (169A), Tikapoo Valley – Southern Part (169B), Penoyer Valley (170), Coal Valley (171), Garden Valley (172), Railroad Valley – Northern Part (173B), Railroad Valley – Southern Part (173A), Hot Creek Valley (156), Cave Valley (180), Dry Lake Valley (181), Delamar Valley (182), Lake Valley (183), Jakes Valley (174), Spring Valley (184), Snake Valley (195), Patterson Valley (202), Lower Meadow Valley Wash (205), Lower Moapa Valley (220), Black Mountains Area (215), White River Valley (207), Pahroc Valley (208), Pahrnagat Valley (209), Coyote Spring Valley (210), Three Lakes Valley – Northern Part (168), Three Lakes Valley – Southern Part (211), Las Vegas Valley (212), Garnet Valley (216), Hidden Valley – North (217), California Wash (218), and Virgin River Valley (222)). The applications are now held in the name of the Southern Nevada Water Authority (SNWA); however, some of the applications have been withdrawn and others have been assigned to Lincoln County, the Moapa Band of Paiute Indians, and the Virgin Valley Water District.

II.

All of the applications were protested and most of the protests raised similar, if not identical, issues.¹ Through the course of the last eight years, the State Engineer has held various hearings and issued rulings on some of these applications and nearly every one of the protest issues have already been ruled upon.²

By letter dated May 23, 2008, the Applicant requested that the State Engineer take administrative notice of the records, exhibits and transcripts from the previous hearings held on the SNWA's water right applications in Spring Valley, Cave, Dry Lake and Delamar Valleys in the review of its applications in Snake Valley in order to avoid duplication of testimony and the submittal of volumes of information already presented. The SNWA also requested that the State Engineer issue an order regarding certain statutory criteria and protest issues the State Engineer has already ruled on in order to alleviate the need to present evidence on issues identical to those that have already been addressed. The SNWA specifically noted that in State Engineer's Intermediate Order No. 1 for the Cave, Dry Lake and Delamar hearing dated October 4, 2007, that the State Engineer found:

- (1) That the SNWA's applications adequately describe the proposed works, the cost of such works, the estimated time required to construct the works and place the water to beneficial use, and the approximate number of persons to be served.
- (2) That the SNWA has provided satisfactory proof of the intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence, and that the SNWA has the financial ability and reasonable expectation to

¹ Many of the protests had attachments to them that appear to be sheets with identified protest issues that were passed around the state for different Protestants to attach to their protests.

² In March 2001, the State Engineer issued State Engineer's Ruling No. 5008 that addressed Applications 54073 and 54074 which have points of diversion in Garnet and Hidden Valleys. In July and August 2001, the State Engineer held hearings on the applications filed in Coyote Springs Valley (Applications 54055-54059, inclusive) and in March of that year the State Engineer issued State Engineer's Order No. 1169, which held the ruling on those applications in abeyance in order for additional study to take place and information to be obtained through the pumping for a substantial period of time of a significant portion of the water rights already issued in the ground-water basin in order to determine if the pumping would have detrimental impacts. In April 2002, the State Engineer issued State Engineer's Ruling No. 5115, that addressed Applications 54075 and 54076, which have points of diversion in California Wash. In March 2002, the State Engineer held the hearing on Applications 53948, 53950, 53951, 54062, 54066, 54068, 54069 (Tikapoo Valleys and Three Lakes Valleys) with Ruling No. 5465 being issued on January 4, 2005. In September 2006, the State Engineer held the hearing on Applications 54003-54021, inclusive, which are applications with proposed points of diversion in Spring Valley and in April 2007 the State Engineer issued State Engineer's Ruling No. 5726 on those applications. In February 2008, the State Engineer held the hearing on Applications 53987-53992, inclusive, which are applications with proposed points of diversion in Cave, Dry Lake and Delamar Valleys and in July 2008 the State Engineer issued State Engineer's Ruling No. 5875 on those applications.

actually construct the works and apply the water to the intended beneficial use with reasonable diligence. See NRS § 533.370(1)(c).

- (3) That the SNWA has demonstrated a need for the water and justified the need to import water from another hydrographic basin, and that evidence demonstrates that the amount of water contemplated in the applications is necessary and reasonably required for the proposed purpose. The State Engineer also found that the population projections used by SNWA were not unrealistic and that the allegation that the applications will cause water rates to go up thereby causing demand to go down, rendering the water unnecessary to be completely hypothetical and not within the purview of his review. See NRS § 533.370(6)(a).
- (4) That the SNWA's plan for conservation of water is advisable for the basin into which the water is imported and that the SNWA has demonstrated that such a plan has been adopted and is being effectively carried out. See NRS § 533.370(6)(b). The State Engineer also found that the comparison of per capita consumption of other southwestern cities to that of southern Nevada is not an accurate comparison due to the factors impacting per capita consumption and has rejected related protest claims.
- (5) That decisions for growth control are the responsibility of other branches of government and whether growth exacerbates air pollution, traffic and crime is not within the State Engineer's jurisdiction.
- (6) That the SNWA is not locking-up vital water resources for possible use in the distant future beyond current planning horizons and that the applications do not substantially overstate future water demand needs.
- (7) The fact that the SNWA does not yet have a specifically identified right-of-way to access federal lands to construct the works required for the applications does not prevent the State Engineer from acting upon the applications and has rejected related protest claims.

The first day of the administrative hearing in the matter of protested Applications 54022 through 54030, to appropriate ground water in the Snake Valley Hydrographic Basin, White Pine County, Nevada, was held on July 15, 2008. At that hearing, the State Engineer addressed this letter. However, the State Engineer noted that some parties to the Snake Valley hearing were not Protestants to applications considered during those other hearings and provided those persons the opportunity to comment in writing on the requests in the letter.

III.

The following legal counsel made appearances at the first day of the hearing on behalf of the Applicant and various Protestants:

Paul Taggart, Chuck Hauser, John Entsminger, Dana Smith, Rob Dotson for the Applicant.

Simeon Herskovits with Advocates for Community and Environment and local counsel Leah Wigren for Protestants Marilyn Ambrose, Baker Advisory Board, Baker Ranches, Inc., Thomas A. Bath, Charles D. Berger, Reita Berger, The Border Inn, William R. Coffman, County of White Pine, Donald Duff, Garrett Family Trust, Carolyn Garret (formerly Carolyn Lehnig), Jo Anne Garrett, Owen L. Gonder, Clay Iverson, James R. Jordan, Marie L. Jordan, Nevada Cattlemen's Association Eastern Unit, Nevada Farm Bureau Association, New Age Gardeners, Tracy Lee Pelk, Margaret Pense, Robert B. and Gayle Robison, William R. and Katherine A. Roundtree, Gerald Sand, Patsy Schlabsz, The School of Natural Order, Thomas E. Sims, Snake Valley Senior Citizen's Center, Snake Valley Volunteer Fire Department, Betty L. Steadman, Terrance P. and Debra J. Steadman, Dean C. Stubbs, John G. Tryon, Darwin Wheeler, and Darlene S. Whitlock.

Greg Walch for Protestants Baker Water and Sewer General Improvement District, Estate of Carl F. Baker and Dean Baker.

Aaron Waite and Paul Tsosie for Protestant Ely Shoshone Tribe of Indians.

Jerald Anderson for Protestant Eskdale Center.

Mark Ward, Richard Wanningham and local counsel John Rhodes Protestant for Millard County.

George Benesch for Protestant Nye County.

Stephen Palmer for Protestants United States Bureau of Land Management, United States Fish and Wildlife Service, United States Bureau of Indian Affairs.

Peter Fahmy for Protestant United States National Park Service.

Don Anderson for Callao Irrigation Company and Veronica Douglas who were granted interested person status.

FINDINGS OF FACT

I.

POPULATION PROJECTION

Baker Water & Sewer General Improvement District (BGID) requested the State Engineer not affirm the finding of fact that the population projections were not unrealistic.³ BGID argues that population projections presented at the Spring Valley hearing may have been realistic at the time of the Spring Valley hearing, but that population growth rate in Southern Nevada has decreased dramatically since then; thus, the need for the water based on those population growth projections is erroneous. The State Engineer finds that BGID does not understand the protest issue that was ruled on in the previous finding that the population projection used by the Las Vegas Valley Water District in the original applications was not unrealistic.

Nevada Revised Statute § 533.340(3) addresses the contents of an application and provides that if an application is for municipal supply use that it shall contain information as to the approximate number of persons to be served and the approximate future requirement.

When the original applications were filed, the Applicant indicated by letter dated March 22, 1990, that the approximate number of persons to be served was 800,000 in addition to the current service to approximately 618,000 persons.⁴ Some protests claimed that these population projections were not realistic. In State Engineer's Ruling No. 5008, the State Engineer found that the Applicant's projected population of 1.4 million people by the year 2020 was realistic because the population had already reached that 1.4 million by 2001; therefore, the protest claim that population prediction in the applications was not realistic was overruled.⁵ The State Engineer finds the overruling of that specific protest ground is affirmed.

II.

WATER RATES AND DEMAND

The State Engineer finds no one raised an objection to the State Engineer affirming his finding that the allegation that the applications will cause water rates to go up thereby causing water demand to go down rendering the water requested for appropriation under the applications

³ Exhibit No. 40.

⁴ See, State Engineer's Ruling No. 5008, p. 1, dated March 20, 2001, official records in the Office of the State Engineer.

⁵ *Id.* at 28.

unnecessary to be completely hypothetical and not within the purview of his review; therefore, the State Engineer affirms that finding.

III.

ADEQUACY OF APPLICATIONS

The State Engineer finds no one raised an objection to the State Engineer affirming his finding that the applications adequately describe the proposed works, the estimated time required to construct the works and place the water to beneficial use and the approximate number of persons to be served; therefore, the State Engineer affirms that finding.

IV.

INTENTION TO CONSTRUCT

The State Engineer finds no one raised an objection to the State Engineer affirming his finding that the Applicant has provided proof of the intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; therefore, the State Engineer affirms that finding.

V.

GROWTH CONTROL

The State Engineer finds no one raised an objection to the State Engineer affirming his finding that the decisions for growth control are the responsibility of other branches of government and whether growth exacerbates air pollution, traffic and crime is not within the State Engineer's jurisdiction; therefore, the State Engineer affirms that finding.

VI.

RIGHT-OF-WAY

The State Engineer finds no one raised an objection to the State Engineer affirming his finding that the fact that the Applicant does not have a specifically identified right-of-way to access federal lands to construct the works required to place the water to beneficial use does not prevent the State Engineer from acting on the applications; therefore, the State Engineer affirms that finding.

VII.

NEED TO IMPORT WATER

Protestant BGID requested the State Engineer not affirm the finding of fact that the SNWA has justified the need for the water or justified the need to import water from another basin and not affirm his finding that the evidence demonstrates that the amount contemplated in the applications is necessary and reasonable.⁶ BGID argues that because the SNWA relied on a growth-rate, which time has proven wrong, the statutory criteria found in NRS § 533.370(6) requires the State Engineer to consider whether the applicant has justified the need to import water from another basin should be re-examined and additionally, NRS § 533.340(3) requires the applicant establish the approximate number of persons to be served.

Protestants represented by Advocates for Community and Environment (ACE) argue that information has come to light and circumstances have materially changed that warrant reconsideration of the finding that the Applicant has justified the need to import the water from another basin.⁷ ACE argues that there are alternatives for meeting the anticipated future demand for water and growth has ceased in the SNWA service area.⁸ Additionally, ACE argues that circumstances on the ground concerning growth and development in the SNWA's service area have dramatically changed from being one of the fastest growing cities in the country to one of the capitals of foreclosures and falling real estate prices. ACE argues the dramatic changes in the financial and real estate development conditions of the SNWA's service area call into question the SNWA's projections of growth and future water demand and requests that the Protestants it represents be allowed to present new evidence concerning the statutory "need" criterion.

The Ely Shoshone Tribe's response argues that because there is new information regarding water conservation steps that could be taken and the SNWA has not accounted for water that has already been granted, purchased or leased from surrounding valleys in its analysis of the need for the water that the State Engineer should require the SNWA to prove its need for the water, that its conservation plan is adequate and that it is not locking up water for possible future uses.⁹

⁶ Exhibit No. 40.

⁷ Exhibit No. 43.

⁸ ACE attached a report to its response to demonstrate that the SNWA is falling significantly behind other western urban areas in water conservation; however, the State Engineer has already ruled on the conservation issue.

⁹ Exhibit No. 41.

And finally, Millard County also argues that the population growth projections on which the State Engineer relied in other basin rulings is questionable given the significant economic downturn that hit Las Vegas after those rulings were issued, which renders the old assessments of future water needs inaccurate.¹⁰ Millard County attempts to interject a “need” argument into this hearing by asking the question “What is SNWA’s need to permanently and artificially lift water out of a hydrographic return flow system that mainly occurs in Utah and which Utah depends heavily upon? What kind of “need” exists that could possibly justify that kind of interstate impact?” The State Engineer finds this “need” argument is not premised in the statutory criterion that addresses whether the applicant has justified the need to import the water and these “need” arguments will not be permitted or addressed.

Nevada Revised Statute § 533.370(6)(a) provides that in determining whether an application for an interbasin transfer of ground water must be rejected, the State Engineer shall consider whether the applicant has justified the need to import the water from another basin. The Applicant responded that it has established the need due to continued growth in Southern Nevada and the expected decline in the availability of water from the Colorado River.¹¹ However, the Applicant also indicated that to accommodate the Protestants’ contested claim that a material change of circumstances has occurred, the SNWA is not opposed to the submittal of exhibits and presentations of new evidence on these issues by all parties.

The Applicant is correct in its analysis that the Protestants fail to recognize that while growth in Southern Nevada was a factor the State Engineer considered, the State Engineer also considered the fact that Southern Nevada relies upon the Colorado River for 90% of its water supply and the Colorado is experiencing a multi-year drought and it would be far from prudent for Southern Nevada to continue to rely almost exclusively on the Colorado River for its water supply. Even while the rate of growth and development in Southern Nevada may have slowed, Southern Nevada still must secure other water sources as drought protection for nearly 2 million people that live there. The State Engineer already has evidence that Southern Nevada is bumping up against the limits of the amount of water it can take from the Colorado River without taking drought shortages into consideration. *See*, State Engineer’s Ruling No. 5726. The Applicant argues that the water

¹⁰ Exhibit No. 42.

¹¹ Exhibit No. 48.

secured from conservation and other resources will not be enough to satisfy Southern Nevada's current need.

The State Engineer finds that NRS § 533.370(6)(a) requires that the State Engineer shall consider whether the applicant has justified the need to import the water from another basin. The State Engineer finds many of the Protestants that are challenging NRS § 533.370(6)(a) were not participants in the previous hearings. The State Engineer finds that more than 58,000 acre-feet with a potential of 78,000 acre-feet has been granted by the State Engineer in Spring, Cave, Dry Lake and Delamar Valleys. The State Engineer finds that more than 8,000 acre-feet has been granted by the State Engineer in Tikapoo and Three Lakes Valleys. The State Engineer finds that the Protestants who raised this issue will be allowed to present evidence as to whether the Applicant has justified the need to import the water from another basin and that the amount of water contemplated in the applications is necessary and reasonably required for the proposed purpose in light of the fact that substantial quantities of water have already been granted to the Applicant and in light of the argument that circumstances have changed the need for the water. The Applicant will have the opportunity to rebut that evidence and demonstrate its need to import the water from another basin and that the amount of water contemplated in the applications is necessary and reasonably required for the proposed purpose. However, the State Engineer takes administrative notice of the testimony and evidence presented on this issue at the Spring Valley hearing.

VIII.

FINANCIAL ABILITY TO MEET COSTS AND ADEQUACY OF DESCRIPTION OF PROPOSED COSTS

Protestants represented by ACE allege that the adequacy of the information provided by the SNWA concerning the costs of the pipeline is no longer sufficient and it has information that the costs will be significantly higher than the previous estimates, which goes directly to the statutory criteria found in NRS § 533.335(7) and 533.370(1)(c)(2). Millard County also argues that the costs of the project have greatly increased and that these significant increases were not contemplated by the State Engineer when issuing prior rulings and that the SNWA's plans to finance this cost through continued growth has been seriously undercut by the recent economic downturn in Las Vegas.

The State Engineer finds NRS § 533.335(7) goes to information that must be contained in an application and the Applicant is not required to refill out the applications. Nevada Revised Statute §

533.370(1)(c)(2) does require that an application provide proof satisfactory of his financial ability to actually construct the work. Because the costs of large infrastructure projects have seen such dramatic increases in the last few years, ACE requests that the State Engineer allow the presentation of new evidence concerning an up-to-date actual and reasonable estimate of the pipeline project and the SNWA's ability to meet that cost.

The State Engineer finds that these Protestants who raised this issue will be allowed to present evidence concerning an up-to-date estimate of the pipeline project cost and the Applicant will have the opportunity to rebut that evidence and demonstrate its financial ability to construct the works. However, the State Engineer takes administrative notice of the testimony and evidence presented on this issue at the Spring Valley hearing.

IX.

CONSERVATION PLAN

ACE alleges that there is new information that demonstrates that the SNWA has failed to implement or even to include in its water conservation planning a range of readily available, cost-effective conservation measures that are being implemented by other cities throughout the arid West that greatly increase water efficiencies and would readily produce 86,000 acre-feet/year of water for use in its service area by implementing certain measures. ACE requests that the State Engineer allow the presentation of new evidence concerning the deficiencies of the SNWA's conservation planning efforts.

Millard County also argues that new information calls into question whether the SNWA has demonstrated that it has adopted and is effectively carrying out a reasonable and adequate conservation plan.

The Applicant argues that the SNWA has clearly demonstrated its adoption and effective implementation of an adequate water conservation plan and cites to several awards the SNWA has received in recognition of its conservation achievements.

Nevada Revised Statute § 533.370(6)(b) provides that when considering an interbasin transfer of ground water the State Engineer shall determine if a plan for conservation of water is advisable for the basin into which the water is imported and whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out.

The State Engineer finds he has already ruled that a plan for conservation of water is advisable for the basin into which the water is imported and that the SNWA has demonstrated

that such a plan has been adopted and is being effectively carried out. The State Engineer also found that the comparison of per capita consumption of other southwestern cities to that of southern Nevada is not an accurate comparison due to the factors impacting per capita consumption and has rejected related protest claims.

Because there are Protestants that were not parties to the prior hearings he will allow a very brief presentation on the issue of a conservation plan by the Protestants who raised this issue and the Applicant will have the opportunity to rebut any evidence presented and demonstrate that its conservation plan is effective. However, the State Engineer takes administrative notice of the testimony and evidence presented on this issue at the Spring Valley hearing.

X.

AIR QUALITY

Various Protestants argue that the issue of air quality impacts to basins other than Snake Valley evidence should be presented during the evidentiary phase of the hearing. Some Protestants argue that they should be allowed to address any issue they want to because they filed a protest. The State Engineer does not agree with that assessment. Nevada Revised Statute § 533.365 provides that a protest must set forth the grounds of the protest with reasonable certainty, which must be verified by affidavit. Nevada Administrative Code § 533.210, which addresses permissible issues to be considered during an administrative hearing, indicates that the issues to be considered during a hearing will be determined from the contents of the application and any protests and may include any issues that arise under chapters 533 and 534 of NRS, which means that protest issues are those that arise from Nevada Water Law.

Some Protestants represented by ACE specifically alleged that the subject application should be denied because it individually and cumulatively with the other applications will exceed the safe yield of the basin thereby adversely affecting phreatophytes and create air contamination and air pollution in violation of State and Federal Statutes including but not limited to the Clean Air Act, and chapter 445 of the NRS. (*See*, protest of Thomas A. Bath to Application 54022 and others identified in the SNWA's Opposition to Motions Regarding Air Quality Evidence, p. 8.)¹² Protestant Millard County attempts to argue that its protests sufficiently identifies issues that should allow it to present an air quality case, but it did not mention air contamination or air pollution anywhere in its protest. Additionally, Millard County wants to argue about air quality

¹² Exhibit No. 47

issues in places far removed from Snake Valley. Millard County cites to other statutory criteria that might include an air quality argument, but Millard County did not cite to these criteria and raise an air quality argument in its protest.

The State Engineer finds that Protestants that did not raise air quality with reasonable certainty in their protest, meaning they did not specifically mention air quality or air pollution, will not be allowed to present evidentiary submissions on that issue; therefore, Millard County will not be permitted to present an individual case as to air quality. The State Engineer finds the Ely Shoshone Tribe identified the same protest issue as Mr. Bath and did identify air quality issues with reasonable certainty.

The State Engineer finds the scope of the State Engineer's inquiry is limited to considerations that arise out of Nevada Water Law and water policy. The burden of evaluating air quality issues in places far removed from Snake Valley is not within the State Engineer's preview and is relegated to other agencies of government. The State Engineer finds that the public interest concerns that he is to address are related to whether the interbasin transfer of water is environmentally sound as it relates to the basin from which the water is exported, and not general environmental concerns. The State Engineer has already found that with respect to environmental soundness the prospective he will focus on is that of hydrologic issues and is not to be duplicative of the environmental review conducted pursuant to federal law. The State Engineer's inquiry as to environmental soundness is whether the use of the water is sustainable over the long-term without unreasonable impacts to the water resources and the hydrologic-related natural resources that are dependent on those resources. Air quality issues are outside the State Engineer's preview and will not be an issue he will address.

XI.

HEARING MANAGEMENT

The State Engineer finds 18 different people appeared at the first day of hearing with ten different entities indicating they would be presenting cases. The State Engineer finds there must be some management and control of the hearing and by allowing Protestants to stray too far away from the issues in their protests or issues of Nevada Water Law and water policy will unduly lengthen the hearing and the State Engineer is exercising his authority to manage the hearing in the manner most effective to his decision making. The State Engineer finds that Protestants frequently add a protest claim alleging that they incorporate by reference the grounds

raised by other Protestants. The State Engineer finds this is not permitted as each protest must be verified by affidavit of the individual protestant; therefore, a protestant cannot adopt a protest to which they are not a signatory and affiant. The State Engineer finds he is not a signatory to the Spring Valley Settlement Agreement or any other agreement between the Applicant and the Federal Agencies and will not allow portions of that agreement that are not relevant to his decision making to be brought in as issues in this hearing.

NOTICE

I.

PLEASE TAKE NOTICE; the administrative hearing on protested Applications 54022 through 54030 will reconvene beginning at **8:30 a.m., on Monday, September 28, 2009, continuing through Friday, October 2, 2009, reconvening on Monday, October 5, 2009, through Friday, October 9, 2009. The hearing will be in recess the week of October 12 through 16, 2009, reconvening on Monday, October 19, 2009, through Friday, October 23, 2009, and Monday October 26, 2009, through Thursday, October 29, 2009, to be held at Nevada State Legislature Room 1214, 401 South Carson Street, Carson City, Nevada.** The hearing will be able to be viewed over the internet through the Nevada Legislature website at www.leg.state.nv.us and at the Division of Water Resources Southern Nevada Branch Office at 400 Shadow Lane, Suite 201, Las Vegas, Nevada. **Public comment will be taken on Friday, October 9, 2009, starting at 9:00 a.m. in Room 1214 at the Nevada State Legislature and in Suite 201 at 400 Shadow Lane, Las Vegas, Nevada.** Written public comment will be accepted through Friday, November 20, 2009, in the Office of the State Engineer in Carson City. The State Engineer will attempt to arrange for public comment to be taken from Ely and Baker, but is unable to make those arrangements as of this date. If such arrangements are made, please refer to the State Engineer's website at www.water.nv.gov at a later date to ascertain the location. Public comment will be limited to five minutes per person in order to accommodate all persons who may wish to speak.

II.

The exchange of documents, witness lists and descriptions of witness testimony will take place in two simultaneous exchanges. No party is required to serve copies of evidence on anyone other than those Protestants who made an appearance at the first day of the hearing and the State Engineer in Carson City and Las Vegas. Where appearances are made by two lawyers

for one entity, only one counsel need be served. Unless other arrangements are made between the parties, Mr. Taggart should be served for the Applicant, Mr. Ward for Millard County, Mr. Herskovits at Advocates for Community and Environment for the Protestants he represents, Mr. Walch for the Protestants he represents, Mr. Waite for Protestant Ely Shoshone Tribe, Mr. Anderson for Protestant Eskdale Center, Mr. Benesch for Protestant Nye County, Mr. Palmer for Protestants U.S. Bureau of Land Management, Fish and Wildlife Service, and Bureau of Indian Affairs, and Mr. Fahmy for Protestant U.S. National Park Service. As Callao Irrigation Company and Veronica Douglas have only been granted interested person status, they are not full party participants to the hearing and need not be served during the full evidentiary exchange and they are only required to serve any documents they provide to the Applicant through Mr. Taggart.

Initial Evidentiary Exchange: The parties are hereby ordered to serve on each other and the State Engineer in Carson City and Las Vegas, Nevada, service meaning receipt by that party, no later than Friday, June 19, 2009, an exhibit list, a witness list, a reasonably detailed summary of the testimony of each witness, and copies of any documentary evidence intended to be introduced into the hearing record. If a witness is not identified as testifying on direct as to a certain topic, the witness will not be allowed to testify to the unidentified topic in his or her direct testimony. If a witness is to be presented to provide expert testimony, the evidentiary exchange shall include a written report prepared and signed by the witness, or witnesses, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or in support of the opinions and a statement of qualifications of the witness. The parties may choose to exchange documents via computer compact disk in PDF 200 x 200 dpi format.

Second Evidentiary Exchange: The parties are hereby ordered to serve on each other and the State Engineer in Carson City and Las Vegas, Nevada, service meaning receipt by that party, no later than Friday, August 21, 2009, an additional exhibit list, witness list, witness testimony summaries or documentary evidence intended to be introduced at the administrative hearing that may be necessary in response to the other parties' first evidentiary exchange. This exchange is meant only to provide evidence that becomes necessary in rebuttal to the original exchange. It is not intended to be the first time a party presents

evidence as to their case-in-chief. Again, the parties may choose to exchange documents via computer compact disk in PDF format.

In addition to the hard copies of the lists, summaries and evidence to be served on the State Engineer in Carson City and Las Vegas, Nevada, **the parties are hereby ordered to also file in the Office of the State Engineer in Carson City and Las Vegas, Nevada, a computer compact disk that includes: their exhibit list in Microsoft Word format using the exhibit numbers assigned below, their witness list, their witness summaries and scanned copies of all their exhibits in PDF 200 x 200 dpi format.** The State Engineer will make these documents available on the Division of Water Resources website at www.water.nv.gov for public availability. If the parties choose to exchange documents via computer compact disk, those arrangements are to be made between the parties themselves.

III.

Nevada Administrative Code § 533.290 requires that exhibits introduced into evidence must be in a readily reproducible form, on paper that is 8½" x 11" or foldable to that size unless otherwise allowed by the State Engineer in a readily reproducible form. Larger charts, maps, drawings and other material will not be admitted into evidence, but may be used for demonstrative purposes. An original and one copy of each exhibit must be submitted to the State Engineer. Computer presentations, such as power-point slides, must be copied on paper that is 8½" x 11" and offered into evidence. Facilities are not available for copying documents during the hearing.

IV.

As discussed during the first day of the hearing, if parties intend to request administrative notice of documents that have already been received into evidence during the hearings on the Spring Valley or the Cave Valley, Dry Lake Valley, and Delamar Valley hearings on the Applicant's project, they must specifically identify those documents on their exhibit lists. Copies of these documents have been posted on the State Engineer's website under the Snake Valley Hearing web page. In order not to have multiple copies of the same document, the parties were directed to discuss with each other which documents, such as technical documents or reports, more than one party would be likely to put on their exhibit list. The Applicant is to put those documents on its exhibit list and supply the copies for the record and any party may refer to those agreed upon documents on the Applicant's exhibit list.

V.

For the presentation of excerpts from large documents, the State Engineer will allow the submission of excerpts, but upon request, the person or entity serving such document must make the entire document available to whomever requests it. If excerpts from a larger document are served and the person upon whom it is served requests to have the entire document in either a hard copy or in a PDF format on a computer compact disk, the person serving said document has 10 days from the date of receipt of the request to place the requested copy in the U.S. Mail.

VI.

The Applicant is hereby ordered to provide a ground-water model that simulates pumping and potential impacts from pumping ground water in the amount of 10,000 acre-feet annually, 25,000 acre-feet annually and 50,000 acre-feet annually for the time frames of 10 years, 25 years, 50 years, 100 years and 200 years. For any computer models presented as evidence, the parties must provide input and output electronic data files necessary to run the model during the initial evidentiary exchange and the models must be completed in MODFLOW.

VII.

Please note, exhibit numbers are assigned as designated below:

State Engineer	1 - 100
SNWA	101 - 500
Mr. Herskovits	501 - 900
Mr. Palmer	901 - 1300
Mr. Fahmy	1301 - 1700
Mr. Waite	1701 - 2100
Mr. Walch	2101 - 2500
Mr. Benesch	2501 - 2600
Mr. Anderson (Eskdale)	2601 - 2700
Callao Irrigation	2701 - 2750
Veronica Douglas	2751 - 2800

IV.

The proposed order for the evidentiary portion of the hearings is that the Applicant will present its case first and will have the days of September 28th through October 2nd. Mr. Herskovits will have the days of October 5th through 8th. Public comment will be taken on

October 9th. Mr. Fahmy will have the days of October 19th and 20th and Mr. Palmer will have the days of October 21st and 22nd. Mr. Waite will have the morning of October 23rd and Mr. Anderson the afternoon of October 23rd. Mr. Ward will have the days of October 26th and 27th, Mr. Benesch will have the morning of October 28th and Mr. Walch the afternoon of October 28th. Veronica Douglas, Deep Creek Mountains Ranch and Callao Irrigation Company will have the morning of October 29th. However, please note this schedule is subject to change as may be necessary during the course of the hearing.

V.

The Applicant and Protestants may make an opening statement at the beginning of their case limited to 15 minutes.

VI.

The order for examining witnesses shall be direct examination, cross-examination, re-direct examination limited to issues raised on cross-examination and re-cross examination limited to issues raised on re-direct. Protestants are not permitted to cross-examine each others witnesses, but may cross-examine the Applicant's witnesses.

VII.

When more than one agent or attorney represents the Applicant or Protestant, only one counsel will be allowed to conduct direct examination or cross-examination of any particular witness, including re-direct and re-cross-examination of said witness. However, a different counsel may participate in separate portions of the same case.

VIII.

Legal counsel not licensed to practice law in the State of Nevada or licensed, but not maintaining an office in the State of Nevada, is required to comply with Supreme Court Rules 42 and 42.1. The Verified Application to Associate form that needs to be filed with the Nevada State Bar can be found on the Nevada Division of Water Resources website found at www.water.nv.gov under Forms Room - Miscellaneous Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

IX.

As set forth in Nevada Administrative Code § 533.220, the hearing will be reported by a certified court reporter. The court reporter will file an original and one copy of the transcripts with the State Engineer. The costs of the transcript will be borne by the Applicant and

Protestants as set forth in the Nevada Administrative Code. Anyone wanting a copy of the transcript should make arrangements with the court reporter.

X.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify Susan Joseph-Taylor at the Nevada Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2800.

Sincerely,



Tracy Taylor, P.E.
State Engineer



TT/jm

Dated this 28th day of
October, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Interim Order No. 2 and Scheduling Order was served
by U.S. mail, postage prepaid, on October 28, 2008, on the following:

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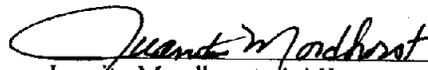
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