

ADVOCATES FOR COMMUNITY AND ENVIRONMENT

Empowering Local Communities to Protect the Environment and their Traditional Ways of Life

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September 12, 2016

Jason King, P.E.

Nevada State Engineer

State of Nevada Division of Water Resources

901 S. Stewart St., Suite 2002

Carson City, NV 89701

Re: Remand Proceedings on Southern Nevada Water Authority's Water Rights Applications in Spring, Cave, Dry Lake, and Delamar Valleys

Dear Mr. King:

On behalf of the Great Basin Water Network, White Pine County, and the rest of the individual, business, non-profit organization, and local government Protestants (collectively "GBWN et al.") that we represent in these proceedings, we are writing to address the first of the four questions you listed as topics to be discussed at the September 14, 2016, status conference on the above referenced matter. After reviewing the decisions of the Nevada District Court and Supreme Court, along with the representations about the evidence that were made in the briefs and petitions for writs of mandamus before the Supreme Court, it is apparent that no additional hearing is necessary to fulfill the directives of the District Court above concerning what the State Engineer must do on remand.

Accordingly, we strongly recommend that the State Engineer apply the legal constructions and holdings contained in District Judge Estes's December 13, 2013, Decision to the extensive record that already exists in this case. As the Applicant, Southern Nevada Water Authority, has repeatedly asserted in all administrative and judicial forums, sufficient evidence on the hydrogeology of the affected basins and groundwater systems already has been presented to allow the State Engineer to recalculate properly the amount of water available from Spring, Cave, Dry Lake, and Delamar Valleys.

Similarly, both the District Court and the Supreme Court have accepted the State Engineer's view that SNWA already has presented a great deal of data that provides a sufficient record for the State Engineer to make sound decisions on the monitoring and mitigation issues. The decisions of both courts above indicate that they view the remand order as an order directing the State Engineer simply to complete his March 22, 2012, rulings below that were incomplete because he failed to consider or address evidence concerning those monitoring and mitigation plan requirements that already is present in the record before the State Engineer.

With regard to the partial inclusion of Millard and Juab counties, Utah, in the monitoring and mitigation plan, the District Court's remand order plainly requires nothing more than a directive from the State Engineer to SNWA to make that minor modification of the monitoring and mitigation plan. No additional evidence is required for the State Engineer to direct SNWA to do so, and neither of the courts above has suggested that any additional evidence is required to correct this last deficiency in the State Engineer's prior order either.

So the courts above have accepted SNWA's and the State Engineer's repeated assertions that sufficient evidence on the issues the State Engineer has been directed to address on remand already is present in the record. This makes sense since SNWA had over 20 years to develop the voluminous data and other evidence that it presented on these issues during the last, lengthy, hearing – the third – before the State Engineer on these water right applications.

Given the ample opportunity SNWA already has had to develop and present evidence on these issues, and given the fact that the reviewing courts, the State Engineer, and SNWA all have agreed that the existing record contains sufficient evidence for the State Engineer to rule on these issues, there is no good reason to subject the State Engineer and the parties to the inconvenience and expense of any further administrative hearing on remand. The State Engineer already has all the evidence he needs to apply the law properly and rule correctly on the issues remanded by the District Court for further consideration. Therefore, GBWN et al. recommend that if the State Engineer decides he would benefit from further argument by the parties, he should simply provide an opportunity for additional written briefing on how the law should be applied to that evidence.

Sincerely,



Simeon Herskovits
Advocates for Community and Environment
Counsel for Protestants GBWN et al.

Cc: Micheline Fairbank
Paul Taggart
Paul Hejmanowski
Scott Williams
Paul Echohawk
Mark Ward