

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

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STATE ENGINEERS OFFICE

IN THE MATTER OF APPLICATIONS )  
53987 THROUGH 53992, INCLUSIVE )  
AND 54003 THROUGH 54021, INCLUSIVE )  
FILED TO APPROPRIATE THE )  
UNDERGROUND WATERS OF SPRING )  
VALLEY, CAVE VALLEY, DELAMAR )  
VALLEY AND DRY LAKE VALLEY )  
HYDROGRAPHIC BASINS (180, 181, 182 )  
AND 184), LINCOLN COUNTY AND )  
WHITE PINE COUNTY, NEVADA. )

State 'S EXHIBITS 86  
DATE: 9/26/11

**CPB'S RESPONSE TO SNWA'S OBJECTION  
TO EXPERT WITNESSES AND EXPERT REPORTS**

Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole ("CPB"), hereby files its response to Southern Nevada Water Authority's ("SNWA") *Objection to Expert Witnesses Heilwil, Hurlow, Jones, Mayo, and Roundy and Expert Reports by Heilweil (Mill Ex. 10), Hurlow (Mill Ex. 11), Myers (CTRG Ex. 14), and Jones and Mayo (CPB Ex 11)* filed herein on September 1, 2011.

This Response addresses only SNWA's request to exclude expert witnesses Jones, Mayo, and Roundy and the Jones and Mayo expert report (CPB\_011). This Response is made pursuant to the State Engineer's regulations (LCB File No. R129-08 sec. 6 (eff. Feb. 11, 2009)), the State Engineer's Third Amended Information Statement (June 6, 2011), the State Engineer's Notice of Pre-Hearing Conference and Hearing (April 1, 2011), and the affidavit of Severin A. Carlson, counsel for CPB, which is attached hereto as **Exhibit 1**.

**I. INTRODUCTION**

The CPB owns the Cleveland Rogers Ranch in northern Spring Valley, Nevada, which consists of approximately 7,000 deeded acres of real property. CPB's ranch operations, beyond

the deeded acreage, also include three (3) Bureau of Land Management (“BLM”) grazing allotments which consist of approximately 60,000 acres. Additionally, CPB is the owner of certain surface and groundwater rights, as permitted by the State Engineer and as set forth in various claims of vested right, in Northern Spring Valley. *See generally* CPB\_001. SNWA has filed various applications to appropriate groundwater in Spring Valley; CPB has protested twelve (12) of those applications.

At the State Engineer’s May 11, 2011, prehearing conference, all of the parties, including SNWA, agreed to a procedural schedule which mandated an initial evidentiary exchange on July 1, 2011, a second evidentiary exchange on August 26, 2011, and the hearing on SNWA’s applications commencing on September 26, 2011. *See Notice of Pre-Hearing Conference and Hearing* (April 1, 2011).

In accordance with the State Engineer’s directive, on Thursday, August 25, 2011, CPB deposited packages containing its second evidentiary exchange with Federal Express, for service on all parties. *See Exhibit 1* at ¶ 4. All of the CPB packages were delivered by Federal Express in a timely fashion throughout the day on Friday August 26, 2011, with the exception of the package addressed to SNWA which was diverted by Federal Express to San Francisco for unknown reasons. *Id.* at ¶ 5. Counsel for SNWA contacted counsel for CPB on the afternoon of Friday, August 26, 2011, indicating that an incorrect zip code had been used for the SNWA shipment. *Id.* at ¶ 6. CPB counsel confirmed that the correct zip code had been used and forwarded documentation confirming the same to SNWA’s counsel. *Id.* at ¶ 7. CPB counsel also offered to email portions of the second evidentiary exchange that were not too large so as to prevent delivery by such means. *Id.* at ¶ 6, 8. SNWA’s counsel agreed to this proposed resolution of the Federal Express error and acknowledged many of the files would be too large to

transmit via email. *Id.* at ¶ 6. Based on CPB counsel's discussion with SNWA's counsel, some portions of the second evidentiary exchange were successfully emailed to SNWA's counsel, to wit: the CPB's Updated Exhibit List (CPB\_004), CPB's Rebuttal Witness List (CPB\_005), Curriculum Vitae of Norm Jones (CPB\_013), Curriculum Vitae of Alan Mayo (CPB\_014) and Curriculum Vitae of Bruce Roundy (CPB\_015). *Id.* at ¶ 8. CPB counsel attempted to send the expert report of Aquaveo, LLC (Norm Jones and Alan Mayo) (CPB\_011), however, it was rejected by SNWA's email server because it exceeded the system limit or the recipient's email box was full. *Id.* at ¶ 9. Since the attempt to send CPB\_011 was late in the day, counsel for CPB did not have adequate staff to reduce the expert report into smaller segments (i.e. printing the entire document in color and scanning into segments that could be received by SNWA) and, therefore, indicated that it could be emailed the following business day if SNWA had not yet received the package from Federal Express. *Id.* Furthermore, counsel for CPB requested another email address from SNWA counsel that could perhaps accommodate such a large file; however, no response to this specific inquiry was provided. *Id.* Ultimately, Federal Express delivered the package on Monday, August 29, 2011 at 9:27 a.m. *Id.* at ¶ 10.

In addition to objecting to CPB\_011 based on the Federal Express delivery error, SNWA objects to expert witnesses Jones, Mayo, and Roundy and CPB\_011 because "they do not contain rebuttal evidence and should have been disclosed on July 1, 2011." *Objection at 3.* SNWA admits that it "has not had time to carefully review Aquaveo 2011 (CPB\_011)" but then goes on to argue that "many of the opinions contained in the Expert Reports do not appear to rebut SNWA's submissions" and rather "offer new expert opinions bearing on obvious issues that should have been disclosed in the initial exchange." *Objection at 5.*

This Response will show that CPB timely delivered its second evidentiary exchange and that any delay (which was short, only two calendar days – days on which SNWA was closed for business) was at the hands of an unaffiliated third party, while also showing that the expert witnesses and expert report clearly rebut assertions made by SNWA in its initial evidentiary exchange and, therefore, are not subject to exclusion.

## II. ARGUMENT

### A. SNWA's argument that it has had inadequate time to review the second evidentiary exchange should be disregarded as SNWA agreed to a short turn-around-time between the second evidentiary exchange deadline and the time for filing pre-hearing motions.

Although SNWA claims that “there has been inadequate time to complete a comprehensive review of these exhibits,” it notes that, based upon a “cursory review,” the exhibits “include content that is not a rebuttal of SNWA evidence.” Upon conducting a careful review of the Aquaveo report (CPB\_011) and examining the applicable law, however, the State Engineer will see that the entire content of the Aquaveo report is in rebuttal of SNWA’s evidence.

Furthermore, simply because SNWA deems that it has insufficient time to review the expert reports prior to the pre-hearing motion deadline does not mean the reports are inherently non-rebuttal in nature. Specifically, the rulings, action taken or agreements made at a prehearing conference are binding upon all parties. LCB File No. R129-08 sec 16 (eff. Feb. 11, 2009). At the time of the prehearing conference, SNWA never objected to the short turn-around-time and it should not now be permitted to use that agreed-upon timeframe as a bootstrap to exclude evidence it believes is detrimental to its case under the guise that a cursory review suggests the evidence is not rebuttal in nature. In fact, SNWA fails to provide any specific details as to what

portions of the expert report, if any, are more appropriate for the July 1, 2011, evidentiary deadline.

SNWA had an enormous amount of time to prepare its first evidentiary exchange. The protestants had approximately two months to review SNWA's 390 exhibits, a complex model, numerous reports of hundreds of pages, and thousands of additional pages of exhibits. SNWA appears to argue that any reports or testimony that deal with modeling were required to be exchanged on July 1, 2011. CPB, in CPB\_011, however, is not offering a new groundwater model, but is working with and analyzing SNWA's model and other expert reports from SNWA that were only available to CPB after July 1, 2011. SNWA's model and data in support of its applications were not filed simultaneously with the applications, so CPB never had a chance to address that modeling until after July 1, 2011.

**B. The Jones and Mayo Expert Report is in rebuttal to SNWA's initial evidentiary exchange**

**1. Legal Standard Regarding Rebuttal Evidence**

“If the State Engineer authorizes rebuttal evidence, the party may offer in its rebuttal only evidence that directly explains, counteracts or disproves facts offered into evidence by other parties of record.” (LCB File No. R129-08, effective 2/11/09, amending NRS Chapter 533)<sup>1</sup>

According to a recent decision of the Nevada Supreme Court, the right to present rebuttal evidence in administrative proceedings is fundamental to due process:

Although proceedings before administrative agencies may be subject to more relaxed procedural and evidentiary rules, due process guarantees of fundamental fairness still apply. Administrative bodies must follow their established procedural guidelines and give notice to the defending party of the issues on

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<sup>1</sup> Subsection (2) of NAC 533.230 (added 2/8/95) formerly provided: “The state engineer will not require the advance identification of persons who intend to offer rebuttal testimony.”

which decision will turn and...the factual material on which the agency relies for decision so that he may rebut it.'

*Dutchess Business Services, Inc., v. Nevada State Board of Pharmacy*, 124 Nev. 701, 711, 191 P.3d 1159, 1166 (2008) (internal citations omitted); *see also Witherow v. State of Nevada Board of Parole Commissioner*, 123 Nev. 305, 311, n. 25, 167 P.3d 408, 411, n. 25 (2007), *citing Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (concluding that the Clark County Personnel Grievance Board hearings “are conducted in a manner consistent with quasi-judicial administrative proceedings” because they afford the “‘taking of evidence only upon oath or affirmation, the calling and examining of witnesses on any relevant matter, impeachment of any witness, and the opportunity to rebut evidence presented against the employee’”); and *Stockmeier v. Nevada Dep't of Corrections Psychological Review Panel*, 122 Nev. 385, 390, 135 P.3d 220, 224-25 (explaining that administrative agencies act in a “quasi-judicial manner” when they take evidence, weigh evidence, and making findings of fact and conclusions of law: “We have also held that ‘the taking of evidence only upon oath or affirmation, the calling and examining of witnesses on any relevant matter, impeachment of any witness, and the opportunity to rebut evidence presented ... ‘was’ consistent with quasi-judicial administrative proceedings’”).

In judicial proceedings, the Nevada Supreme Court has held that rebuttal evidence is that which “explains, contradicts, or disproves evidence introduced by a defendant in his case-in-chief.” *Andrews v. Harley-Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096 (1990), *citing Morrison v. Air California*, 101 Nev. 233, 235-36, 699 P.2d 600, 602 (1985). In *Morrison*, the Nevada Supreme Court reversed and remanded where the trial court had refused to permit rebuttal evidence concerning the standard of care in deplaning:

Rebuttal evidence is that which explains, repels, contradicts, or disproves evidence introduced by a defendant during his case in chief. [Citation omitted.] The general rule for determining whether certain rebuttal evidence is proper is 'whether it tends to counteract new matters by the adverse party.' [Citation omitted.]

101 Nev. at 236, 699 P.3d at 602.

In Morrison the Court held that the rebuttal evidence should not have been excluded simply because it could have been part of plaintiff's case in chief: "Evidence will not be excluded from rebuttal merely because it might have been made part of the case in chief." *Id.*, quoting *Jones On Evidence*, (Sixth Edition, Gard.), § 24:1 (1972) at 74:

Rebutting evidence means, not merely evidence which contradicts the witnesses on the opposite side and corroborates those of the party who first presented evidence bearing on the issue, but evidence in denial of some affirmative fact which the answering party has endeavored to prove. ***Where the purpose of evidence is clearly rebuttal, the party offering it is entitled to have it admitted; and its exclusion may be error.*** [Emphasis added by court.]

*Id.*; see also 101 Nev. at 237, 699 P.2d at 602, citing *Pellico v. E.L. Ramm Company*, 216 N.E.2d 258 (Ill. App. 1966), holding that while the trial court has discretion to permit a plaintiff to introduce evidence of an affirmative matter in rebuttal when such evidence might properly have been offered in chief, "where a defendant introduces evidence of an affirmative matter in defense or justification, the plaintiff, as a matter of right, is entitled to introduce evidence in rebuttal as to such affirmative matter."<sup>2</sup>

Finally, rebuttal evidence need not completely and entirely contradict evidence if it has a tendency to contradict or disprove it. *State v. Holt*, 47 Nev. 233, 219 P. 557, 560 (1923).

## **2. The Expert Testimony of Jones and Mayo and the Aquaveo expert report (CPB\_011) are Rebuttal Evidence**

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<sup>2</sup> See also *Hilt v. State*, 91 Nev. 654, 659, 541 P.2d 645, 649 (1975) ("Even if [witness's] testimony should have been more properly introduced during the prosecution's case in chief, it is within the trial court's discretion to admit evidence during rebuttal offered in support of a party's original cause. This court will not review that discretion in the absence of gross abuse.").

Expert witnesses Jones and Mayo were engaged by the CPB to review and analyze the initial evidentiary exchange submitted by SNWA, including both the documents and the model prepared by SNWA, and to then prepare a technical response focused on the SNWA MODFLOW model and the overall hydrology of Spring Valley as it relates to the CPB properties and the SNWA model. Furthermore, the expert report and testimony were to be limited to the grounds set forth in the CPB's protests to SNWA's applications (i.e. the availability of water in Spring Valley, impact on existing rights, and environmental impact). In fact, the conclusions of the Aquaveo report state that "The idea that CPB springs will dry up and phreatophytes will die is supported by SNWA's groundwater flow model." CPB\_011 at 68. Although Aquaveo agrees with a portion of SNWA's first evidentiary exchange conclusions, as just stated, Aquaveo also provides a critique of the data extrapolated (or the lack thereof) by SNWA in its first exchange.

The SNWA model submitted on July 1 represents SNWA's best estimate of how the aquifers in the region will respond to the proposed project and how the existing water rights in the region will be impacted. Jones, Mayo, and Aquaveo did not build a new model (which might have been subject to the July 1 exchange deadline), but rather, they analyzed the SNWA model and related documents.

Specifically, the Aquaveo report considers the SNWA model files and SNWA\_337 (*Conflicts Analysis Related to Southern Nevada Water Authority Groundwater Applications in Spring, Cave, Dry Lake, and Delamar Valleys, Nevada and Vicinity*). The Aquaveo report reveals that SNWA\_337 was an exercise in oversimplification and obfuscation. SNWA\_337 attempted to indicate that the impact of the applications on existing rights would be relatively minor and would only impact a small number of wells and springs. Rather than reporting the

actual drawdown at each water rights location, the results presented in SNWA\_337 were presented in terms of two simple criteria: (1) is the predicted drawdown greater than 50 feet and (2) was the change in spring discharge greater than 15% (with no indication as to which springs would go dry). The actual drawdown values and the actual changes in discharge were not reported by SNWA. Therefore, Aquaveo ran the SNWA model with more complete and in-depth analysis of the predicted impact at each water right location, including an analysis of which springs would go dry and when those springs would go dry.

As reflected in the Aquaveo report, Jones and Mayo analyzed various factors to test and challenge (i.e. rebut) the presumptions and conclusions offered by SNWA in its initial evidentiary exchange, including the following as it relates to SNWA's first evidentiary exchange and its representations to the effects of the SNWA proposed wells on the CPB holdings in Spring Valley:

- (1) Re-ran the SNWA model in a manner that allowed Aquaveo to determine the model responses with and without four groundwater applications near the Cleveland Ranch that were previously denied by the State Engineer in 2007, to wit: Application Numbers 54016, 54017, 54018, and 54021.
- (2) Identified a problem with how the SNWA model represents hydraulic conductivity on the fringe of the alluvial fan.
- (3) Analyzed the drawdown and impact on additional water rights locations ignored by SNWA in SNWA\_337, including CPB's claims of vested right that were a matter of public record. These locations were primarily south of the Cleveland Ranch and were impacted most severely by the proposed SNWA wells, but were not even referenced by SNWA in any manner whatsoever.

- (4) Illustrated how the SNWA model runs did not accurately simulate the impact on CPB spring water rights due to the elevations assigned by SNWA to the corresponding entries in the drain cells, despite SNWA\_337 stating that the springs were included in the model.
- (5) Performed a comprehensive flow budget analysis that indicated groundwater mining in the center of Spring Valley as a result of SNWA's applications. SNWA\_337 failed to provide for a flow budget analysis, even though such an analysis is a fundamental part of a typical model report.
- (6) Analyzed the model output in terms of ET-salvage, which is the basis of SNWA making its claim that sufficient existing water exist to support its applications.
- (7) Identified a significant flaw in SNWA's simulation that leads to an under-prediction of estimated drawdowns. SNWA's model does not introduce replacement wells at points in time when CPB springs go dry early on in the SNWA simulation, even though SNWA\_337 specifically mentions that replacement wells will most likely be necessary.

These examples are but a few of the rebutting evidence offered by Aquaveo, Jones and Mayo. It is not merely evidence which contradicts the evidence on the opposite side, but is evidence in denial of some affirmative fact which SNWA has endeavored to prove (i.e. that its applications will not impact existing rights or the environment).

### **3. The Expert Testimony of Roundy is also Rebuttal Evidence.**

Expert Witness Roundy participated in preparing and will testify on information in CPB\_007, which is a technical review and comment regarding SNWA's Exhibits 037, 097, 307 and 363 prepared with Resource Concepts, Inc. ("RCI"), concerning the impacts of the proposed

SNWA wells on vegetation, specifically in the area of CPB properties in northern Spring Valley. Expert Witness Roundy worked on the RCI report, CPB\_007, which is in direct rebuttal to a number of SNWA exhibits, and which SNWA has failed to lodge any objection as not being rebuttal in nature. Dr. Roundy reviewed and provided comment for CPB\_007 which details the problems associated with the dewatering of springs, the changes in vegetation as it relates to a loss of AUMs/forage, the potential loss of wetlands, and the conversion of wet meadows to dry meadows as addressed by SNWA in its exhibits. In a like fashion, Dr. Roundy provided input on those same subjects to Jones and Mayo in the drafting of CPB\_011. In other words, he will testify as to matters fully disclosed to SNWA in the CPB exhibits.

C. **The CPB's second exchange was timely and any delay with respect to delivery to SNWA was not at the hands of the CPB, but resulted from an unaffiliated party's actions.**

The State Engineer should bear in mind that SNWA's objection seeks to exclude rebuttal evidence offered by a protestant that not only opposes SNWA's applications, but does so through the eyes of a current owner of existing water rights in the Spring Valley groundwater basin who would be adversely affected by SNWA's applications. Throughout these proceedings, the State Engineer is required to consider the impact SNWA's applications have on existing rights. NRS 533.370(5). SNWA, in its initial evidentiary exchange, attempts to characterize those existing rights and the impact of its applications on them. Water rights, under Nevada law, are property; and therefore, the administration of a water rights hearing is subject to the due process clauses of the Nevada and United States Constitutions. *Mineral County v. Dept. of Conservation and Nat'l Resources*, 117 Nev. 235, 244, 20 P.3d 800, 806 (2001). The "basic notions of fundamental fairness and due process" require the State Engineer to provide full and fair administrative hearings. *Revert v. Ray*, 95 Nev. 782, 787, 603 P.2d 262, 264-65 (1979).

The objective of a protest hearing is to develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the Office of the State Engineer. LCB File No. R129-08 sec 17 (eff. Feb. 11, 2009)). With respect to witnesses, if a party fails to comply with a prehearing order to identify a witness and this failure results in prejudice to the opposing party, the State Engineer may: (a) refuse to allow that witness to testify; or (b) disregard any portion of the testimony. NAC 533.320(3). With respect to exhibits, if a party fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibits into evidence. LCB File No. R129-08 sec 24 (eff. Feb. 11, 2009)).

CPB has met its obligation with respect to the evidentiary exchanges ordered by the State Engineer. SNWA relies upon *Hansen v. Universal Health Services of Nevada, Inc.*, as a basis to exclude CPB's expert witnesses and the expert report. In *Hansen*, however, the trial court excluded an expert witness that was not timely disclosed. *Hansen v. Universal Health Services of Nevada, Inc.*, 115 Nev. 24, 28, 974 P.2d 1158, 1160-61 (1999). But what SNWA fails to set forth in its Objection is that, in *Hansen*, the trial court set January 1, 1992, as the deadline for disclosing expert witnesses and that a second expert disclosure was made in July 1993, a year and a half after the deadline. *Id.* Furthermore, the tardy disclosure in *Hansen* did not result from a third party failing to properly deliver the disclosure, as is the case here.

The delay which resulted from Federal Express misrouting SNWA's package resulted in delivery not being had on Friday, August 26, 2011 (a day on which SNWA's offices are closed), but rather the morning of Monday, August 29, 2011. As such, SNWA's objection should be rejected by the State Engineer.

### III. CONCLUSION

SNWA's motion fails to cite a single fact to support any claimed relief. It actually fails to request any relief. It is simply an inappropriate effort to create a "phantom placeholder" so that SNWA can later mount challenges that should have been specifically raised by September 2<sup>nd</sup>.

The submissions by CPB were timely, focused rebuttals to the inadequate and misleading conclusions advanced by SNWA. The rebuttals present important compelling scientific evidence that requires the denial of twelve of the well applications made by SNWA. Despite SNWA's empty objection, this is precisely the information the State Engineer needs and must have.

Respectfully submitted this 9<sup>th</sup> day of September, 2011.

KAEMPFER CROWELL RENSHAW  
GRONAUER & FIORENTINO

BY: 

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*Attorneys for Protestant CPB*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of September, 2011, a true and correct copy of the foregoing CPB'S RESPONSE TO SNWA'S OBJECTION TO EXPERT WITNESSES AND EXPERT REPORTS was served on the following counsel of record by depositing the same for mailing, at Reno, Nevada, with the United States Postal Service and Federal Express (where indicated), postage prepaid, addressed to the following:

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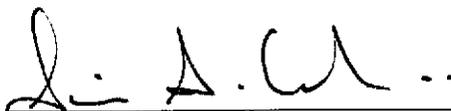
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A handwritten signature in black ink, appearing to read "J. Rhodes", written over a horizontal line.

An Employee of  
Kaempfer Crowell Renshaw Gronauer & Fiorentino

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

**IN THE MATTER OF APPLICATIONS )  
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\_\_\_\_\_ )**

**AFFIDAVIT OF SEVERIN A. CARLSON IN SUPPORT OF CPB'S RESPONSE TO  
SNWA'S OBJECTION TO EXPERT WITNESSES AND EXPERT REPORTS**

STATE OF NEVADA            )  
  )  
CARSON CITY                )            ss.

SEVERIN A. CARLSON, being first duly sworn, under penalty of perjury, deposes and states:

1. I am an attorney licensed to practice law in the State of Nevada with the law firm Kaempfer Crowell Renshaw Gronauer & Fiorentino, counsel for Protestant Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole ("CPB") in the above entitled matter.
2. I have personal knowledge of all matters stated herein and would competently testify as to the matters set forth herein and make this affidavit under penalty of perjury.
3. This affidavit is made in support of CPB's Response to Southern Nevada Water Authority's ("SNWA") Objection to Expert Witnesses and Expert Reports.

4. In accordance with the State Engineer's Third Amended Informational Statement, my firm, on behalf of CPB, deposited packages, containing CPB's second evidentiary exchange, for express delivery, with Federal Express, the afternoon of Thursday, August 25, 2011. Shipping was arranged for delivery to be completed on Friday, August 26, 2011, the deadline established by the State Engineer. SNWA, and all the protestants in this matter, were served in this manner. The State Engineer was served via hand-delivery on Friday, August 26, 2011.

5. All packages that were shipped by Federal Express were delivered on August 26, 2011 in compliance with the State Engineer's directive, with the exception of one package addressed to SNWA. SNWA's package was somehow diverted by Federal Express to San Francisco for unknown reasons.

6. On the afternoon of Friday, August 26, 2011, I received a call from Dana Walsh at SNWA. Ms. Walsh indicated that the package had been delayed and diverted to San Francisco because an improper zip code had been used. I informed Ms. Walsh that I would review our shipping documentation, alerted her to a recent issue I had with Federal Express the day prior, and apologized in advance, should I discover that my firm had made an error with respect to the SNWA shipping label. We also discussed the possibility of emailing portions of the CPB's second evidentiary exchange to Ms. Walsh because of the delay; however, both of us acknowledged that not all portions of the exchange were conducive to being sent via email because of file size and type.

7. Upon reviewing our shipping documentation, I emailed to Ms. Walsh a copy of the shipping slip for the SNWA package which indicated the delivery address and zip code were accurate, thereby confirming that the diversion and delay in delivery resulted from actions of Federal Express, not the CPB or my firm.

8. In addition to emailing Ms. Walsh information concerning the shipment, I also emailed to her the following documents: CPB's Updated Exhibit List (CPB\_004), CPB's Rebuttal Witness List (CPB\_005), Curriculum Vita of Norm Jones (CBP\_013), Curriculum Vitae of Alan Mayo (CPB\_014) and Curriculum Vita of Bruce Roundy (CBP\_015). Based upon information and belief, Ms. Walsh received tall of the aforementioned documents via email.

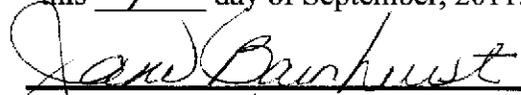
9. I also attempted to email Ms. Walsh the Aquaveo report (CPB\_011), however, because of its size, my email was rejected by SNWA's email server because the email size exceeded the system limit or the recipient's (Ms. Walsh's) email box was full. I forwarded the rejection notice to Ms. Walsh and indicated that because of the time of day and inadequate staffing that afternoon, I could not timely print and scan the Aquaveo report for emailing that afternoon, but would do so the following business day (Monday, August 29, 2011) if the Federal Express package had not yet been received. I also inquired if Ms. Walsh had a different email to which I could attempt to send the entire Aquaveo report. I never received a response to my inquiry.

10. On Monday, August 29, 2011, I confirmed that Federal Express had delivered the package to SNWA at 9:27 a.m.

FURTHER AFFIANT SAYETH NAUGHT.

  
SEVERIN A. CARLSON

Subscribed and Sworn before me  
this 9 day of September, 2011.

  
NOTARY PUBLIC in and for said  
County and State

My Commission Expires: 11/16/14

