

**COMMENTS OF MILLARD COUNTY
REGARDING THE AUGUST 13, 2009 DRAFT ENTITLED
“AGREEMENT FOR MANAGEMENT
OF THE SNAKE VALLEY GROUNDWATER SYSTEM”**

(Hereafter the “draft agreement”)

1. Millard County disagrees with the draft agreement's 7 to 1 split of unallocated groundwater (36,000 af/y for Nevada, 5,000 af/y for Utah). That is grossly out of sync with the facts:
2. FACT: USGS Utah has analyzed the BARCASS data and concluded that there are over 260,000 acres of land in Snake Valley which they say depend on groundwater to sustain all life found thereon (flora, fauna, human). That is 260,000 acres of springs, spring-fed riparian lands, groundwater fed meadows, croplands and pastures irrigated by farmers with well water, phreatophytic shrub communities that support public lands grazing, and towns and residences with their culinary water and sewer systems, **THAT ALL DEPEND EXCLUSIVELY ON THE GROUNDWATER OF SNAKE VALLEY.**
3. FACT: USGS Utah has further determined from the BARCASS data that 84% of those 260,000 groundwater dependent acres **ARE LOCATED IN UTAH.**
4. FACT: USGS Utah has further determined from the BARCASS data that 82% of Snake Valley groundwater that discharges annually through evapotranspiration (ET) **DISCHARGES IN UTAH.**
5. FACT: In 1990, Millard County Commissioner Michael Styler stated in his written protest on behalf of Millard County, that the requested appropriation of groundwater “will further threaten springs, seeps and phreatophytes which provide water and habitat critical to the use and survival of wildlife, grazing livestock and other surface existing uses.” In other words, Commissioner Styler himself realized the necessity of standing up not just for allocated water rights but for desert flora and fauna that also depend on groundwater.
6. FACT: According to the comparative reports of the Utah and Nevada negotiation teams, 76% of groundwater depletion in Snake Valley through water-rights based beneficial use **OCCURS IN UTAH.**
7. FACT: The Utah Negotiating Team's website estimated that 40% of the Precipitation recharge to Snake Valley, **OCCURS IN UTAH.**
8. FACT: The average of the Snake Valley discharge, historic use and recharge ratios still favors Utah over Nevada significantly: 65% to 35%.
9. FACT: 20,000 af/y of the block 1 allocated groundwater which the draft agreement claims supposedly goes to the Utah side of Snake Valley, is never used in Snake Valley. Instead it passes through to Fish Springs Flat completely outside of Snake Valley.
10. FACT: BARCASS estimates that 49,000 af/y of groundwater flows from Spring Valley to Snake Valley, with 33,000 af/y of that flow coming around the southern

flank of the Snake Range right in the path of upstream Spring Valley SNWA pumping plans, which the Nevada Engineer approved to eventually exceed 60,000 af/y. Yet the draft agreement makes no allowance for impacts to groundwater basin inflow due to anticipated SNWA Spring Valley pumping.

11. FACT: The 20,000 af/y set-aside for Fish Springs is a tacit admission by both negotiating teams that really only 88,000 af/y of wet water, not 108,000 af/y, is available for Snake Valley. And of that 88,000, Utah gets only 40,000 af/y (35,000 allocated + 5,000 unallocated) while Nevada gets 48,000 af/y (12,000 block 1 and 36,000 block 2).

12. FACT: Moreover, the Utah numbers in the preceding paragraph (and correspondingly the Nevada numbers) are an illusion, because no allowance is made for Spring Valley pumping impacts to Snake Valley interbasin inflow, which impacts could easily exceed 16,000 af/y annually (which is approximately half of the BARCASS estimated Spring to Snake Valley flow around the southern flank of the Snake Range).

13. FACT: Section 301(e)(3) of the U.S. Public Law 108-424 (commonly referred to as the 2004 Lincoln County Land Act) requires the draft agreement to address the entire Great Salt Lake Regional groundwater flow system, not just the Snake Valley basin:

“Prior to any transbasin *diversion* from *ground-water basins* located within both the State of Nevada and the State of Utah, the State of Nevada and the State of Utah shall reach an agreement regarding the *division* of those *interstate groundwater flow system(s)* from which water will be diverted and used by the project.” (Emphasis added)

14. FACT: The draft agreement does not constitute an agreement contemplated in the foregoing statutory language, because the draft agreement addresses only Snake Valley and not the entire Great Salt Lake Desert Regional Groundwater Flow System of which the Snake Valley hydrographic basin is only one part.

15. Those who are prone to support the draft agreement despite the gross inequity of the interstate groundwater split, pin their hopes on the illusion that the agreement mitigation and dispute resolution procedures will provide a quick enough remedy to stave off irreversible impacts to water rights and ecosystems, when compared to the length of time it takes to pursue a court remedy. FACT: by the time pumping impacts are noticed on the Utah side, it will be far too late to remedy them even under the draft agreement for two reasons, one social/political and one scientific:

Reason one: By the time adverse pumping impacts are noticed in Utah, billions of dollars will have been invested and spent on the Las Vegas pipeline and new pipeline-dependent Las Vegas area suburbs will have been established and entrenched. Turning off the pumps will be a political/social impossibility.

Reason two: Scientists say that replenishing the depleted water table (not to mention eliminating the contamination from the reverse flow of the salt playa near Callao) will take too long ere eco-system destruction in Snake Valley will be complete and virtually irreversible - along the lines of Owens Valley.

Thus the idea of a quick and effective fix available under the draft agreement is illusory, to put it generously.

16. FACT: A proper and fair water split that guards Utah's rightful water in the first place, not an after-the-harm stab at mitigation of harm that will surely follow the draft agreement's inequitable water split, is the only effective protection against the harm that will result from over-pumping of groundwater.

17. Not letting Nevada take Utah's fair share of its groundwater and thus limiting the ability of the Nevada engineer to award SNWA too much water in the first place, is the only sure defense. Everything else is a "pipeline" dream.

18. Utah's only hope is a preventive one, not a curative one. THERE IS NO SUCH THING AS A CURATIVE SOLUTION IN THIS MATTER. YOU EITHER STOP THE GRAB OF UTAH'S RIGHTFUL WATER UP FRONT OR GET READY TO KISS THE SNAKE VALLEY AGRICULTURAL BASE AND ECO-SYSTEM GOOD BYE.

19. An agreement between the two states is the best option, but only if it is a fair and equitable one. It is hard to imagine Utah's faring worse before the Supreme Court than the outrageous 7 to 1 unallocated water split imposed on Utah under the draft agreement. Utah has nothing to lose and everything to gain before the Supreme Court when compared to this split. BUT AGAIN, THE MAIN POINT IS IT WILL BE FAR TOO LATE TO REVERSE THE DESTRUCTION EVEN UNDER THE DRAFT AGREEMENT.

20. Therefore, Utah should make the following counteroffer to Nevada:

Split the 108,000 of known wet water 65% for Utah and 35% for Nevada.
Itemization of the split:

Charge Utah 35,000 for senior water rights and 20,000 for Fish Springs, and give Utah 15,200 of block 2 water to reach a total of 70,200 af/y or 65% of the 108,000 af/y wet water.

Charge Nevada 12,000 for senior water rights, 16,000 to be held in suspension to adjusted up or down after Spring Valley pumping impacts are better understood, and give Nevada 9,800 of block 2 water to reach a total of 37,800 or 35% of the 108,000 af/y wet water. Give Nevada in addition all 24,000 af/y of the block 3 reserve.

This would make the overall split of Block 1, 2 and 3 of the 132,000 af/y equal to 53% Utah and 47% Nevada.

21. The draft agreement should include a disclaimer by Utah that even though Utah is signing it, Utah does not agree that it satisfies the requirements of the 2004 Lincoln County land act which require the two states to agree to a split of the entire interstate groundwater flow system as opposed to just the one Snake Valley groundwater basin. The draft agreement should also state that Utah does not waive its right to challenge for any reason an action of the BLM, SNWA or others regarding any permit or effort to cause the transbasin flow of water from Snake Valley, including the reason that such action by the BLM is inconsistent with the provisional authority Congress gave the BLM under Section 301(e)(3) of the 2004 Lincoln County Land Act.

22. Millard County as part of its continuing confidential discussions with the Governor's office, will submit a marked-up copy of the 8-13-09 Draft Agreement showing additional detailed proposed edits to that draft, in addition to the foregoing.

23. Finally, Millard County agrees with and urges careful consideration of the September 29, 2009 comments submitted by Eskdale Community. That community is located in the Millard County part of Snake Valley. As stated therein, the Eskdale comments "reflect the combined input from approximately 25 adult residents of the Eskdale Community and surrounding area in Snake Valley." This is an obviously important demographic for the Millard County portion of Snake Valley. The groundwater allocation recommended in the Eskdale comments is even more pro-Utah than Millard County's recommendation above. Nevertheless Millard County would strongly support the Eskdale proposed allocation as another reasonable and worthy analysis, were the State inclined to adopt and incorporate it into any counteroffer back to Nevada.

24. Submitted herewith are a number of other documents which relate to the development and explanation of Millard County's position. These documents are incorporated into and made a part of these comments and should be considered in connection herewith.

Millard County appreciates the opportunity to submit these comments. Millard County urges the State of Utah to not sign the draft agreement, but rather make a counteroffer to Nevada consistent with the comments herein.

The Draft Agreement – An Unfair Split That Imperils Utah Senior Water Rights

| | <u>Utah</u> | <u>Nevada</u> | |
|------------------------------|-----------------|---------------|--------------------|
| Allocated | 55,000 | 12,000 | |
| Unallocated | 5,000 | 36,000 | 7 to 1 Nev. |
| Spr. V. Pumping Give Away | <u>(16,000)</u> | <u>16,000</u> | |
| Total | 44,000 | 64,000 | 108,000 |
| | 41% | 59% | |
| Reserve | <u>6,000</u> | <u>18,000</u> | 3 to 1 Nev. |
| Total | 50,000 | 82,000 | 132,000 |
| | 38% | 62% | |



Millard County Proposes the State Make the Following Counter-offer to Nevada:

Split the 108,000 af/y of Wet Water According to the
Average of the Valley's **Natural Discharge,**
Historic Use and **Recharge (65% Ut. 35% Nev.).**

Divide the **Regional Groundwater Flow System** as
Required by the Congressional Statute.

Suspend Part of Nevada's Share Due to **Spring Valley**
Pumping Impacts by 16,000 af/y, to be Adjusted
Down or Up Based on Eventual Proven Impacts.

Proposed Counter Offer:
Split 108,000 By Average of Discharge
Historic Use & Recharge (65% - 35% Utah)

| | <u>Utah</u> | <u>Nevada</u> | |
|---------------------|----------------------|---------------------|---------|
| Already Allocated | 35,000 | 12,000 | |
| Fish Springs | 20,000 | | |
| Spr. V. Pumping | | 16,000 | |
| Unallocated | <u>15,200</u> | <u>9,800</u> | |
| Total Wet Water | 70,200 | 37,800 | 108,000 |
| | 65% | 35% | |
| Reserve | | <u>24,000</u> | |
| Total Wet & Reserve | 70,200 | 61,800 | 132,000 |
| | 53% | 47% | |



Background Materials Millard County's Proposal

Natural Discharge -

Groundwater Dependent Acres:

| | | |
|-------|---------------|------------|
| Utah: | 220,779 acres | <u>84%</u> |
|-------|---------------|------------|

| | | |
|--------|--------------|------------|
| Nevada | 41,364 acres | <u>16%</u> |
|--------|--------------|------------|

Acre Feet of Groundwater Discharged:

| | | |
|-------|--------------|------------|
| Utah: | 108,085 af/y | <u>82%</u> |
|-------|--------------|------------|

| | | |
|--------|-------------|------------|
| Nevada | 25,162 af/y | <u>18%</u> |
|--------|-------------|------------|

Source: USGS Utah, Calculating BARCASS Data



Historic Use -

Depletion Associated With **1989 or Earlier
Water Rights:**

| | | |
|--------|--------|------------|
| Utah: | 35,000 | <u>74%</u> |
| Nevada | 12,000 | <u>26%</u> |

Source: Utah and Nevada Negotiating Teams



Recharge -

Utah: 40%

Nevada 60%

Source: Utah DNR/Negotiating Team Web Site



2004 PUBLIC LAW 108-424
Section 301(e)(3)

“Prior to any transbasin *diversion* from *ground-water basins* located within both the State of Nevada and the State of Utah, . . .

2004 PUBLIC LAW 108-424

Section 301(e)(3) (cont'd)

. . . the State of Nevada and the State of Utah shall reach an agreement regarding the *division* of those *interstate groundwater flow system(s)* from which water will be diverted and used by the project.”



Spring to Snake Valley Interbasin Flow

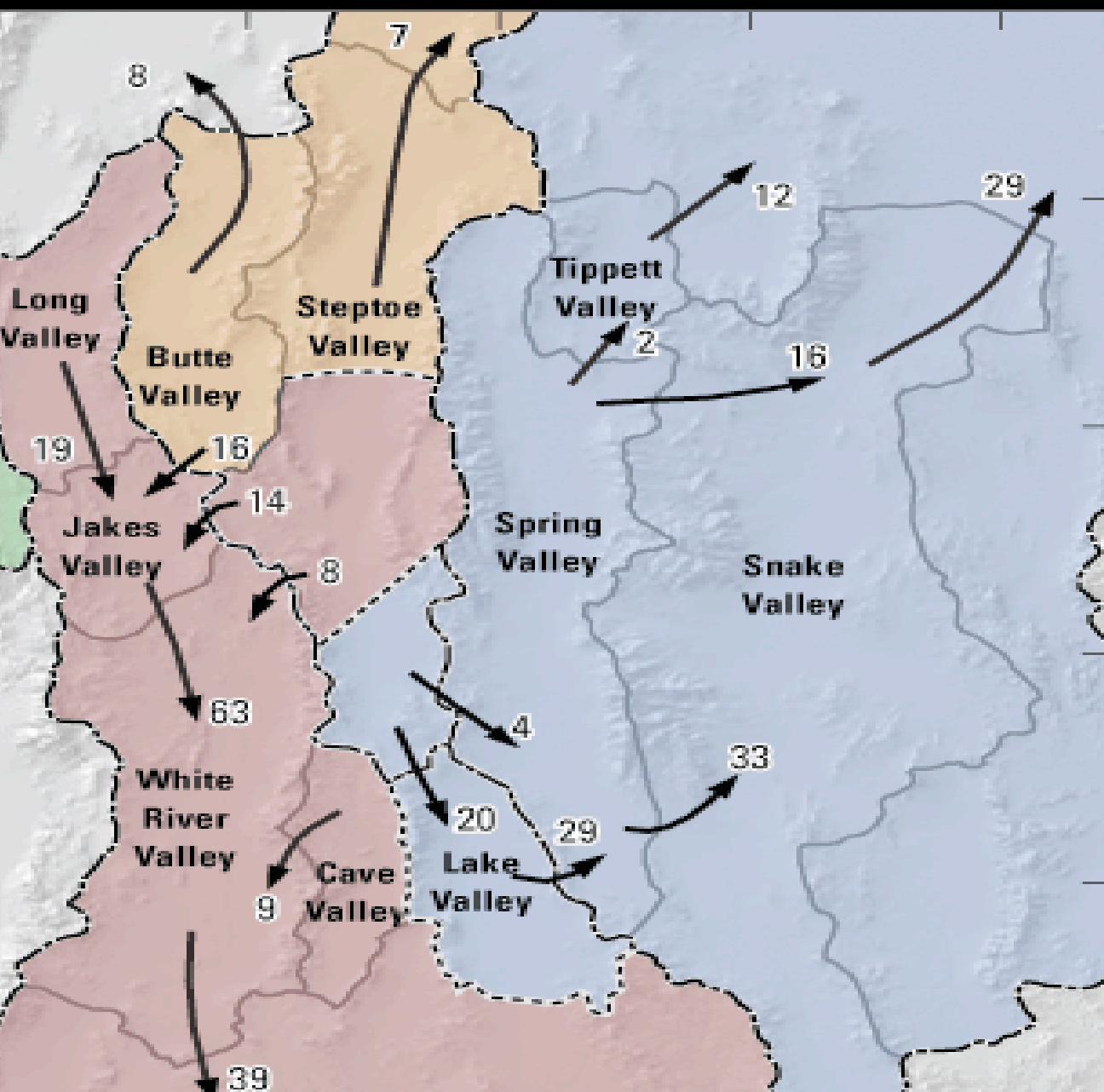
Spring to Snake Valley Estimated Interbasin
Flow: 49,000 af/y
(95% range 30,000 – 60,000)

33,000 around southern flank of Snake
Range

16,000 Further North

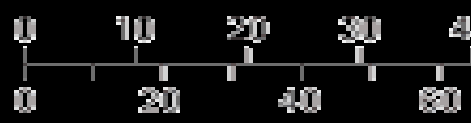
Source: BARCASS Figures 41, 46

113° 114°30' 1° 8' 115°30'



EXPLANATION

- Colorado system
 - Great Salt Lake
 - Snake Valley
 - Newark Valley
 - Boundary of regional flow domain
 - Boundary of regional flow domain (Revised)
 - Direction of groundwater flow
- Values are shown in feet per year; flow rates are in feet per year.



Reduce Nevada's Share Due to Spring Valley Pumping Impacts

Agreement Should Assume that Spring Valley Pumping Will Reduce Interbasin Flow at Least **16,000 af/y,**

And Charge That Amount to Nevada's Share.

16,000 af/y is Roughly Half of the BARCASS Estimated Interbasin Flow South of the Snake Range.

Jerald Anderson

Remarks on the Draft Agreement for Snake Valley Groundwater

Natural Resources, Agriculture, and Environment Interim Committee

September 16, 2009

Thank you for the opportunity to comment on the proposed agreement between Utah and Nevada to share the Snake Valley groundwater resource.

Five years ago, Dean Baker, Gary Perea and I addressed a similar group of legislators considering water issues in Utah. We submitted comments and a letter outlining the potential impact of the Lincoln County Lands Act, which would authorize the pipeline necessary to pump water from Snake Valley and other eastern Nevada basins to southern Nevada.

The committee's action on that letter resulted in the Utah delegation adding language to the bill which required the agreement we are discussing today.

Great effort and expense has gone into negotiating the Draft Agreement released for review this August, and similar effort has been expended by all those concerned about Snake Valley's future to understand both the concepts and the specifics of the proposed Agreement.

The Agreement's objective is an "equitable" and "cooperative" division and management of this shared resource. However, these are subjective terms and their character in this document depends on the interests and negotiating strengths of the parties involved. A good agreement must also be "equitable" and "cooperative" for all who live in Snake Valley.

The Biblical story of Solomon's solution to the claim of two women to the same baby is instructive in how to approach sharing the groundwater resources in Snake Valley.

First we must determine what the principal objective of any agreement must be. In Solomon's case the stated issue was:

WHO OWNS THE BABY?

But if we look at the outcome of the story, we realize that this is not the ultimate object of his wisdom. The real objective is:

THE BABY MUST LIVE!!!

Solomon's initial procedural solution was the same as this Agreement—just divide the object of the controversy and everyone walks away with their legal share, but:

THE BABY HAS TO DIE FOR THIS TO WORK!!!

It is the **LIFE** of Snake Valley that is being divided up, not just the number used to represent a quantity of water.

An agreement that protects the groundwater-based life of the Snake Valley ecosystem and its inhabitants might be a very good thing if it is based on a desire to ensure the continued life of this organism, **but this Agreement cuts off portions of the baby and allows one of the women to carry it off to her home,**

AND THE BABY DIES!!!

As Mark Ward has demonstrated, there are other methods which can and should be explored to arrive at an equitable division, even if only to justify why the Agreement should be based on a particular method. The impacts from other parts of the flow system which contains Snake Valley should be included in this analysis so that all impacts are accounted for, especially those flows from Spring Valley which can be impacted by export pumping rights already granted by the Nevada State Engineer.

The Draft Agreement division of Snake Valley groundwater is based on the BARCASS report, another requirement of the Lincoln County Lands Act. An agreement based on the BARCASS results should consider all the component parts of its analysis to have integrity, especially the 49,000 acre-feet/year from both the south and the north ends of Spring Valley into Snake Valley.

The division of groundwater in the Draft Agreement leaves Snake Valley frozen in time, like a biology specimen in formaldehyde, with only an expectation of declining spring flow and vegetative cover. It can never be more than it is now, and it can not realize its potential as part of the economic structure of Millard County and of Utah.

There are a myriad of comments that can be made about the technical, political, environmental, economic, and moral issues involved with this Agreement (and those comments will be submitted), but any solution which does not respect the natural function of this part of a larger groundwater system will ultimately damage it irreparably. The residents of Snake Valley and the downstream and downwind residents of Utah will reap the consequences of such a solution.

You can do the wrong thing the best way possible and still have done the wrong thing!

The USGS, Utah, and Nevada are all engaged in data collection and analysis of this area which will increase our understanding of the flow system and decrease the error margins and uncertainty in the BARCASS results. The BARCASS work was done in the wettest period in Snake Valley since the 1982-83 winter season. We should avoid basing our long-term expectations and commitments solely on such an anomalous period. We run the risk of over-allocating this resource the same way the Colorado River was over-allocated in the 1920's.

There are no compelling reasons, other than political ones, to rush to sign an Agreement. The Agreement itself describes a minimum five-year period before beginning baseline data collection.

We should take the time to thoroughly consider the other methods of division, evaluate all the upstream and downstream components and impacts, and refine the legal language necessary for an Agreement to survive the test of time after those currently involved are removed from Snake Valley groundwater issues.

Millard County and the residents of Snake Valley are committed to a process which takes the difficult work done so far and refines it to protect the future of this natural resource.

Thank you.

RESULTS OF

Millard County Survey of Public Opinion Regarding the Draft Snake Valley Agreement

(Taken during the Millard County Public Hearing Held in Delta, Utah September 8, 2009)

1. **Support for the Draft Agreement.** Do you Support the Draft Agreement with its split of Snake Valley groundwater?

(Unallocated water split 7 to 1 in favor of Nevada)

(Overall wet water split of 55%/45% for Nevada before accounting for Spring Valley pumping impacts and 59%/41% for Nevada after accounting for such impacts)

Yes 0 No 52

2. **Spring Valley Pumping Impacts.** Should Utah require Nevada to set aside a portion of Snake Valley groundwater to allow for impacts from SNWA's pumping in Spring Valley?

Yes 51 No 1 **(52 responses)**

If so, how much: **(51 responses)**

| | |
|---------------------------|-------------|
| 16,000 af/y | <u> 27 </u> |
| 16,001 af/y – 32,000 af/y | <u> 9 </u> |
| Did not specify amount | <u> 15 </u> |

3. **Fair Split of Wet Groundwater.** What do you feel is a fair split of Snake Valley groundwater between Utah and Nevada after they finish dividing up the Great Salt Lake Desert regional groundwater flow system? **(52 responses)**

| | | |
|---|---------------------------------|-------------|
| 1. Split According to Discharge | 82% Utah - 18% Nevada | <u> 10 </u> |
| 2. Split According to Historical use: | 74% Utah - 26% Nevada | <u> 8 </u> |
| 3. Average Discharge & Historical Use Ratios: | 78% Utah - 22% Nevada | <u> 15 </u> |
| 4. Split According to Recharge: | 60% Nevada - 40% Utah | <u> 0 </u> |
| 5. Average the Discharge and Recharge Ratios: | 61% Utah - 39% Nevada | <u> 1 </u> |
| 6. Weighted Avg. of Ratios 2x Discharge Ratio & 1x Recharge Ratio: | 68% Utah – 32% Nevada | <u> 0 </u> |
| 7. Average the Discharge, Hist. Use, & Recharge Ratios: | 65% Utah - 35% Nevada | <u> 0 </u> |
| 8. Write in: | “No Split” | <u> 2 </u> |
| 9. Write in: | “100% Utah – 0% Nevada | <u> 1 </u> |
| 10. 2 check marks: | #1 (82/18 Ut) and #3 (78/22 Ut) | <u> 1 </u> |
| 11. 2 check marks: | #1 (82/18 Ut) and #2 (74/26 Ut) | <u> 2 </u> |
| 12. 2 check marks: | #1 (82/18 Ut) and #7 (65/35 Ut) | <u> 2 </u> |
| 13. 2 check marks: | #6 (68/32 Ut) and #7 (65/35 Ut) | <u> 2 </u> |
| 14. Did not choose a split: | | <u> 3 </u> |

47

5 Responses Checked a Question That Was Erroneously Stated:

| | | |
|--|---|-------------|
| The Draft Agreement's Ratio (Accounting for Spring Valley pumping impacts) | 59% <u>Utah</u> – 41% <u>Nevada</u> | <u> 5 </u> |
| (It Was Meant to Have Said <u>59% Nevada – 41% Utah</u>) | | 52 |

Support for Millard County

- September 18, 2009 Resolution by the Utah Legislature **Interim Natural Resources, Agriculture and Environment Committee** (urging the Utah Negotiating Team to “seriously consider” Millard County’s position)
- September 8 and 9, 2009 **public hearings in Delta and Salt Lake City** - persons commenting expressed near unanimous opposition to the draft agreement and support for Millard County’s position
- September 8, 2009 written **public opinion survey in Delta Utah**, showing unanimous opposition to the draft agreement and near unanimous support for Millard County’s position
- September 15, 2009 bi-partisan unanimous resolution by the **Salt Lake County Council**, supporting Millard County’s position
- Support for Millard County’s position from the **Salt Lake County Mayor** and the County Commissions of **Juab, Tooele and Utah Counties**
- **Deseret News** September 20, 2009 editorial
- **Salt Lake Tribune** September 18, 2009 editorial (switching its earlier position)
- Support for Millard County’s position from the **Utah Farm Bureau**
- Past **resolutions** from the **Utah Legislature and the Utah Association of Counties** are consistent with Millard County’s Position

Snake Valley water

Slow the rush to judgment

Tribune Editorial

Salt Lake Tribune

Updated:09/18/2009 06:53:21 PM MDT

The Salt Lake Tribune

<http://www.sltrib.com>

Slow the flow. That's Utah's slogan to encourage water conservation. We think the same slogan should be applied to the rush to judgment on the proposed deal between Utah and Nevada to allocate groundwater in Snake Valley. Utah officials should slow the process down.

The proposed agreement is important to all Utahns because it will affect water use by the two states in a huge flow system that underlies much of the eastern Great Basin. The 100-mile-long Snake Valley straddles the Utah-Nevada state line, but the underground water system of which it is a part runs from the Great Salt Lake to Death Valley. If Utah gets this deal wrong, it could have devastating environmental consequences.

The need for the agreement stems from the desire of Las Vegas water managers to tap the groundwater beneath multiple valleys in northeast Nevada and pipe it 275 miles south to their thirsty city. Because Snake Valley and its aquifer lie in two states, the two states must decide how much water beneath it belongs to Utah and how much to Nevada.

Officials of both states have negotiated an agreement that

would allot half of the available groundwater beneath the valley to Utah and half to Nevada. But there are various scientific estimates of how much water is actually available and there is more than one possible model to fairly divide it.

The agreement would delay for 10 years a decision by the Nevada state engineer on how much of that state's unallocated portion in Snake Valley to award to Las Vegas. If Las Vegas is willing to agree to a decade's interim while further studies are made, we believe that Utah should take more time to consider the terms of the agreement. There's no need to rush this process. Despite that, Utah Department of Natural Resources officials are planning to present a final version of the proposal to the governor next month. That's simply too soon, especially considering that the original draft required four years of secret negotiations between the two states.

Millard County is arguing that the proposed agreement is unfair to Utah because Nevada also will be pumping water from the adjacent Spring Valley, which will affect flows into Utah. Millard County also argues the agreement should give higher priority to historic use and discharge in Snake Valley.

An interim committee of the Legislature has asked the DNR to delay any final recommendation to the governor until a Snake Valley Advisory Council created by law this year can be convened and provide its input to the state's negotiators.

We second that motion.

Quick decision in water dispute could hurt Utah

Published: Sunday, Sept. 20, 2009 12:09 a.m. MDT

Beware of anyone who says you have to sign now or the deal is off.

That's a good suggestion for sales pitches. It ought to be a requirement for bills in Congress (health-care reform anyone?). It should be an iron-clad rule when it comes to water rights in the arid West.

Because, as some members of the Millard County Commission put it to the Deseret News editorial board last week, "If the desert collapses, how do you bring it back?"

Millard County is ground zero for a percolating water dispute between Utah and Nevada — one that most likely will end up in court, soaking (pardon the pun) taxpayers before it is resolved. But that wouldn't be the worst outcome. A little delay through the legal system might not be such a bad thing in this case.

At the heart of this dispute is Las Vegas' insatiable thirst for growth. That city, built on a landscape I thought resembled the moon when I moved there for a short time 26 years ago, keeps spreading subdivisions like sagebrush.

The Wasatch Front is doing the same thing, of course. But in Las Vegas, where nature provides only 4.5 inches of rain a year, those subdivisions can't sustain themselves much longer unless they are watered from somewhere else.

So the Southern Nevada Water Authority wants to suck billions of gallons from beneath Utah's portion of the Snake Valley. For years, Utah and Nevada have been negotiating this, and now a proposed compromise has been made public, and hearings are being held, and a signature is needed within two months.

And the people of Utah's arid valleys couldn't be angrier.

I should note up front that the agreement wouldn't authorize anyone to pump anything. As officials have emphasized, it provides a framework for future decisions and leaves time for more scientific study.

But frameworks are important, especially if they require one side to agree in principle to give something up. In this case, Snake Valley water would be split 50-50 between the states, under the assumption that much of the water beneath Utah comes from rain that falls on Nevada mountains. But the Utahns in Millard and Juab counties have figures that show the water, both historically and through natural discharge, belongs to Utah at a ratio of 78 percent to 22 percent.

Figures and maps can make the eyes glaze. There are some other, more dramatic reasons you should be concerned about all this. Water beneath the Snake Valley isn't easily replenished. Some scientists believe it keeps in place contaminated water surrounding the Great Salt Lake to the north. If Nevada removes much of the good water, the bad may take its place, killing vegetation above.

And if that happens, the winds that regularly whip those desert valleys could create giant dust clouds that turn the blue skies over the Wasatch Front brown.

That's all speculation, of course. No one actually has ventured below the ground to see what's there. But can Utah really take a bet from Las Vegas that Snake Valley water isn't important to the state's ecosystem?

The agreement would set aside money for fixing any problems that result. But that doesn't make anyone feel better. The Millard County folks doubt seriously that once water is being pumped to new homes in Las Vegas, anyone will have the authority to turn it off.

Utah Attorney General Mark Shurtleff won't take sides on the agreement, but he said, "There are certain things we won't give up." He also believes the issue will end up in court, although he's trying to avoid that.

There may be another angle. Various sources tell me they think Nevada Sen. Harry Reid is behind the scenes, threatening to withdraw support for a Lake Powell pipeline into St. George unless Las Vegas gets to pump the Snake Valley.

That's why a delay by legal challenges might not be so bad. By all accounts, next year's election may bring a flood of change to Nevada's political landscape.

Jay Evensen is editor of the Deseret News editorial page. E-mail: even@desnews.com. Visit his blog at deseretnews.com/blogs.

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

IN THE MATTER OF APPLICATIONS)
54003 THROUGH 54021, INCLUSIVE, FILED)
TO APPROPRIATE THE UNDERGROUND)
WATER OF THE SPRING VALLEY)
HYDROGRAPHIC BASIN (184),)
WHITE PINE COUNTY, NEVADA)

RULING
5726

GENERAL

I.

Application 54003 was filed on October 17, 1989, by the Las Vegas Valley Water District¹ to appropriate 6 cubic feet per second (cfs) of underground water from the Spring Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and White Pine Counties as more specifically described and defined within NRS § 243.210-243.225 (Lincoln), 243.275-243.315 (Nye), 243.365-243.385 (White Pine), and 243.035-243.040 (Clark). The proposed point of diversion is described as being located within NW¼ NE¼ of Section 20, T.8N., R.68E., M.D.B.&M.² In Item 12, the remarks section of the application, it indicates that the water sought under the application shall be placed to beneficial use within the Las Vegas Valley Water District service area as set forth in Chapter 752, Statutes of Nevada 1989, or as may be amended. Further, that the water may also be served and beneficially used by lawful users within Lincoln, Nye and White Pine Counties, and that water would be commingled with other water rights owned or served by the applicant or its designee. By letter dated March 22, 1990, the Applicant further indicated, in reference to Item 12, that the approximate number of persons to be served is 800,000 in addition to the current service of approximately 618,000 persons, that the applications seek all the unappropriated water within the particular ground-water basins in which the water rights are sought and that the projected population of the Clark County service area at the time of the 1990 letter was estimated to be 1,400,000 persons by the year 2020.

¹ These applications are now held in the name of the Southern Nevada Water Authority.

² File No. 54003, official records in the Office of the State Engineer. Exhibit No. 3, public administrative hearing before the State Engineer, September 11 – 25, 2006. Hereinafter, the transcript and exhibits from this hearing will be referred to solely by the transcript page number or the exhibit number.

The State Engineer finds that due to the great uncertainty, and no party's ability to quantify impacts with any degree of certainty, caution is warranted as it cannot definitively be said that there will or will not be unreasonable impacts, if those impacts would continue for an unreasonable period of time if pumping were ceased or if any impacts, reasonable or unreasonable, are environmentally sound. The State Engineer finds, in order to gather the necessary information to more accurately predict the effects of pumping, the development of water will occur in stages in conjunction with a significant monitoring and mitigation plan. If unreasonable impacts from the pumping are seen or are likely, curtailment of pumping will be ordered unless the impacts can be reasonably and timely mitigated. The State Engineer finds that prior to the Applicant exporting any ground-water resources from Spring Valley biological and hydrologic baseline studies shall be completed and approved by the State Engineer.

Evidence submitted by the Applicant indicates that the earliest development of the water resources in the five or six basin In-State Resource Importation Project is 2015.¹²¹ Additionally the Southern Nevada Water Authority 2006 Water Resource Plan submitted by the Applicant indicates that the in-state water resources option is anticipated for use to meet long-term water demands beginning in 2017.¹²²

→ The State Engineer finds that staged development and monitoring of biological and water resources in the Spring Valley Hydrographic Basin will be as follows:

- A monitoring and mitigation plan consisting of both biological and hydrological parameters shall be approved by the State Engineer.
- A minimum of five years of biological and hydrological baseline data shall be collected by the Applicant after the approval of the monitoring and mitigation plan and submitted to the State Engineer prior to the Applicant exporting any ground-water resources from Spring Valley.
- The initial staged development shall consist of a minimum ten-year period during which time a maximum of 40,000 acre-feet can be pumped in any year. But over a ten-consecutive year period, the pumping must average at least 35,000 acre-feet annually.
- With the exception of incidental uses related to the project, all ground water pumped during the staged development period shall be exported from Spring Valley.
- During the initial staged development period, the Applicant shall file an annual report with the State Engineer by March 15th of each year detailing the findings of the monitoring and mitigation plan.

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Protection
Plan



¹²¹ Exhibit No. 516.

¹²² Exhibit No. 511.

RULING

The protests to Applications 54016, 54017, 54018 and 54021 are hereby upheld in part and the applications are hereby denied on the grounds that approval will conflict with existing rights and would threaten to prove detrimental to the public interest. The protests to Applications 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54019 and 54020 are hereby overruled in part and the Applications are hereby granted subject to:

1. Existing rights;
2. Payment of the statutory fees;
- X 3. A monitoring and mitigation program approved by the State Engineer a minimum of five years prior to the export of any water under these permits;
- X 4. A minimum of five years of biological and hydrological baseline data shall be collected by the Applicant and approved by the State Engineer prior to the Applicant exporting any ground-water resources from Spring Valley under these permits;
- X 5. A minimum ten-year period during which time a maximum of 40,000 acre-feet can be pumped in any one year with a ten consecutive-year average of at least 35,000 acre-feet annually;
6. File an annual report with the State Engineer by March 15th of each year detailing the findings of the approved monitoring and mitigation plan;
7. The total combined duty under Permits 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54019 and 54020 shall be limited to 60,000 acre-feet annually, subject to the staged development guidelines and findings of the initial staged development period;
- X 8. If pumpage impacts existing rights, conflicts with the protectible interests in existing domestic wells as set forth in NRS § 533.024, threatens to prove detrimental to the public interest or is found to not be environmentally sound the Applicant will be required to curtail pumpage and/or mitigate the impacts to the satisfaction of the State Engineer.

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer

Dated this 16th day of
April, 2007.

Enviro Protection

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

IN THE MATTER OF APPLICATIONS 53987)
THROUGH 53992, INCLUSIVE, FILED TO)
APPROPRIATE THE ~~UNDERGROUND~~)
WATER OF THE ~~CAVE VALLEY, DRY~~)
~~LAKE VALLEY AND DELAMAR VALLEY~~)
HYDROGRAPHIC BASINS (180, 181, 182),)
LINCOLN COUNTY, NEVADA.)

RULING

#5875

GENERAL

I.

Application 53987 was filed on October 17, 1989, by the Las Vegas Valley Water District¹ to appropriate 6 cubic feet per second (cfs) of underground water from the Cave Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and White Pine Counties as more specifically described and defined in Nevada Revised Statutes (NRS) § 243.210-243.225 (Lincoln), 243.275-243.315 (Nye), 243.365-243.385 (White Pine), and 243.035-243.040 (Clark). The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 22, T.6N., R.63E., M.D.B.&M.² In Item 12, the remarks section of the application, it indicates that the water sought under the application shall be placed to beneficial use within the Las Vegas Valley Water District service area as set forth in Chapter 752, Statutes of Nevada 1989, or as may be amended. Further, that the water may also be served and beneficially used by lawful users within Lincoln, Nye and White Pine Counties, and that water would be commingled with other water rights owned or served by the Applicant or its designee. By letter dated March 22, 1990, the Applicant further indicated, in reference to Item 12, that the approximate number of persons to be served is 800,000 in addition to the current service of approximately 618,000 persons, that the applications seek all the unappropriated water within the particular ground-water basins in which the water rights are sought and that the projected population of the Clark County service area at the time of the 1990 letter was estimated to be 1,400,000 persons by the year 2020.

¹ These applications are now held in the name of the Southern Nevada Water Authority.

² Exhibit No. 203, public administrative hearing before the State Engineer, February 4-15, 2008. Hereinafter, the transcript and exhibits from this hearing will be referred to solely by the transcript page number or the exhibit number.

The State Engineer finds that the use of water under these Applications is an appropriate long-term use of the ground water and the reservation of unappropriated water in the amounts identified above will not unduly limit the future growth and development of the basins of origin.

XII.

UNAPPROPRIATED WATER

The State Engineer finds the perennial yield of Cave Valley is 5,000 afa, the committed consumptive use of ground-water rights is 47 afa and the water to be left for future growth and development is 275 afa. The State Engineer finds that there is 4,678 afa of water available for appropriation and export from Cave Valley.

The State Engineer finds the perennial yield of Dry Lake Valley is 12,700 afa, committed consumptive use of ground-water rights is 57 afa and 50 afa is reserved for future growth and development of the basin. The State Engineer finds that there is 12,593 afa of water available for appropriation and export from Dry Lake Valley.

The State Engineer finds the perennial yield of Delamar Valley is 2,550 afa, committed consumptive use of ground-water rights is 7 afa and 50 afa is reserved for future growth and development of the basin. The State Engineer finds that there is 2,493 afa of water available for appropriation and export from Delamar Valley.

The State Engineer finds that prior to the Applicant exporting any ground-water resources from Cave Valley, Dry Lake Valley or Delamar Valley, biological and hydrologic baseline studies shall be completed and approved by the State Engineer.

Evidence submitted by the Applicant indicates that the earliest development of the water resources from Cave Valley, Dry Lake Valley and Delamar Valley is 2012.⁹⁸ Additionally, the Southern Nevada Water Authority 2006 Water Resource Plan indicates that the in-state water resources option is anticipated for use to meet long-term water demands beginning in 2017.⁹⁹

The State Engineer finds that the development of water resources and monitoring of biological and water resources in Cave Valley, Dry Lake Valley and Delamar Valley Hydrographic Basins will be as follow:

⁹⁸ Transcript, pp. 119-120.

⁹⁹ Exhibit No. 324.

- ✓ • A monitoring and mitigation plan consisting of both biological and hydrological parameters shall be submitted by the Applicant and approved by the State Engineer prior to exporting any ground-water resources.
- ✓ • A minimum of two years of biological and hydrological baseline data shall be collected by the Applicant in accordance with the approval of the monitoring and mitigation plan and submitted to the State Engineer and approved by the State Engineer prior to the Applicant exporting any ground-water resources. Data collected prior to the approval of the monitoring and mitigation plan by the State Engineer qualifies as baseline data, provided the data was collected in accordance with the subsequently approved, monitoring and mitigation plan.
- ✓ • After approval of the monitoring and mitigation plan, the Applicant shall file an annual report with the State Engineer by March 15th of each year detailing the findings of the monitoring and mitigation plan.
- ✓ • The Applicant shall update a ground-water-flow model approved by the State Engineer every five years and provide predictive results for 10-year, 25-year and 100-year periods.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹⁰⁰

II.

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:¹⁰¹

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

¹⁰⁰ NRS chapters 533 and 534.

¹⁰¹ NRS 533.370(5).

The State Engineer concludes there is unappropriated water for export from Cave Valley, Dry Lake Valley and Delamar Valley, there is no substantial evidence the proposed use will conflict with existing rights, there is no substantial evidence that the proposed use will conflict with protectible interests in existing domestic wells, or the use will threaten to prove detrimental to the public interest; thus, under NRS § 533.370(5) the law mandates the granting of the water rights.

III.

The State Engineer concludes that the Applicant provided proof satisfactory of its intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence, and its financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

IV.

The State Engineer concludes that based on the findings that the Applicant has justified the need to import the water from Cave Valley, Dry Lake Valley and Delamar Valley, that an acceptable conservation plan is being effectively carried out, that the use of the water is environmentally sound as it relates to the basins of origin, and that by leaving an unappropriated portion of water in the basins of origin that the export of the water will not unduly limit the future growth and development of the basins of origin. Therefore, there is no reason to reject the Applications.

RULING

The protests to Applications 53987, 53988, 53989, 53990, 53991 and 53992 are hereby overruled in part and upheld in part.

The perennial yield of Cave Valley is 5,000 afa, the committed consumptive use of ground-water rights is 47 afa and 275 afa is reserved for future growth and development in the basin. The State Engineer grants 4,678 afa under Applications 53987 and 53988.

The perennial yield of Dry Lake Valley is 12,700 afa, committed consumptive use of ground-water rights is 57 afa and 50 afa is reserved for future growth and development in the basin. The State Engineer grants the full amount applied for at 11,584 afa under Applications 53989 and 53990.

The perennial yield of Delamar Valley is 2,550 afa, committed consumptive use of ground-water rights is 7 afa and 50 afa is reserved for future growth and development in the basin. The State Engineer grants 2,493 afa under Applications 53991 and 53992.

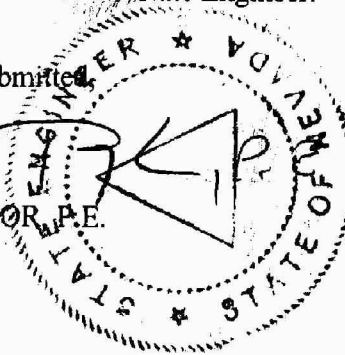
The Applications are granted subject to:

1. Existing rights;
2. Payment of the statutory fees;
- ✓ 3. A monitoring and mitigation program approved by the State Engineer prior to the export of any water permitted under these applications;
- ✓ 4. A minimum of two years of biological and hydrological baseline data shall be collected and approved by the State Engineer prior to the Applicant exporting any ground-water resources from Cave Valley, Dry Lake Valley or Delamar Valley under these permits;
- ✓ 5. After approval of the monitoring and mitigation plan, file an annual report with the State Engineer by March 15th of each year detailing the findings of the monitoring and mitigation plan;
6. The total combined duty under Permits 53987 and 53988 located in Cave Valley shall be limited to 4,678 acre-feet annually.
7. The total combined duty under Permits 53989 and 53990 located in Dry Lake Valley shall be limited to 11,584 acre-feet annually.
8. The total combined duty under Permits 53991 and 53992 located in Delamar Valley shall be limited to 2,493 acre-feet annually.
- ✓ 9. If pumpage impacts existing rights, conflicts with the protectible interests in existing domestic wells as set forth in NRS § 533.024, threatens to prove detrimental to the public interest or is found to not be environmentally sound the Applicant will be required to curtail pumpage and/or mitigate the impacts to the satisfaction of the State Engineer.

Enviro Protection

Respectfully submitted,


TRACY TAYLOR, P.E.
State Engineer



Dated this 9th day of

July, 2008.