Case No.: CV1204049 (and consolidated cases)

Dept. No.: 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WHITE PINE

WHITE PINE COUNTY and CONSOLIDATED CASES, et al.,

Petitioner,

vs.

JASON KING, P.E., Nevada State Engineer, STATE OF NEVADA, DIVISION OF WATER RESOURCES,

Respondent.

ANSWERING BRIEF OF THE CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ON BEHALF OF THE CLEVELAND RANCH

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PRELIMINARY STATEMENT

SNWA's Opening Brief makes three arguments. CPB will not address the second argument, which relates to Delamar, Dry, and Cave valleys. The third, regarding the 3M Plan, was addressed in CPB's Opening Brief and will only be lightly touched on here. This brief will focus on SNWA's first argument: that the State Engineer "refused to consider competent evidence of whether Spring Valley can reach equilibrium in a reasonable time."[1]

As the State Engineer has repeated many times, before pumping begins, a groundwater basin is considered to be in a state of equilibrium, called "steady-state" conditions. Sustainable groundwater development requires maintaining this balance. That is done by ensuring that when new pumping is introduced to a balanced system, it reduces natural discharge in an amount equal to what is pumped. There will always be a temporary imbalance when new pumping begins, but properly managed, natural discharge will slowly be reduced and the system will reach a new equilibrium without unreasonably lowering the water table. If natural discharge is not sufficiently reduced when new pumping begins, steady-state conditions will not be achieved and water levels will continually decline.

In Spring Valley, natural discharge occurs almost exclusively through evaporation and transpiration—"ET" for short. Thus, sustainable groundwater development requires "capturing" or "salvaging" this ET to reduce natural discharge. ET is captured by lowering the water table just enough to eliminate evaporation and transpiration. This means it is critical to choose points of diversion near areas of active ET. But that is not what SNWA did. No one knows for sure why SNWA chose the points of diversion it applied for, but it was not to capture ET. SNWA's expert, Mr. Burns, speculated that these sites were chosen to *avoid* ET capture.[2] It is no surprise, then, that in the previous hearing before the State Engineer, the undisputed evidence showed that SNWA's proposed system would mine millions of acre feet of water from permanent storage without ever reaching equilibrium.

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1 SNWA Opening Br. at 1.

2 Transcript, Vol. 5, pp. 1082:17-1083:23 (Burns) (Sept. 29, 2017) (ROA 54803-4).

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In its first appeal to this court and again now, SNWA argues that capturing ET to create equilibrium was not required by Nevada law and never had been.[3] According to SNWA, an applicant merely had to show that, on paper, the amount of water to be appropriated did not exceed the amount of ET that existed without regard to salvage. At its heart, SNWA's position advocated water withdrawal without regard to equilibrium or sustainability. SNWA relied upon the trappings of a water-budget analysis to determine equilibrium on paper but then contended that actually capturing ET in order to reach equilibrium was not required. Creating equilibrium through ET capture is a nice theory, SNWA contended, but not realistic in practice.

This court realized that SNWA's position was not realistic because it would authorize unsustainable perpetual groundwater mining while giving lip service to a balanced groundwater budget. Thus, the court remanded for an award of "less than the calculated E.T. for Spring Valley" with the requirement that, whatever amount was awarded, the evidence had to show that the system had "some prospect of reaching equilibrium ...."[4]

SNWA knew it could not make this showing on remand because its project was designed as a groundwater-mining project, not an ET-capture project.[5] Thus, SNWA made no effort to comply with the court's ruling—at least not with the 15 wells that are actually at issue.[6] Instead, SNWA presented the State Engineer with a hypothetical 101-wellfield scenario that SNWA contended could reach equilibrium. SNWA argued that the State Engineer should not limit its consideration to the applications actually pending but should consider this hypothetical wellfield. In short, SNWA exchanged a theory of hypothetical equilibrium that would never be reached by the actual wells at issue, for hypothetical wells that could reach equilibrium.

The State Engineer dispatched SNWA's argument by explaining that "Nevada law

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[3] SNWA Opening Br. at 9:14-15.

[4] Remand Decision, p. 13 (ROA 39063).

[5] *See* SNWA Opening Br. at 9 ("SNWA's original applications were not designed to target ET").

[6] Transcript Vol 5, pp. 1069:18-1070:21 (Watrus) (Sept. 29, 2017) (ROA 54790-1); *see also* Transcript, Vol. 4, 990:6-13 (Burns) (Sept. 28, 2017) (ROA 54675).

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requires the State Engineer to consider only applications that are filed, which must include specific points of diversion."[7] SNWA now asks this court to hold that the State Engineer erred by limiting its consideration to the pending applications and not considering whether a hypothetical wellfield could achieve equilibrium.[8] But the State Engineer's ruling was obviously correct and this court should affirm.

There is a great mystery here. Everyone agrees there is a substantial amount of unappropriated water in Spring Valley. And SNWA has presented a hypothetical wellfield design that might capture some of that water and reach equilibrium. The great mystery is why SNWA does not just file applications for that wellfield. CPB is not trying to prevent SNWA from appropriating water from Spring Valley. It is simply trying to protect existing rights and ensure sustainable groundwater development in Spring Valley and Nevada. This Court should affirm the denial of SNWA's applications in Ruling 6446.

BACKGROUND

Cleveland Ranch, owned by the Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-day Saints ("CPB"), is in the center of Spring Valley. CPB has substantial water rights in Spring Valley consisting of surface water (streams, springs, seeps) and groundwater rights (wells). SNWA applied to appropriate water from 19 points of diversion in Spring Valley. CPB protested 12 of those applications.

In 2011, CPB's experts, Norm Jones and Alan Mayo, used SNWA's own groundwater model to show that SNWA's system had no reasonable chance of reaching equilibrium and would cause drastic drawdowns and destroy existing water rights.[9] SNWA disputed this evidence by questioning the usefulness of the model and raising the possibility of human-driven management decisions to monitor, manage, and mitigate these inevitable conflicts.

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[7] State Engineer's Ruling 6446, p. 12 (ROA 38949).

[8] SNWA Opening Br. at 14 ("the State Engineer's decision to determine available water and ET capture rates through only the initial 15 wells was arbitrary").

[9] Exhibit CPB_011 (2011) (ROA 32103).

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In Ruling 6164, the State Engineer granted 15 of the 19 applications. The Ruling refused to consider evidence of drawdowns beyond 75 years—even though SNWA's own model showed that the system would be nowhere near equilibrium after 75 years.[10] And the Ruling accepted SNWA's position that "the model cannot account for human-driven management decisions to reduce, relocate, or stop pumping to prevent impacts to existing water rights or environmental areas of interest."[11] The Ruling adopted SNWA's 3M Plan with a promise to oversee and enforce that plan to protect existing rights and the environment.

CPB and other Protestants appealed and this court reversed Ruling 6164. The court accepted the State Engineer's long-standing definition of *perennial yield*.[12] It then described the process of sustainable groundwater development, whereby natural discharge is gradually eliminated in response to new pumping so that, over time, the system reaches a new equilibrium.[13] The court acknowledged that this process requires a "reasonable lowering of the water table and the death of most of the phreatophytes ...."[14] And it agreed with the State Engineer that "the time to reach equilibrium is not a valid reason to deny the grant of water," but explained that it "may very well be a reason to limit the appropriation below the calculated E.T."[15] The court rejected the argument that ET capture is not required, recognizing that without ET capture equilibrium would never be reached.[16]

Thus, the court reversed Ruling 6164 because SNWA failed to submit "valid evidence" that its groundwater project would capture ET and reach equilibrium. The District Court remanded "for an award less than the calculated E.T." with the requirement that the amended

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10 State Engineer's Ruling 6164, pp. 129-30 (ROA 129-30).

11 State Engineer's Ruling 6164, p. 130 (ROA 130).

12 Remand Decision, p. 10 (ROA 39060).

13 Remand Decision, pp. 10-11 (ROA 39060-61).

14 Remand Decision, p. 10 (ROA 39060).

15 Remand Decision, p. 11 (ROA 39061).

16 Remand Decision, p. 12 (ROA 39062).

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award have "some prospect of reaching equilibrium in the reservoir."[17]

I.

ET CAPTURE IS THE FOUNDATION OF SUSTAINABLE GROUNDWATER DEVELOPMENT

The Remand Decision recognized that ET capture is required by Nevada law.[18] SNWA says this was a "new rule" that "no other applicant in Nevada, or throughout the West" has been required to meet.[19] The State Engineer, in Ruling 6446, likewise says the Remand Decision "imposed new requirements" but it carefully dances around the issue of ET capture.[20] The analysis in Ruling 6446 begins with a red herring: "Nevada groundwater appropriations have never required that a post-development equilibrium condition be achieved *within a defined period of time*."[21] The State Engineer complains that in applying the Remand Decision, "the State Engineer is shackled into determining water availability based on capturing discharge in a *reasonable amount of time*."[22] But the amount of time is not the issue, and the Remand Decision did not say it was. The State Engineer is required to ensure that *at some point* the system will reach equilibrium without conflicting with existing rights or unreasonably lowering the water level.[23] There is no arbitrary time frame on reaching equilibrium. What the State Engineer does not deny any more in Ruling 6446 is that ET capture is required for sustainable development.

Because SNWA and the State Engineer both claim that the Remand Decision created new rules, CPB starts with basic principles to show that the Remand Decision faithfully applied established Nevada law and is consistent with the State Engineer's past practice.

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17 Remand Decision, p. 13 (ROA 39063).

18 Remand Decision, p. 12 (ROA 39062).

19 SNWA Opening Br. at 8-9.

20 State Engineer's Ruling 6446, p. 15 (ROA 38952).

21 State Engineer's Ruling 6446, p. 20 (emphasis added) (ROA 38957).

22 State Engineer's Ruling 6446, p. 20 (emphasis in original) (ROA 38957).

23 NRS 534.110(4).

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Sustainable groundwater development requires a balanced groundwater budget, also known as "steady-state" conditions.[24] "Generally, groundwater systems are thought to be in steady state prior to human development of the resource. Steady state means that recharge to the groundwater system equals discharge; thereby resulting in a balanced groundwater budget."[25]

When new pumping is introduced to a balanced system, the increased discharge creates an imbalance. To rebalance the system, there must be a corresponding increase in recharge, or a decrease in discharge from some other source. As explained by Charles V. Theis:

> Under natural conditions ... previous to development by wells, aquifers are in a state of approximate dynamic equilibrium. Discharge by wells is thus a new discharge superimposed on a previously stable system, and *it must be balanced* by an increase in the recharge of the aquifer, or *by a decrease in the old natural discharge*, or by loss of storage in the aquifer, or by a combination of these.[26]

These basic concepts are captured in the State Engineer's long-standing definition of *perennial yield.* Perennial yield is "the maximum amount of groundwater that can be salvaged each year over the long term without depleting the ground-water reservoir."[27] Perennial yield is "limited to the *maximum amount of natural discharge that can be salvaged* for beneficial use."[28] "If the perennial yield is exceeded," the State Engineer warns, "ground-water levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as groundwater mining."[29] Similarly, the Nevada Supreme Court has defined perennial yield as "the equilibrium amount or maximum amount of water that can safely be used without depleting

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[24] State Engineer's Ruling 5726, p. 27.

[25] State Engineer's Ruling 6164, p. 57 (ROA 39410).

[26] Theis, C.V., 1940. The source of water derived from wells. Civil Engineering 10(5):277-80 (emphasis added).

[27] State Engineer's Ruling 6164, p. 56 (ROA 39409).

[28] State Engineer's Ruling 6164, p. 56 (emphasis added) (ROA 39409).

[29] State Engineer's Ruling 6164, p. 56 (ROA 39409).

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the source."[30]

Built into these definitions is the requirement of salvaging or eliminating "natural discharge" to reach "equilibrium" or "steady-state" conditions after new pumping begins. Natural discharge in Spring Valley occurs primarily through ET.[31] Thus, the State Engineer has defined *perennial yield* in Spring Valley as "the maximum amount" of ET "that can be salvaged for beneficial use."[32] The State Engineer explained "that water lost to natural ET" (water already being discharged) "can be captured by wells and placed to beneficial use," thus maintaining equilibrium between discharge and recharge.[33] Accordingly, the "estimate of the perennial yield" for Spring Valley "relies on the capture of ground-water ET as the limit of the perennial yield."[34]

The State Engineer explains that in basins like Spring Valley, without ET capture, new discharges through pumping will not be offset by declines in natural discharge. There will be a "water budget deficit" and "steady state conditions cannot be reached …."[35] And this is the very definition of groundwater mining. "If the perennial yield is exceeded, groundwater levels will decline and steady state conditions will not be achieved, a situation commonly referred to as groundwater mining."[36] "While there is no statute that specifically prevents groundwater mining, the policy of the Engineer for over one hundred (100) years has been to disallow groundwater mining."[37]

Groundwater mining as a result of the failure to achieve equilibrium leads to "adverse

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30 *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 245 P.3d 1145, 1147 (Nev. 2010).

31 State Engineer's Ruling 5726, p. 27.

32 State Engineer's Ruling 6164, p. 56 (ROA 39409).

33 State Engineer's Ruling 5726, p. 27.

34 State Engineer's Ruling 5726, p. 32.

35 State Engineer's Ruling 5726, p. 36.

36 State Engineer's Ruling 6164, p. 56 (ROA 39409).

37 Remand Decision, p.10 (ROA 39060).

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conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased pumping costs, and land subsidence."[38] In this case, the groundwater mining would also destroy existing rights.[39]

SNWA suggested a different definition of *groundwater mining*. As explained by its counsel, SNWA took the position "that groundwater mining in Nevada does not occur if permits granted in a groundwater basin do not exceed the perennial yield."[40] In other words, "groundwater mining does not occur as long as permits are issued in an amount less than perennial yield[.]"[41] Under this definition, ET salvage means nothing and groundwater mining does not matter as long as, on paper, the amount of water appropriated does not exceed the calculated amount of ET, whether or not the ET is actually salvaged. Under this definition, an aquifer could be completely dewatered while pretending groundwater mining is not occurring. Thus, SNWA's contention was squarely rejected by the Remand Decision.

SNWA's proposed definition of *groundwater mining* is also contrary to the State Engineer's definition, which is directly tied to "steady state" conditions.[42] As stated by CPB's expert, Dr. Jones, in the previous hearing before the State Engineer: "You cannot, on the one hand, state that groundwater mining is prohibited yet, at the same time, state that equilibrium and ET capture do[ ] not matter because if you do not have a state of equilibrium you have, by definition, groundwater mining."[43]

Of course, some lowering of the water table is necessary to capture ET. As expressed by the State Engineer, a "decline in water levels always occurs when a new pumping stress is

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38 State Engineer's Ruling 6164, p. 56 (ROA 39409).

39 Transcript, Vol. 6, pp. 1178:23-1179:9 (Jones/Mayo) (ROA 54922-23), 1196:18-1197:1 (Jones) (Oct. 2, 2017) (ROA 54940-41).

40 Transcript, Vol. 6 1305:16-24 (Taggart) (Oct. 2, 2017) (ROA 55049).

41 Transcript, Vol. 6 1305:16-24 (Taggart) (Oct. 2, 2017) (ROA 55049).

42 State Engineer's Ruling 6164, p. 56 (ROA 39409).

43 Transcript, Vol. 6, 1164:19-23 (Jones) (Oct. 2, 2017) (ROA 54908).

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applied, and water levels will continue to decline as transitional storage is removed until steady state conditions can be reached."[44] Nevada law expressly allows for a "reasonable lowering of the static water level" in response to new pumping.[45]

The water that is withdrawn from storage in order to lower the water table, eliminate ET, and reach steady-state conditions is called "transitional storage." As explained by the State Engineer in 1971: "Transitional storage" is the water "that is extracted during the transition period between natural equilibrium conditions and new equilibrium conditions under the perennial-yield concept of ground water development."[46] Under SNWA's definition of *groundwater mining*, transitional storage would have to be limitless. But it obviously is not. The very concept of *transitional* storage is that a new equilibrium will be reached and water will stop being pumped from storage. But this cannot occur without ET salvage.

The exact amount of time it takes to reach equilibrium is not the critical factor. What matters is whether equilibrium will be reached "without depleting the groundwater reservoir."[47] A small project that takes a long time to reach equilibrium will only remove a small amount of water from storage during the transition. But SNWA applied for the "largest interbasin appropriation and transfer of water ever requested in the history of the state of Nevada."[48] With the amounts of water SNWA proposes to pump, if equilibrium is not reached in a relatively short period of time, the project will withdraw massive amounts of water from storage, unreasonably lowering the water table—especially in the immediate vicinity of its wells, which happens to be where Cleveland Ranch is located.

And if a small project fails to reach perfect equilibrium, the resulting imbalance will not

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44 State Engineer's Ruling 5726, p. 36.

45 NRS 534.110(4).

46 State Engineer's Office, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13.

47 State Engineer's Ruling 5726, p. 26.

48 *Great Basin Water Network v. State Engineer*, 234 P.3d 912, 914 (Nev. 2010).

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be devastating. But if SNWA's project fails to achieve equilibrium, even a small remaining imbalance would result in substantial continuing withdrawals from storage. Again, the very concept of *perennial yield* is based on eliminating natural discharge (ET) to offset new pumping in order to create steady-state conditions so that the pumping can continue "indefinitely."[49] As Dr. Bredehoeft testified, "when you read 'perennial yield,' that's what you're – that's what you're setting out as your objective."[50] And that is precisely why "perennial yield" is directly tied to ET capture. Without ET capture, the system will not achieve steady-state conditions and pumping cannot continue "indefinitely."

Because ET capture is necessary to achieve steady-state conditions, the State Engineer must require applicants to show that their proposed pumping will capture sufficient ET to offset the proposed pumping and reach a new equilibrium. And the applicant should carefully choose points of diversion that will capture ET. The State Engineer has recognized that "[t]he magnitude of transitional storage depletion and ground-water decline" is directly "dependent on *the location and magnitude of pumping*, the location and magnitude of natural inflow and outflow, and the hydraulic properties of the aquifers ...."[51] Thus, as Theis explains, to achieve ET capture with "a minimum lowering of the water table in the aquifer" wells "should be placed as close as economically possible to areas of ... natural recharge where ground water is being lost by [ET] ...."[52]

In Ruling 6446, the State Engineer backed away from its previous assertion that ET capture is not required, and now says that "[r]equiring ET capture with the goal of reaching basin equilibrium *in a reasonable amount of time*" would "completely disrupt the way the State

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49 Transcript, Vol. 24, p. 5372:19 (Bredehoeft) (Nov. 20, 2011) (ROA 37796).

50 Transcript, Vol. 24, p. 5373:10-12 (Bredehoeft) (Nov. 10, 2011) (ROA 37797).

51 State Engineer's Ruling 5726, p. 36 (emphasis added).

52 Theis, C.V., 1940. The source of water derived from wells. Civil Engineering 10(5):277-80.

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Engineer currently administers groundwater basins in Nevada ...."[53] Just because recent State Engineer practices ignored ET salvage does not legitimatize those practices. ET salvage matters and matters very, very much when confronting a project the size of SNWA's project. The State Engineer objects only to requiring equilibrium to be reached in a "reasonable amount of time." But the only alternative is to allow an *unreasonable* or even *unlimited* amount of time to reach equilibrium. And this would require an unlimited amount of "transitional storage." In any case, as discussed below, the undisputed evidence in this case showed that the 15 wells at issue would *never* reach equilibrium.

The State Engineer probably backed away from its previous position that ET capture is not required because, first, it is an indefensible position and, second, the State Engineer has often required applicants to demonstrate ET capture. No ruling by any prior State Engineer proclaimed that ET salvage does not matter. Quite the contrary. In Ruling 3486 the State Engineer reduced the perennial yield of a basin because the "areas of active evapotranspiration" in that basin were "too remote from the concentrated pumping areas" leaving ET uncaptured.[54] If the State Engineer had ignored actual ET capture, the water budget in that basin would have been imbalanced, resulting in a perpetual lowering of the water table. Similarly, in Ruling 3462, the State Engineer denied six applications because of uncaptured ET.

> As of 1976, about 2,500 acre-feet annually of ground water evapotranspiration remained of the estimated 14,000 acre-feet annually discharged under natural conditions. The capture of all ground water evapotranspiration by pumping will probably not occur in the foreseeable future because some remaining areas of active evapotranspiration are too remote from the concentrated pumping areas.[55]

Ruling 3607 reached a similar conclusion. Although there were areas of active ET, the State Engineer found that the proposed pumping regime would not capture that ET because the

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53 State Engineer's Ruling 6446, p. 20 (ROA 38957).

54 State Engineer's Ruling 3486, p. 3.

55 State Engineer's Ruling 3462, pp. 2-3.

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proposed points of diversion were too remote from those areas of active ET.[56] And in 1971, the State Engineer explained that in Pahrump, "the average annual recharge is estimated to be 22,000 acre feet," but "because of the difficulty in salvaging the subsurface outflow from the deep carbonate-rock reservoir, the perennial yield is only 12,000 acre feet."[57] In other words, because some of the natural discharge could not be captured, the perennial yield had to be reduced.

In that same 1971 report, the State Engineer explained that estimates of perennial yield "are based on the following limitations and assumptions: (1) present beneficial uses represent salvage and are therefore included; (2) most evapotranspiration discharge can be salvaged …."[58]

Thus, when determining the perennial yield of a basin, the State Engineer must consider how much natural discharge can actually be salvaged. And when considering an application for a new appropriation, the State Engineer must consider whether the proposed pumping will achieve steady-state conditions by reducing natural discharge (capturing ET) in an amount equal to the proposed pumping. When groundwater is pumped from areas remote from natural discharge, "the condition of equilibrium connoted by the concept of perennial safe yield may never be reached in the predictable future and the water used may all be taken from storage."[59] And this is exactly where SNWA went wrong all the way back in 1989 when it chose points of diversion.

II.

THE REMAND DECISION PROPERLY APPLIED THE BASIC PRINCIPLES OF SUSTAINABLE GROUNDWATER DEVELOPMENT ESTABLISHED IN NEVADA LAW

The last time this matter was before this court, SNWA argued that "[t]here is no mention

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[56] State Engineer's Ruling 3607, p. 3.

[57] State Engineer's Office, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13 (emphasis added).

[58] State Engineer's Office, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13 (emphasis added).

[59] Theis, C.V., 1940. The source of water derived from wells. Civil Engineering 10(5):277-280.

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of ET capture anywhere in Nevada law."[60] To the contrary, the requirement of ET capture is all over Nevada water law. As shown in the previous section, the concept of ET capture is inherent if not explicit in at least the following: (1) the longstanding definition of *perennial yield*; (2) the longstanding prohibition against groundwater mining; (3) the statutory concept of "safe yield;"[61] (4) the concept of "steady-state" conditions or equilibrium; (5) the statutory prohibition against an unreasonable lowering of the water table; (6) the concept of *transitional* storage; and (7) the prohibition against conflicts with existing water rights. These are the fundamental principles of sustainable groundwater development, and they all rely on ET capture. It is not an overstatement to say that, in basins like Spring Valley where natural discharge occurs primarily through ET, ET capture is the very foundation of sustainable groundwater development. Departing from these basic principles of sustainable development when faced with the "largest interbasin appropriation and transfer of water ever requested in the history of the state of Nevada"[62] would be disastrous.

The Remand Decision was right to reject SNWA's argument that "'[t]he whole question of groundwater mining and E.T. capture and timed equilibrium are not part of the water law and they are not necessary.'"[63] Not only are they part of well-established Nevada law, they are essential to sustainable groundwater development.

III.

SNWA MADE NO ATTEMPT TO SATISFY THE REQUIREMENTS OF THE REMAND DECISION.

The Remand Decision mandated "[a] recalculation of the water available for appropriation from Spring Valley assuring that the basin will reach equilibrium between discharge and recharge in a reasonable time."[64] Under the Remand Decision, SNWA was

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60 SNWA's Ans. Br. to CPB, p. 24.

61 NRS 533.371(4).

62 *Great Basin Water Network v. State Engineer*, 234 P.3d 912, 914 (Nev. 2010).

63 Remand Decision, p. 11(ROA 39061) quoting SNWA Ans. Brief, Vol. 1, p. 69.

64 Remand Decision, p. 23 (ROA 39073).

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required to submit evidence of how much ET its groundwater project would capture and also show that equilibrium or "steady-state" conditions would be achieved without unreasonably depleting the groundwater aquifer. SNWA made no attempt to meet this burden.[65] Instead, SNWA conceded that its project, as currently designed, would never reach equilibrium.[66]

CPB put on undisputed evidence that SNWA's groundwater project would never reach equilibrium.[67] This evidence was based on model simulations performed using the same CCRP model developed and used by SNWA experts in 2011, but with the following appropriate updates, all of which favored SNWA: (1) the pumping rate was reduced from 91,000 AFA to 61,000 to match the appropriation levels approved in Ruling 6164; (2) the ET discharge was increased from 75,000 AFA to 84,100 AFA to match the updated ET estimate provided by Ruling 6164; and (3) the baseline simulation was updated to include water rights purchased by SNWA in recent years.[68] The simulations run by CPB's experts were limited to the 15 wells proposed in the applications that are pending before the State Engineer.[69]

This evidence showed that the proposed pumping system will never reach equilibrium. The primary reason is the location and spatial distribution of the wells. They are too remote from the ET discharge zones. Dr. Burns acknowledged that the "proximity of the well locations to the discharge area" was the primary cause of the failure to capture ET.[70] And because of that, the proposed pumping would substantially dewater the aquifer, destroy existing rights, and pull a substantial amount of groundwater from neighboring basins, without ever approaching

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65 Transcript, Vol. 5, pp. 1069:18-21 (Watrus) (Sept. 29, 2017).

66 Exhibit SNWA_597, p. 6 (ROA 48153); Transcript, Vol. 4, pp 990:6-992:11 (Burns) (Sept. 28, 2017) (ROA 54675-77).

67 Exhibit CPB_19 (ROA 53111), Exhibit CPB_25 (ROA 53267).

68 Transcript, Vol. 6, pp. 1181:10-1182:5 (Jones) (Oct. 2, 2017) (ROA 54925-26).

69 Transcript, Vol. 6, pp. 1183:23-1184:6 (Jones) (Oct. 2, 2017) (ROA 54927-28).

70 Transcript, Vol. 4, 980:10-11 (Burns) (Sept. 28, 2017) (ROA 54665).

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equilibrium.[71]

According to the undisputed evidence, after 75 years of pumping, the system would be capturing about 38,000 AFA of ET discharge, meaning about 62% of the pumping would result from captured ET. The system would still be withdrawing 15,155 AFA from storage (continually lowering the water table and depleting storage) with 8,218 AFA being siphoned from adjacent valleys.[72] And that is about as close as the system would get to equilibrium. After 200 years of pumping, ET capture would only be at 69%, with the rest being withdrawn from storage (9,000 AFA) and interbasin transfer (10,000 AFA).[73] The model predicts that after 200 years, SNWA will have withdrawn 3.68 million acre feet from storage which, based on SNWA's estimate of the total amount of storage in Spring Valley, represents 43% to 77% of the total available storage.[74] Additionally, about 1.5 to 2 million acre feet would have been siphoned from adjacent valleys.[75] And the system would still be far from equilibrium.[76]

CPB's experts also did a fractional pumping analysis to see if equilibrium could be reached at a lower rate of pumping. The analysis started at 90% of the proposed pumping rate and went down to 10% at intervals of 10%., i.e., 90%, 80%, 70%, etc. down to 10%. The analysis showed that the system does not reach equilibrium at any of these pumping rates.[77] This analysis confirms that the primary problem is not the pumping rate, but the location of the wells in relation to active ET zones. While the proposed wells are located in the southern end of

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71 Transcript, Vol. 6 pp. 1178:23-1179:9 (Jones/Mayo) (Oct. 2, 2017) (ROA 54922-23).

72 Transcript, Vol. 6, pp. 1192:9-21 (Jones) (Oct. 2, 2017) (ROA 54936).

73 Transcript, Vol. 6, pp. 1188:14-1190:7 (Jones/Mayo) (Oct. 2, 2017) (ROA 54932-6).

74 Transcript, Vol. 6, pp. 1191:14-21 (Jones) (Oct. 2, 2017) (ROA 54935).

75 Transcript, Vol. 6, pp. 1194:7-14 (Jones) (Oct. 2, 2017) (ROA 54938).

76 Transcript, Vol. 6, pp. 1194:15-16 (Jones) (Oct. 2, 2017) (ROA 54938).

77 Transcript, Vol. 6, pp. 1198:1-14 (Jones) (Oct. 2, 2017) (ROA 54942).

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Spring Valley, 70% of the ET in Spring Valley occurs in the northern half.[78]

Again, rather than dispute this evidence, SNWA's witnesses conceded the point.

> Q. Do you have an opinion about whether … by simply reducing the award you can accomplish the goal the court indicated, which was reaching equilibrium in the basin?
>
> A. No. That really doesn't get you there. Reducing the award, reducing the appropriation is not really the issue. As I described earlier, it's the proximity of the wells to the discharge area.[79]

The system "does not reach equilibrium after 200 years of pumping," SNWA concedes, "because the production well configuration was not designed to capture ET."[80]

Yet, even while conceding that pumping rate is not the issue because no award could reach equilibrium, SNWA still protests that the State Engineer's "complete denial" is contrary to the Remand Decision.[81] The Remand Decision, SNWA says, required the State Engineer to "recalculate the award."[82] But the recalculation ordered in the Remand Decision was predicated on the requirement imposed on SNWA to submit evidence that its project would reach equilibrium within a reasonable amount of time.[83] When SNWA conceded on remand that it could not meet this burden – that its project would never reach equilibrium because it was not designed to – there was nothing to recalculate. The undisputed evidence showed that even an award of just 10% of what SNWA has applied for would result in perpetual groundwater mining.

The Remand Decision required SNWA to prove ET capture and equilibrium without unreasonably depleting the groundwater reservoir. The undisputed evidence showed substantial uncaptured ET, unreasonable depletion of the groundwater reservoir, and no chance of equilibrium. The evidence also showed that simply awarding less water was not a viable

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78 Transcript, Vol. 6, pp. 1195:22-1196:4 (Jones) (Oct. 2, 2017) (ROA 54939-40).

79 Transcript, Vol. 4, 990:7-14 (Burns) (Sept. 28, 2017) (ROA 54675).

80 Exhibit SNWA_597, p. 6 (ROA 48153

81 SNWA Opening Br., p. 6.

82 SNWA Opening Br., p. 17.

83 Remand Decision, p. 13 (ROA 39063).

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solution. The problem is the proposed location of the wells, not the amount of water. The State Engineer had no choice but to deny these applications. Again, the great mystery here is why SNWA does not just file new applications for wells that will capture ET.

IV.

THE STATE ENGINEER PROPERLY LIMITED ITS CONSIDERATIONS TO THE APPLICATIONS BEFORE IT.

SNWA's argument on appeal is that the State Engineer erred by limiting its consideration to the applications before it.[84] SNWA calls the State Engineer's interpretation of the Remand Decision "absurd" and "arbitrary."[85] "This Court never directed the recalculation to be based on only the original 15 wells," SNWA argues.[86] A conflicts analysis is limited to the pending applications, but "the ET capture analysis," SNWA argues, should consider "the life of the project" and recognize that it will "undoubtedly evolve."[87] In short, no matter what the applicant actually applies for, SNWA argues, as long as the applicant can show that some hypothetical wellfield (even if it requires 86 additional wells) could reach equilibrium, the applications should be approved. Tomorrow will take care of itself, seems to be the idea.

A. Nevada law requires applications to be rejected or approved based on the information in the applications, including specific points of diversion.

The State Engineer rejected SNWA's argument and found that "Nevada law requires the State Engineer to consider only applications that are filed, which must include specific points of diversion."[88] Nevada law requires the State Engineer to "approve or reject each application ...."[89] This is done based on the "best available science"[90] applied to the information provided in

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84 SNWA Opening Br., p. 3.

85 SNWA Opening Br., p. 14.

86 SNWA Opening Br., p. 14.

87 SNWA Opening Br., pp. 9, 11.

88 State Engineer's Ruling 6446, p. 12 (ROA 38949).

89 NRS 533.370(2).

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the application and the statutory criteria as applied to each application. Nothing in Nevada water law authorizes the State Engineer to approve an application that does not meet the statutory criteria based on potential changes in pumping rates or points of diversion as the project evolves.

Where the statutory standards are not met, the State Engineer has no discretion but "shall" deny the applications.[91] This requires the State Engineer to consider only the applications that are before him, with their proposed pumping rate, point of diversion, and proposed works. It is based on this precise information that the State Engineer considers: (1) whether the proposed use conflicts with existing rights or with protectable interests in existing domestic wells; (2) whether the proposed use threatens to prove detrimental to the public interest;[92] (3) "whether the approval of the Applications is environmentally sound as it relates to Spring Valley;"[93] and (4) whether springs and streams on which livestock rely will be protected.[94]

No evidence was submitted to the State Engineer to show that SNWA's hypothetical 101-wellfield meets any of these statutory criteria. SNWA conceded, for example, that no conflicts analysis was done for this hypothetical wellfield.[95] Further, while SNWA's simulations showed that this hypothetical wellfield with 101 wells could conceivably reach equilibrium, SNWA did not look at how much water would be taken from storage or how much the water table would be lowered before it reached equilibrium.[96] The 3M Plan does not address this hypothetical wellfield. It is obvious that "the best available science" demanded by NRS 533.024(1)(c) is altogether lacking. "[T]he State Engineer's decision to grant an application, which requires a

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90 NRS 533.024(1)(c).

91 NRS 533.370(2).

92 NRS 533.370(2).

93 State Engineer's Ruling 6164, p. 27 citing NRS 533.370(3)(c).

94 NRS 533.495.

95 Transcript, Vol. 10, p. 2052:1-6 (Taggart) (Oct. 6, 2017) (ROA 56016); Transcript, Vol. 5, 1086:1-13 (Burns) (Sept. 29, 2017) (ROA 54807).

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determination that the proposed use or change would not conflict with existing rights, NRS 533.370(2), must be made upon presently known substantial evidence, rather than information to be determined in the future . . . ." *Eureka Cnty. v. State* Engineer, 359 P.3d 1114, 1120 (2015).

The State Engineer is authorized to limit the initial use of water to a quantity that is less than the amount approved for an application while requiring additional studies and the submission of additional evidence to justify the full pumping rate.[97] But this extra layer of protection only applies when the statutory standards for granting the applications at issue are otherwise met. Nothing in Nevada law allows the State Engineer to conditionally approve applications that do not meet the statutory criteria because they will "evolve" in the future.

The applicant must also provide proof of (1) "[i]ntention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence," and (2) "[f]inancial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence."[98] SNWA provided such evidence with respect to the pending applications, and this court affirmed that part of the State Engineer's previous ruling. SNWA did not present any such evidence for its hypothetical wellfield. To the contrary, Ms. Drici testified that the 101-well model presented during the hearing is just a conceptual model and "definitely not" what would actually be done.[99]

Other State Engineer rulings and cases have concluded that it violates the State's public policy and is detrimental to the public interest to approve applications based on imaginary points of diversion. In Ruling 5857, the State Engineer quoted *United States v. Alpine Land & Reservoir Co.*,[100] in refusing to consider imaginary points of diversion:

"The State Engineer concludes that to establish an imaginary or made-up point of

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96 Transcript, Vol. 5, p. 1081:6-15 (Burns) (Sept. 29, 2017) (ROA 54802).

97 NRS 533.3705.

98 NRS 533.370(1)(c).

99 Transcript, Vol. 5, p. 1077:4-7 (Drici) (Sept. 29, 2017) (ROA 54798).

100 2012 WL 4442804, *3 (D. Nev. 2012).

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diversion for the purposes of retaining priority would violate the Alpine Decree and Nevada water law and therefore, would threaten to prove detrimental to the public interest."[101]

Furthermore, if the State Engineer approved applications that do not meet the statutory criteria based on the possibility or promise of future changes to the wellfield design, the State Engineer would lose the ability to enforce the statutory criteria. Having already approved the pending applications, there does not appear to be anything in Chapter 533 that would give the State Engineer the right to compel an applicant to file change applications. And if change applications were filed, what would happen if they did not meet the statutory criteria and were denied? The applicant would presumably still have the right to pump from the original points of diversion based on the State Engineer's approval of the original applications, even though those applications also did not meet the statutory criteria. Simply put, it would be fundamentally inconsistent with the provisions of Chapter 533 for the State Engineer to approve applications that do not meet the statutory criteria based on the possibility of change applications being filed in the future. The State Engineer correctly found that he "cannot approve the existing applications based on the possibility or promise by the Applicant of future changes to the wellfield design under later applications not before him."[102]

The answer here for SNWA is to simply submit new applications for the 101 wells, or whatever final design it comes up with.

B. The Remand Decision did not authorize consideration of alternative well field designs.

SNWA cites the Remand Decision as authority for considering a hypothetical wellfield. The Remand Decision noted that "SNWA did claim that after two hundred (200) years; their evidence showed that eighty-four (84%) of the E.T. would be captured and eighty four percent

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101 *United States v. Alpine Land & Reservoir Co.*, 2012 WL 4442804, *3 (D. Nev. 2012), *quoting* State Engineer's Ruling #5857, p. 15.

102 State Engineer's Ruling 6446, p. 14 (ROA 38951).

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[is] close to a hundred percent."[103] This 84% ET capture scenario was not based on the pending applications but a different wellfield design presented in a different context without even the pretense of meeting statutory requirements. Nonetheless, SNWA takes this reference as this court's approval to transmute the pending applications into alternative wellfield designs.

The court was not advised that this 84% ET capture scenario was based on a different wellfield design. In its brief to this court, SNWA argued that it had submitted evidence to the State Engineer showing that "a substantial percentage of groundwater ET could be captured *after full project development is complete*, and a minimal amount of water would be removed from storage."[104] "Full project development" seemingly referred to *this* project, not some hypothetical project. To support this argument, SNWA noted that the "BLM Draft Environmental Impact Statement for the Groundwater Project states that eighty-four percent of ET in Spring Valley will be captured 75 years *after full build out*."[105] Again, "after full build out" implied build out of the 15 wells at issue, not some hypothetical wellfield. SNWA did not mention to the court that this 84% ET-capture prediction was based on "simulated pumping from 81 wells distributed throughout the Spring Valley basin and was not limited to the 15 points of diversion ... specifically identified in SNWA's applications."[106] This court had no reason to think this 84% ET-capture scenario was based on a hypothetical wellfield. Nothing in the Remand Decision required the State Engineer to consider alternative wellfield designs.

C. The State Engineer previously rejected consideration of alternative wellfield designs and this court did not disturb that conclusion in the Remand Decision.

During the 2011 hearing on these same applications, SNWA attempted to proffer information about possible changes to the wellfield design. The Hearing Officer interjected and

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103 Remand Decision, p. 11 (ROA 39061).

104 SNWA's Ans. Br. to CPB, p. 20 (emphasis added).

105 SNWA's Ans. Br. to CPB, p. 20 (emphasis added).

106 SNWA's Opp. to CPB's Mot. in Limine to Exclude Testimony and Evidence Relating to Theoretical ET-Capture Wells, p. 2 (ROA 40147).

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explained why this evidence would not be allowed:

> [SNWA has] applied for a diversion rate from specifically 19 wells, and that's all the State Engineer is considering. He's not considering a different well field.... We're talking about the applications under consideration here.... [A]nd we've had people in here arguing, Well, I'm going to move the well field other places. And I have said that's not what we're considering. We're considering the applications that are before us.[107]

In Ruling 6164, the State Engineer reaffirmed that only the pending applications were before him:

> In addition, Dr. Myers provided many simulations of pumping at alternative points of diversion. At this time, the State Engineer is only considering the points of diversion for the Applications before him. If the Applicant wishes to change the points of diversion of the Applications, it must submit further applications to change the points of diversion to the State Engineer pursuant to NRS 533.345. If such applications are submitted, the State Engineer will consider pumping at the new points of diversion. Alternative points of diversion are irrelevant to the analysis of whether the proposed pumping unreasonably conflicts with existing rights for this hearing.[108]

SNWA did not challenge this part of Ruling 6164 during the prior appeal and this court did not reverse this ruling in its prior appeal.

In sum, the State Engineer clearly did not err in refusing to consider hypothetical wellfield designs. SNWA concedes that the 15 Applications at issue will never reach equilibrium. This court should affirm the State Engineer's denial of the Applications. Doing so will not forever preclude SNWA from appropriating water from Spring Valley. There is plenty of water available. SNWA must simply submit applications for wells that will achieve steady-state conditions, thus allowing for sustainable groundwater development.

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107 Transcript, Vol. 11, pp. 2507:23-2508:10 (Oct. 10, 2011) (ROA 34926-7).

108 State Engineer's Ruling 6164, p. 150 (ROA 39503).

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V.
SNWA INVITED THE STATE ENGINEER TO REASSESS THE ENTIRE 3M PLAN

SNWA assails the State Engineer for allegedly going beyond the scope of the Remand Decision in interpreting the 3M Plan. That is rather ironic because of what SNWA itself did.

The Remand Decision (and Ruling 6164) addressed SNWA's June 2011 Hydrologic Monitoring and Mitigation Plan for Spring Valley.[109] Following the Remand Decision, however, SNWA threw away that 53-page plan for the purposes of these proceedings and replaced it with the all-new SNWA Monitoring, Management, and Mitigation Plan for Spring Valley of 187 pages.[110] Actually, SNWA tries to "have its cake and eat it too." SNWA contends that the 2011 3M Plan will be kept in place to meet requirements of its stipulation with federal agencies but that these State Engineer proceedings will be governed by the 2017 plan.

> This 3M Plan replaces the previous hydrologic monitoring and mitigation plan (SNWA 2011b) and biological monitoring plan (Biological Work Group, 2009) that were approved by the NSE in Ruling 6164 (NDWR 2012, at page 217). Those previous plans include specific elements to meet requirements of a stipulated agreement between SNWA and federal agencies, and will continue to be implemented in accordance with that agreement. This 3M Plan addresses concerns stated in the Remand Order, and complies with Nevada water law pursuant to the NSE's regulatory authority. This 3M Plan may be updated or amended in accordance with any future rulings, orders, or other direction by the NSE.[111]

Interestingly, SNWA does not make any provision for what happens if, or when, the two plans conflict with each other.

From that context, SNWA argues that the State Engineer's specific denial of two applications near the Swamp Cedars was improper because the State Engineer "relied on matters

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109 Exhibit SNWA_149 (ROA 13333-86).

110 Exhibit SNWA_592 (ROA 47810-49997).

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outside the remand instruction."[112] It is hard to see how the State Engineer could have done otherwise inasmuch as SNWA had withdrawn the 2011 3M Plan that was actually discussed in Ruling 6164 and the Remand Decision.

More importantly, the 2017 3M Plan is seriously flawed in its treatment of the Swamp Cedars. The Swamp Cedars are of critical cultural importance to the Goshute Tribes. Dr. Sanford, an expert on the cultural significance of the Swamp Cedars, explained that this area was the site of three successive massacres of tribal members. These massacres took the lives of hundreds and hundreds of men, women and children. He described the first one as the largest massacre of Indians in the history of the United States.[113]

Tribal elders testified and explained:

> Significant to Swamp Cedars is when those massacres took place where those our people fell, after being killed, they were replaced by cedar trees in that area, and that's why that area is very sacred. To cut down cedar trees and try to replace them by some kind of regrowth would be very disrespectful to the native tribe, our tribe. It would be a desecration to uproot those trees. I don't think any water being brought in would replant the trees. Trees that are replanted would not represent the same thing that those trees are now representing.[114]

Each individual tree is associated with a massacred individual Indian. Displaying a complete insensitivity for the cultural significance of the trees, SNWA blithely promises to plant some new trees elsewhere in the valley to offset the loss of trees below the mitigation trigger.[115] Promising to plant new trees somewhere else is scarcely sufficient.

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111 Exhibit SNWA_592, pp. 1-2 (ROA 47823).

112 SNWA Opening Br., p. 26.

113 Transcript, Vol. 7, pp. 1486-88 (Sanford) (Oct. 3, 2017) (ROA 55267-9).

114 Transcript, Vol. 7, p. 1601:13-23 (Johnson) (Oct. 3, 2017) (ROA 55382).

115 Exhibit SNWA_592, table 3-8 at p. 3-46 (ROA 47927).

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The 2017 3M Plan defines as its goal the avoidance of unreasonable effects to environmental resources. That is good. The definition of an unreasonable effect however, is not good. For the Swamp Cedars, this plan defines the unreasonable effect to be avoided as the total elimination of the trees.[116] SNWA's 2017 3M Plan boldly claims to have avoided "unreasonable effects" as long as it has not eliminated *all* of the Swamp Cedars. This fundamental lack of understanding of the vital importance of each individual tree is a direct consequence of SNWA's inexplicable failure to consult with the tribes and other stakeholders as demanded by their vaunted adoptive management concepts.[117]

Ruling 6446 devotes several pages to the threat to the Swamp Cedars represented by two of SNWA's applications.[118] In view of the fact that the State Engineer had already denied all of SNWA's applications, it really was not necessary to separately address applications 54014 and 54015.

The State Engineer pointed out that in the 2017 3M Plan the "unreasonable effect" for the Swamp Cedars was the complete elimination of that habitat.[119] Everyone would probably agree that the death of all the Swamp Cedars was unreasonable. But then the State Engineer noted that SNWA had conceded that, under the plan, 100% of the Swamp Cedars could be eliminated before the investigation trigger was even activated![120] In other words, the 3M Plan does not provide meaningful protection of the Swamp Cedars. Furthermore, the State Engineer evaluated the risks and concluded:

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116 Exhibit SNWA_592 at pp. 1-2 9ROA 47823)and Section 3.3.2.4 at p. 3-41 (ROA47922).

117 CPB Opening Br., pp. 13-17.

118 State Engineer's Ruling 6446, pp. 81-88 (ROA 39018-25).

119 State Engineer's Ruling 6446, p. 81 (ROA 39018).

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> The State Engineer finds that given the local hydrologic characteristics of the area it is likely that groundwater pumping will affect the supplemental groundwater utilized by the swamp cedars and it is uncertain that the habitat can be maintained from surface runoff and precipitation alone.
>
> * * *
>
> To guard against the potential loss of the swamp cedar ACEC prior to the investigation trigger being activated, the State Engineer finds the public interest compels the denial of Applications 54014 and 54015, as these applications pose the greatest potential for immediate groundwater drawdown and risk of loss of the swamp cedars in the ACEC.[121]

Here, the State Engineer got it right.

CONCLUSION

This appeal presents enormously important issues, not just to the parties, or even to Spring Valley, but to the State of Nevada. Sustainable groundwater development requires equilibrium. Equilibrium cannot be reached without reducing discharge when new pumping begins. This leads to the inescapable conclusion that where discharge occurs primarily through ET, discharge through ET must be reduced when new pumping begins in order to reach a new equilibrium. This is indisputable. And the importance of it cannot be overstated, especially when confronted with the "largest interbasin appropriation and transfer of water ever requested in the history of the state of Nevada."[122]

The position taken by the State Engineer and SNWA that ET capture is a "new rule" is demonstrably false. For decades, water appropriation in Nevada has been based on the concept of "perennial yield" which is "limited to the *maximum amount of natural discharge that can be*

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120 State Engineer's Ruling 6446, p. 83 (ROA 39020).

121 State Engineer's Ruling 6446, pp. 85-86 (ROA 39022-23).

122 *Great Basin Water Network v. State Engineer*, 234 P.3d 912, 914 (Nev. 2010).

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salvaged for beneficial use."[123] To divorce water appropriation from the ET-capture requirement would undermine the entire foundation of Nevada water law.

It is undisputed that SNWA chose points of diversion that would not reduce natural discharge enough to reach a new equilibrium, no matter how long SNWA pumped. Instead, the proposed pumping would dewater the aquifer, destroy existing rights, and siphon millions of acre feet from adjacent basins, without ever reaching equilibrium. That is not in dispute. And that is why SNWA's applications were properly denied by the State Engineer. That a hypothetical wellfield could possibly achieve equilibrium is not a valid basis to grant these applications. Sustainable groundwater development cannot just be a hypothetical idea.

Again, the great mystery here is why SNWA does not just file new applications for a sustainable groundwater development project. The State Engineer recognized that SNWA has now "demonstrated that a conceptual plan could be developed to capture ET within a reasonable time."[124] There is no reason to continue wasting so much time and money fighting over what is an obviously-flawed project.

Dated this 31st day of July, 2019.

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123 State Engineer's Ruling 6164, p. 56 (emphasis added) (ROA 39410).

124 State Engineer's Ruling 6446, p. 6 (ROA 38943).

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CERTIFICATE OF SERVICE

I certify that on this 3 day of July, 2019, I served counsel of record with a copy of the foregoing Answering Brief of the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints on Behalf of the Cleveland Ranch as follows:

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