



CENTER for BIOLOGICAL DIVERSITY

2010 SEP 13 PM 4:41

STATE ENGINEER OFFICE

Jason King, State Engineer  
Division of Water Resources  
901 Stewart St. Suite 2002  
Carson City, NV 89701

September 9, 2010

RE: Interpretive and Informational Statements of August 19, 2010

Dear Mr. King:

The Center for Biological Diversity ("Center") is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 255,000 members and on-line activists throughout Nevada and the United States.

In April of this year we filed 130 protests with regards to the refilling of applications made by the Southern Nevada Water Authority, Lincoln County, Virgin Valley Water and others after a Nevada Supreme Court decision found errors in how the state engineer processed earlier applications. It should be noted that the Center is a member of the Great Basin Water Network.

The Center wishes to offer the following concerns, suggestions and observations for your consideration as you plan how to proceed forward.

1. Your statements only reference "Southern Nevada Water Right Applications in Spring, Cave, Dry Lake and Delamar Valleys". We believe this is inadequate and too narrowly focused. New hearings must also be conducted for 3 Lakes, Tikaboo, Coyote Springs and Indian Springs basins.
2. Your interpretation that the protests we filed are invalid and SNWA's re-filings were unnecessary and their original applications are valid flies in the face of the spirit and intent of the Nevada Supreme Court's decision in *GBWN v. State Engineer*. Our protests were filed as a defensive move in direct proportion to SNWA's duplicative re-filing of their previous water right applications. To rule that their original applications are valid and did not have to be re-filed, while holding that our protests of them cannot be transferred to their previous valid applications of SNWA seems arbitrary and capricious and is counter to due process and providing for the concerns of today's citizens of Nevada to be heard. As a not for profit organization, the over \$3500 we spent on protest and notary fees is far from an insignificant expense. We can sympathize with your concerns about your costs raised in your informational statement. In the spirit of fairness and citizen access, we respectfully request that our protests be held valid and directed towards the appropriate valid previously existing SNWA application. We should not be forced to pay twice to buy our way in to due process.
3. The Center believes you are taking an extreme interpretation with regards to the statutory 1-year rule. The concern raised in *GBWN v. State Engineer* was about the time that had

elapsed between the filing of the applications and the hearings, rather what was raised before the courts was the conscious exclusion of citizens and groups with present day concerns about the applications that were not party to the original hearings. The schedule you proposed in your informational statement is far too aggressive to allow for meaningful hearings. Because of the uniqueness of this particular situation, we urge you to engage in constructive discussion with the applicants, protestees, the court, and perhaps the legislature to come to a mutually satisfactory schedule that does not cram all the hearings into an extremely short period.

4. With respect to our protests of SNWA applications regarding their Spring Valley Ranch and our protests of other applications not related to interbasin transfers, we raised other valid grounds such as resource damage and threats to imperiled species to support our protest, and as such, our protests should be held valid. Such concern arise from new information and new species status that were not considered in previous hearings.
5. Your request for complete inventories is a sound one. However, such inventories and related studies must be completed and in-hand before the hearings. Also, inventories such as those conducted by SNWA must be made available to the protestees for their review well before the hearings. These inventories must, as well, undergo rigorous independent science review before the hearings.
6. The State Engineer's office has not done a very good job of communicating with interested parties. We are left to find out about your interpretation and decision through word of mouth rather than direct notice. We need to work together to close this communication gap. The proposed use of a dedicated web page that is inclusive of the pertinent information and e-mail notifications are steps in the right direction.
7. As a member of the GBWN, we ask you to incorporate their comments into ours, as well as those from attorney Simeon Herskovits.

Thank you for this opportunity to provide input and suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Mrowka". The signature is fluid and cursive, with a large, stylized initial "R" that loops back.

Rob Mrowka  
Ecologist/Conservation Advocate