

# IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON KING, P.E., in his official capacity as the Nevada State Engineer, and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES, and SOUTHERN NEVADA WATER AUTHORITY,

Appellants,

vs.

MILLARD COUNTY, UTAH; JUAB COUNTY, UTAH; et al.,

Respondents.

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, on behalf of CLEVELAND RANCH,

Cross-Appellant,

vs.

JASON KING, P.E., in his official capacity as the Nevada State Engineer, and the NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES, DIVISION OF WATER RESOURCES, and SOUTHERN NEVADA WATER AUTHORITY; MILLARD COUNTY, UTAH; and JUAB COUNT, UTAH, et al.,

Cross-Respondents.

Case No. 64815

District Court Case No. CV-1204050

Consolidated with:

CV-1204049

CV-1204051

CV-1204052

CV-1204053

CV-1204054

CV-1204055

CV-0418012

CV-0419012

## DOCKETING STATEMENT CIVIL APPEALS

### GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

### WARNING

The statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Seventh Department I  
County White Pine Judge Honorable Robert E. Estes  
District Ct. Case No. CV-1204049; Consolidated with CV-1204050; CV-1204051;  
CV-1204052; CV-1204053; CV-1204054; CV-1204055;  
CV-0418012; CV-0419012

**2. Attorney filing this docketing statement:**

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Firm: Lionel Sawyer & Collins

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Attorney: Severin A. Clarson Telephone: (775) 852-3900

Firm; Kaempfer Crowell Renshaw Gronauer & Fiorentino

Address 50 West Liberty  
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Reno, Nevada 89501

Client: Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-  
Day Saints on Behalf of Cleveland Ranch

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondent(s)**

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Iris Thornton, Esq.

Firm: Advocates for Community and Environment

Address: P.O. Box 1075  
El Prado, New Mexico 87529-1075

**Clients:** 2<sup>nd</sup> Big Springs Irrigation Company; Aaron Carl Hgfeldt; Aaron Jessop; Aaron  
McRory; Aaron Showell; Abigail C. Johnson; Achiel E. Wanket; Alamo Sewer & Water  
GID; Alex Vincent; Allan K. Nyberg; Amanda Moore; Amy Asperheim; Andrew M. Horsch;  
Anna E. Gloechner; Anna M. Trousdale; Ann Brauer; Annette Garland; Anthony Paul  
Donohue; Arla Prestwich; Armando Aguilew; Art Cameron; Axel Pearson; B.J. Whitney;  
Baker GID; Baker Ranches Inc.; Barbara Baker; Barbara J. Mason-Wanket; Bart Anderson;  
Bart Hansen; Bath Lumber; Beau Carlson; Becky Kleim; Bernard Buswell; Bevan Lister;  
Beverly Strickland; Billie Harker; Bobby Bonnell; Border Inn; Brad Dalton; Bradley Walch;  
Brad Lloyd; Brandon Christian; Brandon Holton; Brent Gardner; Brian Beacher; Bristlecone  
Alliance; Brynlee Wadsworth; Carl Jessop. Carlos Palencia; Carol Harker; Carol Hullinger;

Cary Curcio; Cecile Garland; Center for Biological Diversity; Central Nevada Regional Water Authority; Charles Hafen; Cheyenne Thompson; Chris Adler; Chris Shinkle; Christia Barlow; Chrystal Malloy; Chuck Rogers; Citizens Education Project; City of Ely; Clayton F. Dean; Clifford Pete Peterson; Confederated Tribes of the Goshute Reservation; Connie Simkins; Craig Baker; Craig Christianson; Cynthia Lee Bell; D. Danie Bradfield; D.L. Luccesi; Dale Canepa; Damian Sandoval; Dana Vogler; Daniel Hansen; Danile Rohr; Dan Simkins; David A. Baker; David Carlson; David Cox; David Hartley; Dawne Combs; Dean Mossgr; Debra Steadman; Deb Umina; DelsaNaiia Harker; Dennis Dotson, Jr.; Dennis Hafen; Dennis Jurgensen; Dennis O'Connor; Dennis Vanwinkle; Devin Sonnenberg; Dianne E. Mason; Donald Gent; Donald Rodriguez; Donald Zook; Don Hunt; Donna Bath; Donna Lytle; Duane E. Wadsworth; Dustin Crowther; Edith B. Warren; Ed Spear; Ed Vincent; Edward E. Wright; Edward Vincent; Edwin E. Higbee; Elaine R. Lewis; Elizabeth Bedell; Elko County; Eureka County; Eva Buswell; Eve Harker; Farrell Lytle; Frederick Hammel; Gary Bodell; Gary Davis; Gary McBride; Gary Perea; Gary Rosonlund; Geniel Connor; Gordon F. Yach; Gracie Thompson; Grant Perkins; Great Basin Business & Tourism Council; Great Basin Water Network; Greg Schatzle; Gretchen Baker; Halli Cox; Henry C. Vogler; Holly M. Wilson; Hope Johnson; Indian Springs Civic Association; India Phillips; Jackie Stewart; Jack T. Lee; Jacob Lester; James Bath; James E. Brady; James R. Ferrell; Janice Hilton; Janice Palmeri; Janie Rippetoe; Janille Baker; Jason Lloyd; Jaycee Wadsworth; Jennifer Jack; Jerald Bates; Jerome A. Jensen; Jerri Elliot; Jerry Etchart; Jessica Jessop; Jess Klotz; Jim Brauer; Jimmie Sue Lee; Jim Slough; Jo Anne Garrett; Jo Ann Perea; Jody Finicum; Joel Briscoe; Joe Morrow; Jo Fogliani; John Bowman; John Condie; John S. Cole; John Settles; John T. McClellan; John Wadsworth; Jo Lloyd; Joseph A. Dunne; Joseph Vincent; Josett Harker; Jo Wells; Justin Frehner; Karen Campbell, Kari Mortensen; Karl C. Stewart; Katherine McCrosky; Katherine Rountree; Kathleen LaJoie; Kathleen M. Cole; Kathryn A. Hill; Kathy Bingley; Kathy Cook; Kathy Hiatt; Kathy Wadsworth; Keith A. Pearson; Keith Rose; Keith Stever; Kelley Dabel; Kena Gloechner; Ken Lytle; Kenneth F. Hill; Kevin J. Jessop; Kevin Phillips; Kirk Johnson; Kyle Leany; Lacie Pearson; Landon Cole; LaRene Rogers; Larry LaJoie; Larry Stever; Laura Johnson; Laura Tibbetts; Laurel Ann Mills; Lavoy Hafen; League of Women Voters of Salt Lake City; Leah R. Lawson; Lee Pearson; Lene Clay; Linda G. Johnson; Lisa L. Lytle; Lisa M. Nielsen; Lorin Jessop; Louis Benezet; Louise Carlson; Ludell Deutcher; Luke Bottche; Lund Irrigation Company; Lynda Hatch; Lynda Hatch; Lynn Lloyd Major Mastin; Manetta Lythle; Marcia Wadsworth; Margaret Barlow; Margaret Joyce Yach; Margaret Pense; Marian K. Hunt; Marie A. Carrick; Marie McBride; Mark A. Mason; Mark D. Jones; Mark Olson; Mark Rippetoe; Mark Wadsworth; Marshall Stackhouse; Mary Rose; McGill-Ruth Sewer & Water GID; Melinda McCrosky; Melissa Cheeney; Melissa Jo Free; Merlene Hurd; Merle Rawlings; Merline Rhode; Merrilee Lee; Michael Bivins; Michael Hanley; Michael Knipes; Michele Austria; Michele R. Butler; Michelle Stephens; Michelle Yosai; Mick Lloyd; Mike Fogliani; Mike Jessop; Mike Vitt; N. Peter Horlacher; N-4 State Grazing Board; Nancy Gloechner; Natalie Mellern; Nathan McClure; Nevada Farm Bureau; Nevin May; Nicholas Vincent; Nye County; Nye County Water District; Orrin Dotson; Panaca Farmstead Association; Parker McManus; Pat Gloechner; Patricia J. Crosthait; Patricia J. Gladman; Patrick Fuller; Patrick M. Kelley; Paula J. Foht; Paula McManus; Paul Gloechner; Paul Steed; Pearson Farms; Peter Coroon; Pete Tony Delmue; Phillip Reeves; Post Carbon Salt Lake; Preston Irrigation Company; Progressive Leadership Alliance of Nevada; Rachel Carlisle; Rachelle Phillips; Rachel Steed; Rafter Lazy C Ranch; Randy Simkins; Ray Hulse; Relena Hanley; Rex Thompson; Richard A. Barr; Richard A. Rullo; Richard Prince; Rick Hansen; Robert Crager; Robert Jennings; Robert Laubach; Robert Rowe; Robin Dalton; Robin Edward John Bell, III;

Rocky Hatch; Roderick McKenzie; Rollin Kim Lee; Rom DeCanno; Ronald Jeremy Robinson; Ronald Kozak; Rose Diane Kelley; Russ Thompson; Ryan Timmons; Sammie L. Skinner; Sarah Lester; Sarah Somers; School of the Natural Order; Sean Bonnell; Shane Simkins; Shannon Barker; Shannon Spendlove; Sharalan Simkins; Sharon Williams Shelby Taylor; Sidney Taylor; Sierra Club; Sportsworld; Stephanie Vincent; Steve Chouquer; Steve McCrosky; Steven Heiselbetz; Stinson Vogler; Summer Simkins; Susan Wetmore; Tami Gubler; Tana R. Baker; Teresa Lloyd; Terrance Steadman; Terryle H. Phillips; Terry Olson; Theodore Stazeski; Thora Harker; Tom Baker; Tom E. Brown; Tom H. Sears; Toni Pinkhan; Travis Dormina; Trey Scott; Tyler Wadsworth; Utah Audubon Council; Utah Physicians for a Healthy Environment; Utah Rivers Council; Vaughan E. Seeben, Jr.; Vaughn M. Higbee & Sons; Velda Embry; Veronica Garcia; Vivian Jessop; Walter Franklin Brown; Wesley R. Lewis; White Pine Chamber of Commerce; White Pine County; William Butts; William Coffman; William Connor; William Jordan; William Kramer; William Long; William Rountree; William Smith; William Wilson

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Ely Shoshone Tribe

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**Client:** Southern Nevada Water Authority

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Firm: Taggart & Taggart Ltd.

Address: 108 North Minnesota Street  
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**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input type="checkbox"/> Other (specify):                               |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree                                 |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)                    |

**5. Does this appeal raise issues concerning any of the following?**

- Child Custody
- Venue
- Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeal or original proceedings presently or previously pending before this court which are related to this appeal:

- A. *Great Basin Water Network v. Taylor*, Supreme Court Case No. 49718, June 17, 2010
- B. *Southern Nevada Water Authority, and Tracy Taylor, in his official capacity as Nevada State Engineer v. Carter-Griffin, Inc., d/b/a Carter Cattle Co., et al.*, Supreme Court Case No. 54986, September 13, 2010

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

- A. *Great Basin Water Network v. Taylor*, Supreme Court Case No. 49718
- B. *Southern Nevada Water Authority, and Tracy Taylor, in his official capacity as Nevada State Engineer v. Carter-Griffin, Inc., d/b/a Carter Cattle Co., et al.*, Supreme Court Case No. 54986

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

By Rulings ##6164, 6165, 6166 and 6167, the State Engineer authorized SNWA's staged development of its 1989 Applications for Spring, Cave, Dry Lake and Delamar Valleys. Those four rulings represent the largest water appropriations in Nevada history, and possibly the largest interbasin transfer in U.S. history.

The Rulings were the subject of nine separate petitions for judicial review which were consolidated into a single action in White Pine County before Senior District Judge Robert E. Estes.

Cleveland Ranch's Petition for Judicial Review requested (1) that the court declare Ruling #6164 invalid and unenforceable as to SNWA Applications ##54009-54015, and 54020; and (2) to the extent any portion of Ruling #6164 remained operative, that the court impose a more robust monitoring system to determine the impact of the challenged Applications on Cleveland Ranch's water rights, and clarify that the 4,000 afa reserved by the State Engineer for "future use" in Spring Valley be reserved for parties other than SNWA.

On December 13, 2013, the District Court entered its Decision concluding that by the challenged Rulings, the State Engineer had (1) exceeded his statutory authority; (2) relinquished his statutory authority and responsibility to others; (3) made findings not based on substantial or reliable evidence, but on subjective, insubstantial and unscientific data; (4) acted arbitrarily and capriciously; (5) ruled prematurely; and (6) authorized groundwater mining which is not in the public interest and is unfair to following generations of Nevadans. The District Court also concluded that NRS 533.3705, enacted in 2007 and authorizing staged development, applied retroactively to SNWA's 1989 Applications. The District Court's Decision concluded that the State Engineer's Rulings ##6164, 6165, 6166 and 6167 would not be disturbed save for remand to the State Engineer for the following:

(a) the addition of Millard and Juab Counties, Utah, to the mitigation plan so far as water basins in Utah are affected by pumping of water from Spring Valley Basin, Nevada;

(b) recalculation of water available for appropriation from Spring Valley to assure that the basin will reach equilibrium between discharge and recharge in a reasonable time;

(c) addition of the definition of standards, thresholds or triggers so that mitigation of unreasonable effects from pumping water are neither arbitrary nor capricious in Spring, Cave, Dry Lake and Delamar Valleys; and

(d) recalculation of the appropriations from Spring, Cave, Dry Lake and Delamar Valleys to avoid over appropriations or conflicts with down gradient water rights.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets if necessary).

1. Whether the State Engineer's Ruling #6164 was supported by substantial, scientific, reliable evidence.

2. Whether the State Engineer exceeded and/or relinquished his statutory authority to SNWA or others.
3. Whether the State Engineer acted arbitrarily and capriciously.
4. Whether the State Engineer ruled prematurely.
5. Whether the State Engineer authorized groundwater mining contrary to the public interest.
6. Whether staged development, authorized by the Nevada Legislature through enactment of NRS 533.3705 in 2007, is even applicable to SNWA's 1989 Applications.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issues raised:

*Eureka County, a political subdivision of the State of Nevada, et al. v. The State of Nevada State Engineer, et al.*, Supreme Court Case No. 61324; consolidated with *Michel and Margaret Ann Etcheverry Family, LP, et al. v. State Engineer, of Nevada, Office of the State Engineer Department of Conservation and Natural Resources, et al.*, Supreme Court Case No. 63258

In these consolidated cases, the Appellants challenge the State Engineer's approval of applications conditioned on staged development under NRS 533.3705 where a monitoring, management and mitigation plan is relied upon to prevent or mitigate against interference with existing rights, which circumstances mandates rejection of applications under NRS 533.370(2).

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy



An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain:

This case involves serious issues of public policy as it is the largest water appropriation in Nevada history. The District Court determined that it violated Nevada public interest to approve water applications of such proportion without substantial and reliable scientific evidence and that the State Engineer had failed to exercise and abdicated his authority and responsibilities to the generations of Nevadans relying on him to safeguard the State's water and protect the environment.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? Was it a bench or jury trial?

There was no trial. This is an appeal from a Decision on consolidated Petitions for Judicial Review.

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

#### TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** December 13, 2013. If no written judgment or order was filed in the district court, explain the basis for seeking appellate review.

**16. Date written notice of entry of judgment or order was served** January 2, 2013.

Was service by:

Delivery

Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCPC 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

NRCPC 50(b)      Date of filing \_\_\_\_\_

NRCP 52(b)      Date of filing \_\_\_\_\_

NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b)      Date of entry of written order resolving tolling motion

(c)      Date written notice of entry of order resolving tolling motion was served

Was service by:

Delivery

Mail

**18. Date notice of appeal filed**

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

For State Engineer:      January 10, 2014

For Southern Nevada Water Authority:      January 13, 2014

For Cleveland Ranch:      January 29, 2014

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a); NRS 533.450(9)

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appeal from:**

(a)

NRAP 3A(b)(1)

NRS 38.205

NRAP 3A(b)(2)

NRS 233B.150

NRAP 3A(b)(3)

NRS 703.376

Other (specify)      NRS 533.450(9)

(b)      Explain how each authority provides a basis for appeal from the judgment or order:

Each of the consolidated appeals and cross-appeals has been taken from the same District Court decision upholding the State Engineer's authority to grant relief on the 1989 applications in stages, but remanding all of the State Engineer's current decisions for further evidentiary proceedings, findings and conclusions. Appellant intends to file a motion asking this Court to determine its jurisdiction of all of the

consolidated appeals and, if it dismisses the appeals for lack of a final judgment, grant writ review of the District Court's final decision that NRS 533.3705 applies retroactively so as to permit the State Engineer to grant relief on the 1989 applications in stages.

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

See Attachment 1.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

No party was dismissed from District Court Case No. CV-1204050, filed by Cleveland Ranch.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Respondent/Cross-appellant Cleveland Ranch and the other Respondents each sought Judicial Review to set aside one or more of the State Engineer's Rulings ##6164-6167.

Appellants Nevada State Engineer and SNWA defended the State Engineer's Rulings ##6165-6167.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

Yes

No

**24. If you answered "No" to questions 23, complete the following:**

(a) Specify the claims remaining pending below:

The District Court's December 13, 2013, Decision remanded issues to the State Engineer for further proceedings, correction and clarification, but adjudicated finally the issue of the retroactive applicability of staged development under NRS 533.3705 to SNWA's 1989 Applications.

(b) Specify the parties remaining below:

There are none.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

Yes

No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

Each of the consolidated appeals and cross-appeals has been taken from the same District Court decision upholding the State Engineer's authority to grant relief on the 1989 applications in stages, but remanding all of the State Engineer's current decisions for further evidentiary proceedings, findings and conclusions. Appellant intends to file a motion asking this Court to determine its jurisdiction of all of the consolidated appeals and, if it dismisses the appeals for lack of a final judgment, grant writ review of the District Court's final decision that NRS 533.3705 applies retroactively so as to permit the State Engineer to grant relief on the 1989 applications in stages.

**26. Attach file-stamped copies of the following documents.**

- The latest-filed complaint, counterclaims, cross-claims, and third party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims, and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

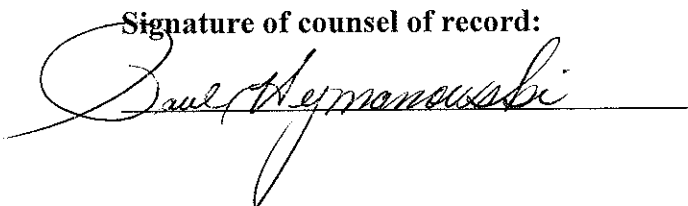
**Name of Appellant:**  
Corporation of the Presiding Bishop of  
The Church of Jesus Christ of Latter-Day  
Saints on behalf of Cleveland Ranch

**Name of counsel:** Paul R. Hejmanowski, Esq.

**Date:**

2-25-14

**Signature of counsel of record:**



**State and county where signed:**

Clark Count, Nevada

## CERTIFICATE OF SERVICE

I certify that on the 25 day of February, 2014, I served a copy of this completed docketing statement by electronic mail to the persons and addresses listed below:

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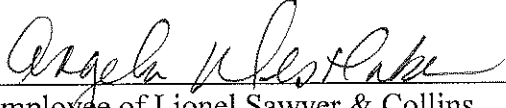
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**ATTACHMENT 1**

**ATTACHMENT 1**



## List of Parties:

2<sup>nd</sup> Big Springs Irrigation Company; Aaron Carl Hgfeldt; Aaron Jessop; Aaron McRory; Aaron Showell; Abigail C. Johnson; Achiel E. Wanket; Alamo Sewer & Water GID; Alex Vincent; Allan K. Nyberg; Amanda Moore; Amy Asperheim; Andrew M. Horsch; Anna E. Gloechner; Anna M. Trousedale; Ann Brauer; Annette Garland; Anthony Paul Donohue; Arla Prestwich; Armando Aguilew; Art Cameron; Axel Pearson; B.J. Whitney; Baker GID; Baker Ranches Inc.; Barbara Baker; Barbara J. Mason-Wanket; Bart Anderson; Bart Hansen; Bath Lumber; Beau Carlson; Becky Kleim; Bernard Buswell; Bevan Lister; Beverly Strickland; Billie Harker; Bobby Bonnell; Border Inn; Brad Dalton; Bradley Walch; Brad Lloyd; Brandon Christian; Brandon Holton; Brent Gardner; Brian Beacher; Bristlecone Alliance; Brynlee Wadsworth; Carl Jessop. Carlos Palencia; Carol Harker; Carol Hullinger; Cary Curcio; Cecile Garland; Center for Biological Diversity; Central Nevada Regional Water Authority; Charles Hafen; Cheyenne Thompson; Chris Adler; Chris Shinkle; Christia Barlow; Chrystal Malloy; Chuck Rogers; Citizens Education Project; City of Ely; Clayton F. Dean; Clifford Pete Peterson; Confederated Tribes of the Goshute Reservation; Connie Simkins; Craig Baker; Craig Christianson; Cynthia Lee Bell; D. Danie Bradfield; D.L. Luccesi; Dale Canepa; Damian Sandoval; Dana Vogler; Daniel Hansen; Danile Rohr; Dan Simkins; David A. Baker; David Carlson; David Cox; David Hartley; Dawne Combs; Dean Mossgr; Debra Steadman; Deb Umina; DelsaNaiia Harker; Dennis Dotson, Jr.; Dennis Hafen; Dennis Jurgensen; Dennis O'Connor; Dennis Vanwinkle; Devin Sonnenberg; Dianne E. Mason; Donald Gent; Donald Rodriguez; Donald Zook; Don Hunt; Donna Bath; Donna Lytle; Duane E. Wadsworth; Dustin Crowther; Edith B. Warren; Ed Spear; Ed Vincent; Edward E. Wright; Edward Vincent; Edwin E. Higbee; Elaine R. Lewis; Elizabeth Bedell; Elko County; Eureka County; Eva Buswell; Eve Harker; Farrell Lytle; Frederick Hammel; Gary Bodell; Gary Davis; Gary McBride; Gary Perea; Gary Rosonlund; Geniel Connor; Gordon F. Yach; Gracie Thompson; Grant Perkins; Great Basin Business & Tourism Council; Great Basin Water Network; Greg Schatzle; Gretchen Baker; Halli Cox; Henry C. Vogler; Holly M. Wilson; Hope Johnson; Indian Springs Civic Association; India Phillips; Jackie Stewart; Jack T. Lee; Jacob Lester; James Bath; James E. Brady; James R. Ferrell; Janice Hilton; Janice Palmeri; Janie Rippetoe; Janille Baker; Jason Lloyd; Jaycee Wadsworth; Jennifer Jack; Jerald Bates; Jerome A. Jensen; Jerri Elliot; Jerry Etchart; Jessica Jessop; Jess Klotz; Jim Brauer; Jimmie Sue Lee; Jim Slough; Jo Anne Garrett; Jo Ann Perea; Jody Finicum; Joel Briscoe; Joe Morrow; Jo Fogliani; John Bowman; John Condie; John S. Cole; John Settles; John T. McClellan; John Wadsworth; Jo Lloyd; Joseph A. Dunne; Joseph Vincent; Josett Harker; Jo Wells; Justin Frehner; Karen Campbell, Kari Mortensen; Karl C. Stewart; Katherine McCrosky; Katherine Rountree; Kathleen LaJoie; Kathleen M. Cole; Kathryn A. Hill; Kathy Bingley; Kathy Cook; Kathy Hiatt; Kathy Wadsworth; Keith A. Pearson; Keith Rose; Keith Stever; Kelley Dabel; Kena Gloechner; Ken Lytle; Kenneth F. Hill; Kevin J. Jessop; Kevin Phillips; Kirk Johnson; Kyle Leany; Lacie Pearson; Landon Cole; LaRene Rogers; Larry LaJoie; Larry Stever; Laura Johnson; Laura Tibbetts; Laurel Ann Mills; Lavoy Hafen; League of Women Voters of Salt Lake City; Leah R. Lawson; Lee Pearson; Lene Clay; Linda G. Johnson; Lisa L. Lytle; Lisa M. Nielsen; Lorin Jessop; Louis Benezet; Louise Carlson; Ludell Deutcher; Luke Bottche; Lund Irrigation Company; Lynda Hatch; Lynda Hatch; Lynn Lloyd Major Mastin; Manetta Lythle; Marcia Wadsworth; Margaret Barlow; Margaret Joyce Yach; Margaret Pense; Marian K. Hunt; Marie A. Carrick; Marie McBride; Mark A. Mason; Mark D. Jones; Mark Olson; Mark Rippetoe; Mark Wadsworth; Marshall Stackhouse; Mary Rose; McGill-Ruth Sewer & Water GID; Melinda McCrosky; Melissa Cheeny; Melissa Jo Free; Merlene Hurd; Merle Rawlings; Merline

Rhode; Merrilee Lee; Michael Bivins; Michael Hanley; Michael Knipes; Michele Austria; Michele R. Butler; Michelle Stephens; Michelle Yosai; Mick Lloyd; Mike Fogliani; Mike Jessop; Mike Vitt; N. Peter Horlacher; N-4 State Grazing Board; Nancy Gloechner; Natalie Mellern; Nathan McClure; Nevada Farm Bureau; Nevin May; Nicholas Vincent; Nye County; Nye County Water District; Orrin Dotson; Panaca Farmstead Association; Parker McManus; Pat Gloechner; Patricia J. Crosthait; Patricia J. Gladman; Patrick Fuller; Patrick M. Kelley; Paula J. Foht; Paula McManus; Paul Gloechner; Paul Steed; Pearson Farms; Peter Coroon; Pete Tony Delmue; Phillip Reeves; Post Carbon Salt Lake; Preston Irrigation Company; Progressive Leadership Alliance of Nevada; Rachel Carlisle; Rachele Phillips; Rachel Steed; Rafter Lazy C Ranch; Randy Simkins; Ray Hulse; Relena Hanley; Rex Thompson; Richard A. Barr; Richard A. Rullo; Richard Prince; Rick Hansen; Robert Cramer; Robert Jennings; Robert Laubach; Robert Rowe; Robin Dalton; Robin Edward John Bell, III; Rocky Hatch; Roderick McKenzie; Rollin Kim Lee; Rom DeCanno; Ronald Jeremy Robinson; Ronald Kozak; Rose Diane Kelley; Russ Thompson; Ryan Timmons; Sammie L. Skinner; Sarah Lester; Sarah Somers; School of the Natural Order; Sean Bonnell; Shane Simkins; Shannon Barker; Shannon Spendlove; Sharalan Simkins; Sharon Williams Shelby Taylor; Sidney Taylor; Sierra Club; Sportsworld; Stephanie Vincent; Steve Chouquer; Steve McCrosky; Steven Heiselbetz; Stinson Vogler; Summer Simkins; Susan Wetmore; Tami Gubler; Tana R. Baker; Teresa Lloyd; Terrance Steadman; Terryle H. Phillips; Terry Olson; Theodore Stazeski; Thora Harker; Tom Baker; Tom E. Brown; Tom H. Sears; Toni Pinkhan; Travis Dormina; Trey Scott; Tyler Wadsworth; Utah Audubon Council; Utah Physicians for a Healthy Environment; Utah Rivers Council; Vaughan E. Seeben, Jr.; Vaughn M. Higbee & Sons; Velda Embry; Veronica Garcia; Vivian Jessop; Walter Franklin Brown; Wesley R. Lewis; White Pine Chamber of Commerce; White Pine County; William Butts; William Coffman; William Connor; William Jordan; William Kramer; William Long; William Rountree; William Smith; William Wilson

Juab County, Utah; Millard County, Utah

Southern Nevada Water Authority

Confederated Tribes of the Goshute Reservation; Duckwater Shoshone Tribe;  
Ely Shoshone Tribe

State of Nevada Department of Conservation and Natural Resources, Division  
of Water Resources; State of Nevada State Engineer

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, on  
behalf of Cleveland Ranch

**IN RESPONSE TO NUMBER 26.**

**PLEASE SEE ATTACHED  
DOCUMENTS.**



1 of Applications 54003 through 54021, Inclusive, Filed to Appropriate the Underground Waters  
2 of the Spring Valley Hydrographic Basin (184), Lincoln and White Pine Counties, Nevada"), as  
3 follows:

#### 4 PROCEDURAL BACKGROUND

5  
6 1. In 1989, the Las Vegas Valley Water District (the "LVVWD") filed 146  
7 Applications with the State Engineer to appropriate approximately 800,000 acre-feet annually  
8 ("afa")<sup>1</sup> of public water from groundwater sources in 26 rural Nevada water basins to serve the  
9 greater Las Vegas area. The State Engineer acknowledged LVVWD's project as "the largest  
10 interbasin appropriation and transfer of water ever requested in the history of the state of  
11 Nevada." *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op. 20, 234 P.3d 912, 914  
12 (2010).

13  
14 2. In 1991, the Southern Nevada Water Authority ("SNWA") was created and  
15 acquired the rights to LVVWD's Applications.

16 3. Nineteen of SNWA's Applications (##54003-21) sought to appropriate  
17 groundwater from Spring Valley (the "Spring Valley Applications").

18 4. Spring Valley is located in eastern White Pine and northeastern Lincoln Counties  
19 and is about 120 miles long in a north-south direction and about 15 miles wide. Spring Valley  
20 has an area of approximately 1,700 square miles.

21  
22 5. Many persons and entities, both private and governmental, protested the Spring  
23 Valley Applications during the original protest period, which ended in July 1990.

24 6. On January 5, 2006, the State Engineer held a pre-hearing conference at which  
25 some Protestants requested that the State Engineer re-open the period for protests. The State  
26 Engineer denied the requests and set the hearing on SNWA's Spring Valley Applications to  
27

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28 <sup>1</sup> An acre foot is 325,851 gallons.

1 begin on September 11, 2006.

2 7. On or about July 6, 2006, some Protestants petitioned the State Engineer for a  
3 declaratory order requiring that SNWA's Applications be renoticed and that the protest period be  
4 reopened. On July 27, 2006, the State Engineer denied that petition.

5 8. The State Engineer held a hearing on the Spring Valley Applications from  
6 September 11-29, 2006.

7 9. On April 16, 2007, the State Engineer issued Ruling #5726, denying Spring  
8 Valley Applications ##54016, 54017, 54018, and 54021, and approving Spring Valley  
9 Applications ##54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012,  
10 54013, 54014, 54015, 54019, and 54020, subject to certain limitations and conditions.

11 10. On August 22, 2007, some Protestants filed in the Seventh Judicial District Court  
12 a Petition for Judicial Review of the State Engineer's denial of their requests to republish the  
13 Spring Valley Applications and reopen the protest periods. On May 30, 2007, the District Court  
14 denied that Petition and the Protestants then appealed that decision to the Nevada Supreme  
15 Court.

16 11. On June 17, 2010, in *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op. 2,  
17 222 P.3d 665 (2010), *modified on petition for rehearing* 126 Nev. Adv. Op. 20, 234 P.3d 912  
18 (2010), the Nevada Supreme Court reversed Ruling #5726 on the grounds the Spring Valley  
19 Applications had not been acted upon by the State Engineer within one year after the close of the  
20 protest period as required by statute. The Nevada Supreme Court concluded that "the proper and  
21 most equitable remedy is that the State Engineer must re-notice the applications and re-open the  
22 protest period." 234 P.2d at 919.

23 12. The State Engineer thereafter republished the Applications and scheduled  
24 hearings on the Applications between September 26 and November 18, 2011. The State  
25

1 Engineer also authorized the Applicant and Protestants to file opening and closing statements  
2 and proposed forms of the State Engineer's Ruling.

3 13. CPB protested 12 of SNWA's 19 Spring Valley Applications (##54009-54018,  
4 54020, and 54021) on the following grounds, among others:

- 5 (A) Only SNWA's actual Applications were before the State Engineer and any  
6 consideration of SNWA's possible future applications, intentions, or changes  
7 would violate NRS 533.370 and fundamental due process;
- 8 (B) SNWA's analysis overestimated the amount of water available for appropriation  
9 in Spring Valley;
- 10 (C) SNWA's analysis underestimated existing and future uses in Spring Valley;
- 11 (D) SNWA's own data and model demonstrated that the protested wells would directly  
12 conflict with the Ranch's water rights and have a devastating impact, including the  
13 creation of a massive, ever-increasing aggregate cone of depression that would  
14 eventually consume the springs and wetlands located on and around the Ranch;
- 15 (E) Even with removal of the four wells denied by the State Engineer's Ruling #5726  
16 in 2007 (Applications ##54016, 54017, 54018, and 54021), SNWA's model  
17 demonstrated dramatic drawdown and interference with the Ranch's existing  
18 water rights;
- 19 (F) Over time, the extensive drawdowns were likely to cause substantial subsidence  
20 and the permanent loss of aquifer storage capacity;
- 21 (G) SNWA's Applications and Groundwater Project ("GWP") did not call for the  
22 capture of much of the evapotranspiration ("ET") and would result in substantial  
23 and perpetual groundwater mining, contrary to the public interest and prohibited  
24 under Nevada law;<sup>2</sup>
- 25 (H) SNWA offered no realistic ability to monitor and/or mitigate the tremendous risks  
26 that its GWP posed to the Ranch, the public interest, and the environment;
- 27 (I) SNWA's reliance on a September 8, 2006, Stipulation between it and four bureaus  
28 of the U.S. Department of the Interior (National Park Service, Fish and Wildlife  
Service, Bureau of Land Management, and Bureau of Indian Affairs), and as to  
which neither the Ranch nor the State Engineer was a party, amounted to an

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26 <sup>2</sup> The water available for appropriation is the natural discharge (ET) that can be  
27 salvaged for beneficial use. SNWA's Applications were not designed to capture ET and its  
28 proposed wells in fact would capture only a fraction of ET, resulting in substantial and continual  
groundwater mining. SNWA's own model predicted that steady-state conditions would never be  
reached.

1 abdication of the State Engineer's statutory obligations and offered no  
2 substantive protection to the Ranch or the public interest;

3 (J) Approval of SNWA's Applications would amount to an impermissible taking of  
4 the Ranch's property without just compensation; and

5 (K) Further study and analysis should have been conducted because of the difficulty  
6 of determining and anticipating the potentially devastating and irreversible effects  
7 of SNWA's Applications.

8 14. On March 22, 2012, the State Engineer issued Ruling #6164 on the Spring Valley  
9 Applications, again denying Spring Valley Applications ##54016, 54017, 54018, and 54021, and  
10 approving Applications ##54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011,  
11 54012, 54013, 54014, 54015, 54019, and 54020 subject to certain conditions, including certain  
12 monitoring and reporting requirements and a staged development, which authorized an initial  
13 development of 38,000 afa over 8 years, an additional 12,000 afa over the next 8 years, and the  
14 remainder, up to a total of 61,127 afa duty, available thereafter. According to Ruling #6164,  
15 "Any development beyond the initial stage will be dependent upon a favorable review of the data  
16 collection and analysis." State Engineer's 3/22/12 Letter accompanying Ruling #6164, Appendix  
17 Exhibit 10.

18 15. By Ruling #6164, the State Engineer also determined that there is 84,000 afa  
19 perennial yield in Spring Valley, as opposed to the 80,000 afa perennial yield determined by the  
20 State Engineer's 2007 Ruling #5726. In reaching this finding, the State Engineer determined that  
21 existing water rights in Spring Valley amount to 18,873 afa and that 4,000 afa suffices for future  
22 Spring Valley growth and development, leaving 61,127 afa unappropriated in Spring Valley.

23 16. CPB, on behalf of the Ranch, hereby petitions the Court for judicial review  
24 reversing the State Engineer's approval, based on certain conditions, of eight of SNWA's Spring  
25 Valley Applications, ##54009 - 54015, and 54020, copies of which are attached respectively as  
26 Appendix Exhibits 2-9.  
27



1                                   **THE SNWA APPLICATIONS THAT ARE THE SUBJECT OF**  
2                                   **CPB'S PETITION FOR JUDICIAL REVIEW**

3           17.     Application #54009, Appendix Exhibit 2, was filed on October 17, 1989, by the  
4 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
5 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
6 White Pine Counties as more specifically described and defined therein. The proposed point of  
7 diversion was described as being located within NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.13N., R.66E.,  
8 M.D.B.&M. Application #54009 continues, stating that the "water is to be diverted from a 20-  
9 inch diameter well, via deep well No. 184-7A, pump, pipelines, pumping stations, reservoirs, and  
10 distribution system," that is estimated to cost "\$700,000 (well and equipment only)," and take  
11 "Minimum 20 years" to construct.  
12

13           18.     Application #54010, Appendix Exhibit 3, was filed on October 17, 1989, by the  
14 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
15 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
16 White Pine Counties as more specifically described and defined therein. The proposed point of  
17 diversion was described as being located within SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T.14N., R.66E.,  
18 M.D.B.&M. Application #54010 continued, stating that the "water is to be diverted from a 20-  
19 inch diameter well, via deep well No. 184-8A, pump, pipelines, pumping stations, reservoirs, and  
20 distribution system," that is estimated to cost "\$700,000 (well and equipment only)," and take  
21 "Minimum 20 years" to construct.  
22

23           19.     Application #54011, Appendix Exhibit 4, was filed on October 17, 1989, by the  
24 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
25 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
26 White Pine Counties as more specifically described and defined therein. The proposed point of  
27 diversion was described as being located within NE $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 14, T.14N., R.66E.,  
28

1 M.D.B.&M. Application #54011 continues, stating that the "water is to be diverted from a 20-  
2 inch diameter cased well, via deep well No. 184-9A, pump, pipelines, pumping stations,  
3 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
4 only)," and take "Minimum 20 years" to construct.

5  
6 20. Application #54012, Appendix Exhibit 5, was filed on October 17, 1989, by the  
7 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
8 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
9 White Pine Counties as more specifically described and defined therein. The proposed point of  
10 diversion was described as being located within SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T.14N., R.67E.,  
11 M.D.B.&M. Application #54012 continues, stating that the "water is to be diverted from a 20-  
12 inch diameter cased well, via deep well No. 184-10A, pump, pipelines, pumping stations,  
13 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
14 only)," and take "Minimum 20 years" to construct.

15  
16 21. Application #54013, Appendix Exhibit 6, was filed on October 17, 1989, by the  
17 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
18 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
19 White Pine Counties as more specifically described and defined therein. The proposed point of  
20 diversion was described as being located within SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 25, T.15N., R.66E.,  
21 M.D.B.&M. Application #54013 continues, stating that the "water is to be diverted from a 20-  
22 inch diameter cased well, via deep well No. 184-11A, pump, pipelines, pumping stations,  
23 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
24 only)," and take "Minimum 20 years" to construct.

25  
26 22. Application #54014, Appendix Exhibit 7, was filed on October 17, 1989, by the  
27 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
28

1 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
2 White Pine Counties as more specifically described and defined therein. The proposed point of  
3 diversion was described as being located within SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.15N., R.67E.,  
4 M.D.B.&M. Application #54014 continues, stating that the "water is to be diverted from a 20-  
5 inch diameter cased well, via deep well No. 184-12A, pump, pipelines, pumping stations,  
6 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
7 only)," and take "Minimum 20 years" to construct.  
8

9 23. Application #54015, Appendix Exhibit 8, was filed on October 17, 1989, by the  
10 Las Vegas Valley Water District to appropriate 6 cfs of underground water from the Spring  
11 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
12 White Pine Counties as more specifically described and defined therein. The proposed point of  
13 diversion was described as being located within SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 14, T.15N., R.67E.,  
14 M.D.B.&M. Application #54015 continues, stating that the "water is to be diverted from a 20-  
15 inch diameter cased well, via deep well No. 184-13A, pump, pipelines, pumping stations,  
16 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
17 only)," and take "Minimum 20 years" to construct.  
18

19 24. Application #54020, Appendix Exhibit 9, was filed on October 17, 1989, by the  
20 Las Vegas Valley Water District to appropriate 10 cfs of underground water from the Spring  
21 Valley Hydrographic Basin for municipal and domestic purposes within Clark, Lincoln, Nye and  
22 White Pine Counties as more specifically described and defined therein. The proposed point of  
23 diversion was described as being located within SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.14N., R.67E.,  
24 M.D.B.&M. Application #54020 continues, stating that the "water is to be diverted from a 20-  
25 inch diameter cased well, via deep well No. 184-2R, pump, pipelines, pumping stations,  
26 reservoirs, and distribution system," that is estimated to cost "\$700,000 (well and equipment  
27  
28

1 only)," and take "Minimum 20 years" to construct.

## 2 JURISDICTION AND VENUE

3 25. This Court has jurisdiction of this Petition pursuant to NRS 535.450.

4 26. Venue is properly in this Court pursuant to NRS 533.450(1) as the Seventh  
5 Judicial District Court in and for the State of Nevada includes White Pine and Lincoln Counties,  
6 both of which are "count[ies] in which the matters affected or a portion thereof are situated."  
7

8 27. All requirements for judicial review have been satisfied.

## 9 THE PARTIES

10 28. SNWA, a political subdivision of the State of Nevada, was formed in 1991 by  
11 seven local Clark County water agencies, the Big Bend Water District, the City of Boulder City,  
12 the Clark County Water Reclamation District, the City of Henderson, the City of Las Vegas, the  
13 Las Vegas Valley Water District, and the City of North Las Vegas. SNWA now manages and  
14 operates the Southern Nevada Water System.  
15

16 29. The Ranch, which is owned and operated by the CPB, is located in northern  
17 Spring Valley on 7,000 acres of fee land, with approximately 60,000 acres of grazing allotments.  
18 The Ranch is a major source of beef for the welfare program of The Church of Jesus Christ of  
19 Latter-day Saints, supplying approximately 35% of the Welfare Program's beef needs.  
20

21 30. Cattle have been raised on the Ranch since at least the 1870s. The Ranch now  
22 runs about 1,750 head of cattle a year. To support this endeavor, the Ranch relies upon  
23 approximately 5,000 afa of certificated and decreed water rights; approximately 37,000 afa of  
24 vested surface water rights claims;<sup>3</sup> approximately 2,000 afa of permitted supplemental  
25 groundwater irrigation rights; and numerous stockwater rights and springs rights. The Ranch  
26

---

27 <sup>3</sup> These claims of vested rights are based on the use of surface water rights prior to  
28 Nevada's enactment of the water law in 1903.

1 does not intend to diminish or cease its activities, but in fact to maintain and expand its water  
2 resources.

3 31. The springs located on the Ranch are the primary source of water for the cattle.  
4 The high water table in Spring Valley is what sustains the Ranch's springs and subirrigated lands  
5 as well as quality forage essential to cattle production. Lowering the water table would destroy  
6 those rights and have devastating effects on the Ranch.  
7

8 32. Pursuant to NRS 532.020, the Nevada State Engineer is appointed by and  
9 responsible to the Director of the State Department of Conservation and Natural Resources. The  
10 State Engineer is statutorily authorized by NRS Chapter 533 to adjudicate applications to  
11 appropriate the public waters of the State of Nevada in the public interest and in conformity with  
12 various statutory criteria.  
13

14 33. The Nevada Division of Water Resources ("NDWR") is headed by the Nevada  
15 State Engineer. According to the State Engineer, NDWR's mission is "to conserve, protect,  
16 manage and enhance the water resources of the state for Nevada's citizens through the  
17 appropriation and reallocation of public waters." Ruling #6164, Appendix Exhibit 1, at p. 27.  
18

19 34. The State Engineer is responsible for reviewing all applications for the  
20 appropriation of water and, in accord with the water law and public policies of Nevada,  
21 approving or rejecting such applications. Ruling #6164, Appendix Exhibit 1, at p. 27.  
22

### 23 BASIS FOR JUDICIAL REVIEW

24 35. The State Engineer's approval of SNWA's Spring Valley Applications ##54009 -  
25 54015, and 54020 (1) directly conflicts with the Ranch's vested<sup>4</sup> water rights and will cause all of  
26 the Ranch's springs and subirrigated pastures to go dry; (2) will create a massive aggregate cone  
27

---

28 <sup>4</sup> The Ranch uses the term "vested" to describe water rights which were fixed and  
established either by diversion and beneficial use prior to enactment of the statutory water law or  
by the statutory permit process. *See, e.g. Application of Filippini*, 66 Nev. 17, 22, 202 P.2d 535,

1 of depression that will dominate Spring Valley in the vicinity of the Ranch with significant  
2 drawdowns; (3) will likely result in substantial subsidence and permanent loss of aquifer storage  
3 capacity; (4) will result in substantial and perpetual groundwater mining; and (5) will result in  
4 significant and irreversible impacts on unique animal and plant communities dependent on the  
5 current hydrological regime, destroying plant communities upon which the Ranch has relied for  
6 well over 100 years.

7  
8 36. The State Engineer's approval of SNWA's Spring Valley applications ##54009 -  
9 54015 and 54020 by Ruling #6164 (1) violates the Ranch's due process rights; (2) violates the  
10 Ranch's vested and other property rights; (3) exceeds the State Engineer's statutory authority; (4)  
11 constitutes a condemnation of private property without just compensation; (5) violates Nevada's  
12 public water policy as expressed by the Legislature, the Nevada Supreme Court, and other  
13 Rulings of the State Engineer; and (6) is not supported by substantial evidence, is arbitrary and  
14 capricious, and amounts to an abuse of discretion.  
15

#### 16 NEVADA LAW AND PUBLIC POLICIES

17 37. NRS 533.024 charges the Nevada State Engineer with responsibility for carrying  
18 out the public policy of the State with regard to water, stating in part that the State Engineer is  
19 "[t]o recognize the importance of domestic wells as appurtenances to private homes, to create a  
20 protectable interest in such wells and to protect their supply of water from unreasonable adverse  
21 effects which are caused by municipal, quasi-municipal or industrial uses and which cannot  
22 reasonably be mitigated[,]" and "to consider the best available science in rendering decisions  
23 concerning the available surface and underground sources of water in Nevada."  
24

25 38. According to NRS 533.070(1), water may only be appropriated in Nevada if it is  
26 put to a beneficial use: "The quantity of water from either a surface or underground source which  
27

28 537 (1949).

1 may hereafter be appropriated in this state shall be limited to such water as shall reasonably be  
2 required for the beneficial use to be served."

3 39. NRS 533.490(1) determines that the watering of livestock is a beneficial use.

4 40. According to NRS 533.085(1), nothing contained in NRS Chapter 533 is intended  
5 to be used to impair the vested right of any person to the use of water.

6 41. NRS 533.325 requires that anyone who wishes to appropriate any of Nevada's  
7 public waters, or to change the place of diversion, manner of use or place of use of water already  
8 appropriated, shall, before performing any work in connection with such application or change,  
9 apply to the State Engineer for a permit to do so. According to NRS 533.330, no application  
10 shall be for the water of more than one source to be used for more than one purpose.  
11

12 42. SNWA's Spring Valley Applications are also governed by NRS 533.335, which  
13 requires that *all* applications *shall* contain each of the following items of specific information:  
14

15 1. The name and post office address of the applicant and, if the  
16 applicant is a corporation, the date and place of incorporation.

17 2. The name of the source from which the appropriation is to be  
18 made.

19 3. The amount of water which it is desired to appropriate, expressed  
20 in terms of cubic feet per second, except in an application for a permit to store  
21 water, where the amount shall be expressed in acre-feet.

22 4. The purpose for which the application is to be made.

23 5. A substantially accurate description of the location of the place at  
24 which the water is to be diverted from its source and, if any of such water is to be  
25 returned to the source, a description of the location of the place of return.

26 6. A description of the proposed works.

27 7. The estimated cost of such works.

28 8. The estimated time required to construct the works, and the  
29 estimated time required to complete the application of the water to beneficial use.

30 9. The signature of the applicant or a properly authorized agent  
31 thereof.

32 43. If an application is for municipal supply or domestic use, as here, the application  
33 is also required by NRS 533.340(3) to state "the approximate number of persons to be served,  
34 and the approximate future requirement." If any water is to be stored, NRS 533.340(6) requires

1 that the dimensions and locations of any proposed dam, its capacity, and a description of any  
2 land to be submerged by the impounded waters must also be stated.

3 44. NRS 533.368 authorizes the State Engineer to require, at the expense of the  
4 Applicant, hydrological, environmental, or other studies as necessary to make a final properly-  
5 informed determination on an application:  
6

7 1. If the State Engineer determines that a hydrological study, an  
8 environmental study or any other study is necessary before the State Engineer  
9 makes a final determination on an application pursuant to NRS 533.370 and the  
10 applicant, a governmental agency or other person has not conducted such a study  
11 or the required study is not available, the State Engineer shall advise the applicant  
12 of the need for the study and the type of study required.

13 2. The required study must be conducted by the State Engineer or by  
14 a person designated by the State Engineer, the applicant or a consultant approved  
15 by the State Engineer, as determined by the State Engineer.

16 3. The applicant shall bear the cost of a study required pursuant to  
17 subsection 1. A study must not be conducted by the State Engineer or by a person  
18 designated by the State Engineer until the applicant has paid a cash deposit to the  
19 State Engineer which is sufficient to defray the cost of the study.

20 4. The State Engineer shall:

21 (a) Consult with the applicant and the governing body of the  
22 county or counties in which the point of diversion and the place of use is located  
23 concerning the scope and progress of the study.

24 (b) Send a copy of the completed study to all attorneys of  
25 record, to a public library, if any, or other public building located in the county of  
26 origin, to the county or counties in which the point of diversion and the place of  
27 use is located and to the governing bodies of the county of origin and of the  
28 county or counties in which the point of diversion and the place of use is located.

5. The State Engineer may adopt regulations to carry out the  
provisions of this section.

45. NRS 533.370(1) authorizes the State Engineer to approve an application  
submitted in proper form which contemplates the application of water to beneficial use if:

(b) The proposed use or change, if within an irrigation district, does  
not adversely affect the cost of water for other holders of water rights in the  
district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of  
the applicant's:

(1) Intention in good faith to construct any work necessary to  
apply the water to the intended beneficial use with reasonable diligence; and

(2) Financial ability and reasonable expectation actually to  
construct the work and apply the water to the intended beneficial use with  
reasonable diligence.



1           46.     The State Engineer has acknowledged that NRS 533.370(1)(c)'s requirements  
2     express the Nevada public policy against speculation in water rights and/or any practice  
3     authorizing applicants to tie up water for some future use. *See, e.g.*, State Engineer's 2011  
4     Ruling #6122, at p. 42 ("NRS § 533.370(1)(c)(2) has as its goal the protection against  
5     speculation. Its intent is to avoid issuance of permits which can never, or unlikely to ever, satisfy  
6     the ultimate beneficial use requirement"); State Engineer's 2011 Ruling #6095, at p. 2 ("The  
7     State Engineer finds that the beneficial use requirement provides that the Applicant must  
8     demonstrate an actual beneficial use for the water applied for and does not allow for an applicant  
9     to tie up water for some project it might find in the future"); 2010 Ruling #6063, at p. 4 (to the  
10    same effect); *id.*, pp. 4-5 ("The State Engineer finds while it is useful to have new studies of  
11    water availability for Nevada's future growth, it threatens to prove detrimental to the public  
12    interest to allow an applicant to hold on to a water right application when it is unable to  
13    demonstrate an actual project for which the water will be used or to fail to provide information  
14    required by Nevada law"); 2009 Ruling #5997, pp. 5-6 (discussing the State's anti-speculation  
15    doctrine and an applicant's need to demonstrate actual need for water, its actual beneficial  
16    purpose, the quantity of water to be appropriated, and actions undertaken in furtherance of  
17    beneficial use of the water sought); 2007 Ruling #5782, p. 20 ("The Applicant also did not  
18    provide any evidence on the specifics of where water would be used and in what quantities; thus,  
19    there was no evidence of beneficial use"); 2006 Ruling #5612, p. 10 ("The State Engineer finds  
20    the Applicant did not provide anything specific as to what would be built and where. The State  
21    Engineer finds this is not the kind of specificity required under a water right application"). The  
22    Nevada Supreme Court has also declared the State's "anti-speculation doctrine." *See Bacher v.*  
23    *State Engineer*, 122 Nev. 1110, 1119-20, 146 P.3d 793, 799 (2007) (an "anti-speculation  
24    doctrine" precludes "speculative water rights acquisitions" to ensure "satisfaction of the  
25  
26  
27  
28

1 beneficial use requirement that is so fundamental to our State's water law jurisprudence").

2 47. According to NRS 533.370(2), "where there is no unappropriated water in the  
3 proposed source of supply, or where its proposed use or change conflicts with existing rights or  
4 with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to  
5 prove detrimental to the public interest, the State Engineer shall reject the application and refuse  
6 to issue the requested permit."  
7

8 48. The Spring Valley Applications are interbasin transfers. Ruling #6164, Appendix  
9 Exhibit 1, at p. 28. NRS 533.370(3) imposes additional criteria on the State Engineer's approval  
10 or rejection of interbasin transfers, stating:

11 3. In addition to the criteria set forth in subsections 1 and 2, in  
12 determining whether an application for an interbasin transfer of groundwater must  
13 be rejected pursuant to this section, the State Engineer shall consider:

14 (a) Whether the applicant has justified the need to import the  
15 water from another basin;

16 (b) If the State Engineer determines that a plan for  
17 conservation of water is advisable for the basin into which the water is to be  
18 imported, whether the applicant has demonstrated that such a plan has been  
19 adopted and is being effectively carried out;

20 (c) Whether the proposed action is environmentally sound as it  
21 relates to the basin from which the water is exported;

22 (d) Whether the proposed action is an appropriate long-term  
23 use which will not unduly limit the future growth and development in the basin  
24 from which the water is exported; and

25 (e) Any other factor the State Engineer determines to be  
26 relevant.

27 49. The State Engineer is required to act upon an application in writing in accord with  
28 NRS 533.370(8), which states:

If a hearing is held regarding an application, the decision of the State  
Engineer must be in writing and include findings of fact, conclusions of law and a  
statement of the underlying facts supporting the findings of fact. The written  
decision may take the form of a transcription of an oral ruling. The rejection or  
approval of an application must be endorsed on a copy of the original application,  
and a record must be made of the endorsement in the records of the State  
Engineer. The copy of the application so endorsed must be returned to the  
applicant. Except as otherwise provided in subsection 11, if the application is  
approved, the applicant may, on receipt thereof, proceed with the construction of

1 the necessary works and take all steps required to apply the water to beneficial use  
2 and to perfect the proposed appropriation. If the application is rejected, the  
3 applicant may take no steps toward the prosecution of the proposed work or the  
diversion and use of the public water while the rejection continues in force.

4 50. NRS 533.380(1) addresses, among other things, the time for an applicant to  
5 complete work and apply water to beneficial use, and requires that in approving any application,  
6 the State Engineer shall: "(a) Set a time before which the construction of the work must be  
7 completed, which *must be within 5 years after the date of approval*" and "(b) [S]et a time before  
8 which the complete application of water to a beneficial use must be made, which *must not*  
9 *exceed 10 years after the date of the approval.*" [Emphasis added.] According to NRS  
10 533.380(3), any extensions must be "[a]ccompanied by proof and evidence of the reasonable  
11 diligence with which the applicant is pursuing the perfection of the application." NRS  
12 533.380(6) also provides that "the measure of reasonable diligence is the steady application of  
13 effort to perfect the application in a reasonably expedient and efficient manner under all the facts  
14 and circumstances."

15  
16 51. The burden of meeting all of the statutory conditions for grant of an application to  
17 appropriate water is on the Applicant, here SNWA. *Bacher v. State Engineer*, 122 Nev. 1110,  
18 1116, 146 P.3d 793, 797 (2007) ("NRS Chapter 533 prescribes the general requirements that  
19 every applicant must meet to appropriate water"). Thus, it was SNWA's burden to present  
20 evidence showing that its Applications should be granted. To the extent of any gaps in the  
21 Application or the evidence, SNWA did not meet its burden and its Applications should have  
22 been denied as a matter of law  
23

24 52. According to the Nevada Supreme Court, Nevada's water laws are to be construed  
25 strictly. *Preferred Equities Corp. v. State Engineer*, 119 Nev. 384, 390, 75 P.3d 380, 383-84  
26 (2003).  
27

1           53.     A vested water right "is regarded and protected as property." *Application of*  
2 *Filippini*, 66 Nev. 17, 22, 202 P.2d 535, 537 (1949). A water right "is regarded and protected as  
3 real property." *Town of Eureka v. State Engineer*, 108 Nev. 163, 167, 826 P.2d 948, 951 (1992),  
4 *citing Carson City v. Estate of Lompa*, 88 Nev. 541, 542, 501 P.2d 262, 264-65 (1979).

5           54.     Vested water rights are entitled to the protections of due process. *Revert v. Ray*,  
6 95 Nev. 782, 787, 603 P.2d 262, 264-265 (1979).

7           55.     The "utilization of water by grazing livestock," for example, "constitutes  
8 sufficient appropriation to establish a vested water right" in a spring that is used for such a  
9 purpose. *Waters of Horse Spring v. State Engineer*, 99 Nev. 776, 778, 671 P.2d 1131, 1132  
10 (1983) (cattle ranching operation had vested right to water of springs).

11           56.     Permanent groundwater mining is unacceptable under Nevada law and public  
12 policy. *See, e.g.*, State Engineer's 2007 Ruling #5726, at p. 52, stating when considering the  
13 same Applications as are the subject of Ruling #6164: "Mining of ground water is not acceptable  
14 and appropriation of this magnitude will lower the water table and degrade the quality of water  
15 from existing wells, cause negative hydraulic gradients influences, and other negative impacts  
16 and adversely affect existing rights and the public interest." *See also*, 7/9/1964 Ruling #707, p. 1  
17 (extraction of any additional water would have an adverse effect on existing water rights within  
18 the basin); 2/3/1969 Ruling #1327, p. 1 (existing groundwater rights exceeded estimates of  
19 recharge to the basin); 4/26/1972 Ruling #1842, p. 1 (existing groundwater rights exceeded  
20 estimated recharge); 4/13/1975 Ruling #2045, p. 1 (existing groundwater rights exceeded the  
21 perennial yield); 4/10/1979 Ruling #2453, pp. 4-5 (additional withdrawal of water would result  
22 in groundwater mining); 1/13/1988 Ruling #3486, p. 6 (additional withdrawal of water would  
23 result in groundwater mining and "conflict with existing rights and be detrimental to the public  
24 interest"); 12/28/1989 Ruling #3664, p. 9 (existing groundwater rights exceeded annual recharge  
25  
26  
27  
28

1 within the basin and would "impair the value of existing rights and threaten to prove detrimental  
2 to the public interest and welfare"); 5/21/1990 Ruling #3708, pp. 3-4 (existing groundwater  
3 rights substantially exceeded the perennial yield); 1/23/1990 Ruling #3679, pp. 11-13  
4 ("Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions  
5 such as water quality degradation, storage depletion, diminishing yield of wells, increased  
6 economic pumping lifts, land subsidence and reversal of ground water gradients which could  
7 result in significant changes in the recharge/discharge relationship. These conditions have  
8 developed in several other ground water basins within the State of Nevada where storage  
9 depletion and declining water tables have been recorded and documented"); 04/16/2007 Ruling  
10 #5726, p. 52 ("Mining of groundwater is not acceptable"); 7/16/2007 Ruling #5750, pp. 21-22  
11 (withdrawal of substantial amounts of groundwater in excess of perennial yield would :adversely  
12 affect existing rights and would threaten to prove detrimental to the public interest"); 8/3/11  
13 Ruling #6134, at p. 4 (denying permits where basin was already over-appropriated and increased  
14 withdrawals would constitute groundwater mining with "significant impact" on both the quality  
15 of water and existing water rights); 10/14/2011 Ruling #6151, p. 4 (approval of application  
16 would result in withdrawal of groundwater in substantial excess of perennial yield and the  
17 resulting groundwater mining "would conflict with existing rights and would threaten to prove  
18 detrimental to the public interest").

19  
20  
21  
22 57. To withstand the Court's reversal on judicial review, the State Engineer's  
23 determination of an application to appropriate water must be supported by "substantial  
24 evidence." *Bacher v. State Engineer*, 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2007).  
25 Substantial evidence is that evidence "which 'a reasonable mind might accept as adequate to  
26 support a conclusion.'" *Id.*; and *id.* at 122 Nev. at 1123, n. 37, 146 P.3d at 801, n. 37  
27 ("speculative evidence of development projects is not sufficient to survive a substantial evidence  
28

1 inquiry on review").

2 **COUNT ONE**  
3 **THE STATE ENGINEER'S RULING #6164**  
4 **VIOLATES FUNDAMENTAL DUE PROCESS**

5 58. Petitioner repeats and realleges the allegations in Paragraphs 1-57 as though set  
6 forth fully herein.

7 59. The due process requirements of the 14<sup>th</sup> Amendment to the U.S. Constitution and  
8 Article 1, Sec. 8(5) of the Nevada Constitution apply to administrative decisions and require that  
9 interested parties be apprised of the nature of the proceeding so that there is no unfair surprise.  
10 *Nevada State Apprenticeship v. Joint Apprenticeship*, 94 Nev. 753, 765, 587 P.2d 1315, 1317  
11 (1978).

12 60. SNWA's 1989 Applications ##54009 - 54015, and 54020 for Spring Valley each  
13 state that the proposed diversion will require a drilled and cased well, motor and pump, pipelines  
14 and a distribution system. The proposed points of diversion are hundreds of miles from the  
15 proposed places of use. Despite the enormity of the work involved in effecting the work upon  
16 which the Applications were noticed, the Applications estimate the cost of necessary work at  
17 \$750,000. That estimate is unrealistically low and cannot be achieved at that cost. In fact, at p.  
18 48, Ruling #6164 states that SNWA's engineering department now estimates the cost of  
19 completion of the GWP, by 2020, to be approximately \$6.45 billion, or 850 times greater than  
20 what was noticed to the public and Protestants by SNWA's Spring Valley 1989 Applications.

21 61. NRS 533.335's requirement that Applications state the source from which  
22 appropriation is to be made, the amount requested in cubic feet per second, the purpose for the  
23 water, the place of diversion, a description of the proposed work, the estimated cost of the works,  
24 and the time required to construct the work and apply the water to its proposed beneficial use is  
25 imperative and implies that a +/- 50-year process is not intended. The confusion in protesting an  
26  
27  
28

1 application for a project of unknown start-date, unknown cost, and unknown beneficial use is not  
2 intended by Nevada's statutory scheme and does not comport with fundamental due process. The  
3 State Engineer's consideration and approval of SNWA's challenged 1989 Applications violated  
4 the Ranch's fundamental due process rights.

5  
6 62. SNWA's 23-year old Applications are sketchy, vague, outdated, and invalid.  
7 They do not give reasonable or fair notice of what SNWA was seeking and should not have been  
8 the subject of the State Engineer's action. SNWA's actual intent and the State Engineer's Ruling  
9 deviate so far from the content of the actual applications as to have rendered the 23-year old  
10 Applications of no use at all in giving notice to the Ranch or other interested parties and the  
11 public of SNWA's true intentions. The State Engineer's reliance on the outdated Spring Valley  
12 Applications violates the State Engineer's statutory authority and fundamental due process.

13  
14 63. Ruling #6164, at p. 211, states that "The State Engineer finds for the purposes of  
15 the application form, the Applications adequately describe the proposed works, the cost of such  
16 works, estimated time required to construct the works and place the water to beneficial use and  
17 the approximate number of persons to be served" and dismisses protests based on the  
18 insufficiency of the 1989 Applications to apprise interested parties, including the Ranch, of  
19 SNWA's Application and intent.

20  
21 64. Ruling #6164 leaves too much up to SNWA's good intentions. SNWA's own  
22 experts admitted that the viability of SNWA's GWP depends entirely on the success of the  
23 monitor-manage-mitigate plan. *See, i.e.*, 10/10/11 Transcript, pp. 2533-35 (Prieur and Marshall).

24  
25 65. While SNWA's presentation to the State Engineer described its needs as  
26 "pressing," it also acknowledged that it could not begin putting the water to beneficial use until  
27 around 2028, 39 years after its Applications were made, and that it is unclear and uncertain  
28 whether the GWP is required for other than "drought purposes." *See* SNWA's 9/16/11 Opening

1 Statement.

2 66. Ruling #6164 violates fundamental due process because it does not give  
3 reasonable notice of what rights have been granted to SNWA and it allows SNWA to move  
4 forward imposing its own manage, monitor, and mitigate decisions without adequate protection of  
5 the Ranch's vested and other water rights through notice and information and without adequate  
6 supervision of the State Engineer. For example, at pp. 103-104 of Ruling #6164, the State  
7 Engineer accords tremendous responsibility and authority to groups, panels, and committees  
8 created by the 2006 Stipulation between SNWA and four divisions of the U.S. Department of the  
9 Interior to which neither the State Engineer nor any of the Protestants, including CPB, are  
10 parties, stating:  
11

12  
13 The State Engineer is not a party to the Stipulation with the Federal  
14 Agencies. While the Stipulation is binding on the Applicant and the Federal  
15 Agencies, it is not binding on the State Engineer. However, the Stipulation is  
16 important to the consideration of the Applications for a number of reasons. First,  
17 the Stipulation formed the process for the initial development of the Spring Valley  
18 Management Plan. Second, the Stipulation addresses how the Federal Agencies  
19 and the Applicant will resolve issues between themselves that are related to  
20 Federal claims to water rights and resources. Third, the Stipulation provides a  
21 forum through which critical information can be collected from hydrologic and  
22 biological experts that the State Engineer can utilize to assure development of the  
23 Applications will not conflict with existing water rights or with protectable  
24 interests in existing domestic wells.

25 By its terms, the Stipulations, and its exhibits, set forth the guidelines for  
26 the elements of the monitoring plan. Exhibit A established the technical  
27 framework and structure for the hydrologic elements of the monitoring,  
28 management and mitigation program. Exhibit B provided the same technical  
structure and management elements for the biologic portion of the plan. The  
parties agreed upon mutual goals to guide the development of these monitoring  
plans. The common hydrologic goals of the parties are: (1) to manage the  
development of groundwater by SNWA in the Spring Valley hydrographic basin  
without causing injury to Federal water rights and/or any unreasonable adverse  
effects to Federal resources; (2) to adequately characterize the groundwater  
gradient from Spring Valley to Snake Valley via Hamlin Valley; and (3) to avoid  
effects on Federal resources located within the boundaries of Great Basin  
National Park.

The Stipulation established a Technical Review Panel ('TRP') for the  
hydrologic plan, a Biological Work Group ('BWG') for the biological plan, and an  
Executive Committee to oversee implementation and execution of the agreement.  
The TRP and BWG are composed of subject matter experts who act as  
representatives from each of the parties to the Stipulation who review, analyze,  
interpret, and evaluate information collected under the plan. The technical panels  
will also evaluate model results and make recommendations to the Executive



1 Committee.

2 The technical review teams for both the hydrologic component and the  
3 biologic component work together to accomplish the goals of the Stipulation. For  
4 example, Mr. Prieur<sup>5</sup> testified that during development of the monitoring plan, the  
5 teams conducted field trips to identify springs that were of biologic interest and  
6 should be included in the monitoring plan network. The Applicant's  
7 representatives regularly meet with the TRP and the BWG to discuss ways to best  
8 utilize each group's data and to discuss any additional hydrologic data that may be  
9 needed under the plan.

10 The Executive Committee reviews TRP recommendations pertaining to  
11 technical and mitigation actions. The Executive Committee also resolves disputes  
12 in the event the TRP cannot reach a consensus on monitoring requirements,  
13 research needs, technical aspects of study design, interpretation of results or  
14 appropriate actions to minimize or mitigate unreasonable adverse effects on  
15 Federal resources or injury to Federal water rights. If the Executive Committee  
16 cannot reach a consensus, a dispute resolution procedure directs such a matter to  
17 be forwarded for resolution to the State Engineer or another qualified third-party.

18 67. The State Engineer concedes that the 2006 Stipulation between SNWA and the  
19 Department of the Interior's four bureaus was not intended to protect CPB. "CPB is not a party  
20 to the Stipulation, and the Stipulation was not intended to address non-federal water rights," but  
21 argues that the Stipulation "in no way limits" his obligations or authority to protect CPB's  
22 existing water rights." Ruling #6164, p. 105.<sup>6</sup> But, the State Engineer is not a party to the  
23 Stipulation and the State Engineer does not control of what testing, information, and planning he  
24 or she will receive from the actual parties to the Stipulation. The State Engineer does not even  
25 control what information the Stipulation's teams and committees are obliged to release to him or  
26 her. The "monitoring" conducted by SNWA and/or the committees, groups, and teams created  
27 by the Stipulation are insufficient regarding identification of impacts specific to the Ranch's  
28 water rights. By relying to such a large extent on the Stipulation and the committees, groups,

---

23 <sup>5</sup> James Prieur is a Senior Hydrologist for the Applicant.

24 <sup>6</sup> To illustrate CPB's position as an outsider to the members of the Stipulation's  
25 panels, committees, and groups responsible for analyzing how and when to mitigate or minimize  
26 potential harm to the CPB and others similarly situated, the Hearing Officer cut CPB short when  
27 questioning Mr. Zane Marshall, SNWA's Environmental Resources Director, about how the  
28 monitor-manage-mitigate provisions of the 2006 Stipulation would operate. Ruling #6164, at pp.  
29 2498-2500 ("Hold on, Mr. Hejmanowski. [I]t's a stipulated settlement between particular parties.  
30 The Tribe didn't settle. The ranch didn't settle. So I don't really know your point. So I don't  
31 know how much farther I'm going to let you go.... Told you I wasn't going to let you go much  
32 further").

1 and teams created by it, the State Engineer's Ruling #6164 does not protect existing water rights  
2 and violates fundamental due process owed to those to whom the State Engineer is responsible,  
3 including the CPB.

4  
5 **COUNT TWO**  
6 **THE STATE ENGINEER'S RULING #6164 VIOLATES**  
7 **NRS 533.370(2) AND NEVADA LAW AND PUBLIC**  
8 **POLICY AGAINST GROUNDWATER MINING**

9  
10 68. Petitioner repeats and realleges Paragraphs 1-67 as though fully set forth herein.

11 69. SNWA represented in the hearing that:

12 For basins with significant groundwater discharge to the surface in the  
13 form of ET, the perennial yield is limited to the total annual groundwater ET. For  
14 basins without significant groundwater ET, the definition of the perennial yield  
15 has been interpreted in different ways. The maximum perennial yield has,  
16 however, always been defined as no more than the total annual recharge volume  
17 to the basin.

18 Spring Valley is a basin with considerable groundwater ET; therefore, the  
19 perennial yield is equal to groundwater ET in the basin, 94,800 afy.

20 SNWA 9/16/11 Opening Statement, at p. 6.

21 70. The State Engineer acknowledges that SNWA's application constitute the largest  
22 demand for interbasin transfers in Nevada's history and that Nevada is the driest state in the  
23 United States. Such facts have caused the State Engineer to condemn groundwater mining in  
24 general, as in Ruling #5726, p. 52, in consideration of precisely the same SNWA Applications as  
25 at issue in Ruling #6164, stating: "Mining of ground water is not acceptable and appropriation of  
26 this magnitude will lower the water table and degrade the quality of water from existing wells,  
27 cause negative hydraulic gradients influences, and other negative impacts and adversely affect  
28 existing rights and the public interest."

71. Ruling #6164 contains no similar condemnation of groundwater mining, because,  
in fact, it authorizes SNWA to engage in precisely the dangerous and detrimental, and heretofore  
unlawful practice which is against Nevada public interest and will interfere with and prove

1 detrimental to, if not outright destroying, CPB's existing water rights.

2 72. The State Engineer's Ruling #6164 does not condemn groundwater mining,  
3 choosing instead only to define it:

4 The perennial yield of a groundwater reservoir may be defined as the  
5 maximum amount of groundwater that can be salvaged each year over the long  
6 term without depleting the groundwater reservoir. Perennial yield is ultimately  
7 limited to the maximum amount of natural discharge that can be salvaged for  
8 beneficial use. The perennial yield cannot be more than the natural recharge to a  
9 groundwater basin and in some cases is less. If the perennial yield is exceeded,  
10 groundwater levels will decline and steady state conditions will not be achieved, a  
11 situation commonly referred to as groundwater mining.

12 Ruling #6164, Appendix Exhibit 1, at p. 56.

13 73. Ruling #6164 does not require that ET be captured by SNWA's project. *See, i.e.,*  
14 Ruling #6164 at p. 90 ("The State Engineer finds that there is no provision in Nevada water law  
15 that addresses time to capture, and no State Engineer has required that ET be captured within a  
16 specified period of time. It will often take a long time to reach near-equilibrium in large basins  
17 and flow systems..."); and at p. 91 ("The State Engineer finds that the Applicant is not required to  
18 prove capture of ET as a prerequisite to approval of the Applications"). Those determinations  
19 result in authorizing SNWA to engage in unprecedented and impermissible permanent  
20 groundwater mining which poses devastating harm to the Ranch and is contrary to Nevada law  
21 and public policy.

22 74. When asked why SNWA's proposed project is not groundwater mining, Dr. James  
23 Watrus, SNWA's senior hydrologist and expert witness, testified that SNWA "will not in all  
24 likelihood be awarded" what it applied for, and in addition, reliance on SNWA's good intentions  
25 should suffice. 10/11/11 Transcript, at 2609.

26 75. Dr. Watrus also conceded that were SNWA to engage in groundwater mining, it  
27 "would result in devastating effects." 10/11/11 Transcript, at 2609.



1 Judicial Review) for 61,127 afa, with a staged development limited to 38,000 afa for the first  
2 eight years; 50,000 afa for the next eight years; and 61,127 afa perpetually thereafter. Ruling  
3 #6164 says the State Engineer will evaluate the impact of the pumping at each stage of  
4 development before SNWA is to be allowed to proceed to the next stage of development.

5  
6 81. At page 91 of Ruling #6164, the State Engineer "finds that there is no requirement  
7 that the Applicant must show that the proposed well placement will actually be able to fully  
8 capture discharge." That finding is contrary to law governing the State Engineer's  
9 responsibilities because in determining whether an applicant may appropriate water, the State  
10 Engineer is required to determine that there is unappropriated water available for use. If the  
11 discharge cannot or will not be captured, then it is not available for use.

12  
13 82. As the Applicant, SNWA bears the burden of demonstrating that the water is  
14 available for use.

15  
16 83. If SNWA did not demonstrate that it can or will capture the discharge, then  
17 SNWA has not met its statutory burden and the eight Applications challenged by this Petition  
18 should not have been approved by the State Engineer as a matter of law.

19  
20 84. The State Engineer acted in excess of his authority in relieving SNWA of its  
21 statutory burden to demonstrate that its GWP will not constitute groundwater mining.

22  
23 85. In determining that Applications ##54009-15, and 54021 do not conflict with  
24 CPB's existing rights, the State Engineer acted in excess of his statutory authority because he did  
25 not determine the amount of unappropriated water "in the proposed source of supply" as required  
26 by NRS 533.370(2), as opposed to the amount of unappropriated water available in the entire  
27 Spring Valley Hydrologic Basin.

28  
86. The State Engineer was required to determine what portion of the 84,000 afa is in  
the area of the protested Applications, evaluate what existing water rights are in that area, and

1 then determine the amount of the unappropriated water for that area. For the State Engineer not  
2 to have made such determinations violates NRS 533.370(2), which requires a determination of  
3 unappropriated water that is available "in the proposed source of supply."

4 87. The State Engineer's Ruling #6164 is based on so many unknowns that the  
5 approval of the challenged Applications constitutes action in excess of the State Engineer's  
6 statutory authority. *See, i.e.*, the following statements evidencing the lack of information,  
7 uncertainties, and assumptions upon which Ruling #6164, so important to the Ranch's survival, is  
8 based:  
9

10 "In the case of more severe and prolonged shortages, there is a significant degree of  
11 uncertainty regarding the amount of water that would be available to Southern Nevada.  
12 In order to address that uncertainty, the Applicant used a series of assumptions in its  
13 analysis." (p. 36);

14 "The assumptions in the Applicant's analysis may over-estimate or under-estimate the  
15 reductions that would occur during shortage, but the assumptions are reasonable for water  
16 planning purposes in light of the many uncertainties that exist. While the exact amounts  
17 of these reductions are unknown, the evidence clearly supports a conclusion that the  
18 reductions would be significant." (p. 37);

19 "In the short-term, there is a high degree of uncertainty regarding the population  
20 increases that will occur in Southern Nevada." (p. 41);

21 "The information used by both parties to support their interbasin flow calculations is  
22 sparse, and estimates of flow using limited data will have significant uncertainty." (p.  
23 83);

24 "For large projects like the one at issue, the detailed hydraulic properties are simply not  
25 known well enough to precisely predict the dynamic response of pumping. In addition,  
26 the groundwater in a basin may be appropriated by many different individuals and  
27 entities. There is no practical way to require them to manage their groundwater  
28 operations collectively to reach full capture. Moreover, the location of the small amount  
of private land in Nevada limits where wells can be placed to capture ET." (p. 91);

"The complexity and large size of the region modeled and the sparseness of available  
data result in uncertainties in the Applicant's model simulations. Furthermore, the lack of  
good historical data on anthropological uses of groundwater provides further uncertainty  
to the model simulations. Because of the model's regional scale, local-scale features are  
not accurately simulated. For instance, Dr. D'Agnesse testified that it would not be  
appropriate to use the model to make drawdown predictions at Cleveland Ranch or  
spring-flow predictions for the Gandy Warm Springs and McGill Springs." (p. 125);

1 "The State Engineer finds that the Applicant's model provides a reliable tool to examine  
2 potential effects on the groundwater system; however, the model contains many  
3 uncertainties that must be kept in mind as it is used to analyze the system." (p. 128);

4 "The uncertainty with longer prediction periods relates in part to the fact that no actual  
5 data exists for large-scale pumping, so predicting conditions many hundreds of years into  
6 the future only compounds the uncertainty caused by lack of data." (p. 129);

7 "Some adjustments had to be made to the model to represent full pumping of the  
8 Application points of diversion. Specifically, the model framework could not support  
9 pumping at Application 54021. The Applicant's model locates points of diversion in the  
10 center of the modeling cell, which in this case was an impermeable rock layer."<sup>8</sup> (p.  
11 130);

12 "There are limitations in the model predictions that must be accounted for in the conflicts  
13 analysis." (p. 130);

14 "[T]he model is a regional model whose site specific predictions are highly uncertain.  
15 The model cannot currently represent the complex geologic stratification on the valley  
16 floor in Spring Valley." (p. 131);

17 "Other limitations include a lack of historical pumping drawdown data to determine how  
18 consumptive uses affect the aquifer over time and a lack of variation in recharge over  
19 time to assess how increased or decreased recharge will influence drawdown under  
20 different pumping regimes." (p. 131);

21 "The State Engineer finds that predictions of the models become increasingly uncertain  
22 over extended periods of time. The State Engineer further finds that model predictions of  
23 drawdowns of less than 50 feet and spring flow reductions of less than 15% are highly  
24 uncertain.... [B]ecause the model does not accurately represent local-scale geologic and  
25 hydrogeologic features that influence drawdown, numeric drawdown predictions are not  
26 precise." (p. 132);

27 "The State Engineer agrees the reliability of model predictions decreases the further out  
28 into the future they are made, especially when the period of future simulations exceeds  
the period of available pumping data." (p. 146); and

"The State Engineer finds that due to the uncertainties associated with many of the  
studies and evidence submitted during the hearing by all the parties, it is prudent to  
consider and weigh the science provided by all parties...." (p. 162).

88. Ruling #6164 acknowledges a lack of "critical information" and the need for  
additional data. Ruling #6164, at p. 104. The Applications should have been denied based on  
this lack of critical evidence. Instead, Ruling #6164 takes a wait-and-see approach by granting  
the Applications subject to what additional information shows. The following excerpts from  
Ruling # 6164 are examples:

1 "Third, the Stipulation provides a forum through which critical information can be  
2 collected from hydrologic and biological experts that the State Engineer can utilize to  
3 assure development of the Applications will not conflict with existing water rights or  
4 with protectable interests in existing domestic wells." (p. 104.)

4 "[T]he monitoring efforts and data collection in Spring Valley will provide scientifically  
5 sound baseline information from which changes to the system and potential impacts can  
6 be diagnosed, assessed, and, if necessary, mitigated." (p. 111.)

6 "In order to ensure that existing rights are not impacted, additional information is  
7 necessary." (p. 151.)

8 "The State Engineer finds that staged development of the resource under the applications  
9 granted allows for further data collection to alleviate any uncertainty ...." (p. 151.)

10 "The Applicant's model will be improved in the future as more data is collected.... As  
11 the model continues to improve, it will be used as a management tool by the State  
12 Engineer to monitor and manage the Applicant's pumping in order to prevent impacts to  
13 existing rights and environmentally sensitive areas. The State Engineer finds that the  
14 Applicant will be required to improve and use its model as a management tool, which  
15 will be used to prevent impacts currently predicted by the models in this hearing." (p.  
16 117.)

14 The State Engineer is charged with guarding the public interest. Given the unknowns and  
15 variables associated with the challenged Applications, it was impossible for the State Engineer to  
16 have approved the challenged Applications and still have guarded the public interest. *See, e.g.*  
17 2011 State Engineer's Ruling #6136 (denying an application and stating that "without the  
18 additional data, sufficient information is not available to properly guard the public interest").

20 89. The State Engineer also acted in excess of his statutory authority by ignoring the  
21 plain language of NRS 533.370(3)(d) regarding future growth and development.

22 90. The State Engineer's Ruling #6164 wrongfully focuses on whether the Protestants  
23 presented evidence of future growth and development that would require a specific quantity of  
24 water.  
25

---

28 <sup>8</sup> Application #54021 is one of the Applications protested by CPB.



1           91.     In determining that Applications would not unreasonably limit future growth, the  
2 State Engineer wrongfully allocated the burden to the Protestants rather than to the Applicant.

3           92.     When the provisions of NRS 533.370(3)(d) were added to NRS Chapter 533, the  
4 legislative history evidences the Legislature's concern for the originating basins' "potential losses  
5 of taxable income, social stability or the ability to economically develop in the future." Summ.  
6 of Legisl., 1999 Legl. 70<sup>th</sup> Sess. 11, 41 Nev. (1999) (remarks of Naomi Duerr). A broad view of  
7 future growth and development was to be applied. *See* Gregory J. Walch and Stacy D. Harrop,  
8 *The SNWA Groundwater Development Project: Creating New Water Law*, Clark County Bar  
9 *Communique*, September 2008. The State Engineer's Ruling #6164 ignores the Legislature's  
10 directive.

11           93.     The State Engineer is not a party to SNWA's September 8, 2006, Stipulation with  
12 four federal bureaus through the Department of the Interior (the National Park Service, the Fish  
13 and Wildlife Service, the Bureau of Land Management, and the Bureau of Indian Affairs).  
14 Nonetheless, the State Engineer finds that the Stipulation "provides a forum through which  
15 critical information can be collected... and used to assure development of the Applications will  
16 not conflict with existing water rights or with protectable interests in existing domestic wells."  
17 Ruling #6164, at pp. 119-120. Part of the information to be collected by the parties to the  
18 Stipulation concerns the potential effect of SNWA's potential request to change points of  
19 diversion and rates of withdrawal of groundwater within the Spring Valley Hydrographic Basin  
20 Reliance. Such changes have a tremendous impact on the Ranch and the State Engineer's  
21 reliance on the studies and reports generated by groups, panels, or committee of which the State  
22 Engineer is not a part is a wrongful abdication of the State Engineer's duties and obligations to  
23 CPB and the public under NRS Chapter 533.



1 domestic wells ....”

2 102. The State Engineer's Ruling #6164 acknowledges that the evidence presented to  
3 him predicted significant impact to existing rights, but granted the Applications based on the lack  
4 of information and evidence, subject to future evidence gathering. For example, Ruling #6164  
5 states: “The Applicant’s model will be improved in the future as more data is collected” and “the  
6 Applicant will be required to improve and use its model as a management tool, which will be  
7 used to prevent impacts currently predicted by the models in this hearing.” Ruling #6164, at p.  
8 117.  
9

10 103. The State Engineer did not find that the protested Applications would not conflict  
11 with existing rights. Instead, the State Engineer acknowledged that the models predicted  
12 significant impact, but granted the Applications anyway without a clear understanding of what  
13 the impact to existing rights will be based on future changes to avoid those impacts. Not only is  
14 the information insufficient for determining current impacts, but there is no provision for  
15 collecting the right information to determine impacts as SNWA's GWP moves forward through a  
16 staged development. In effect, the State Engineer did not make the decision the law requires him  
17 to make but adopted an arbitrary wait-and-see approach with the promise to intervene when  
18 existing rights are impacted. The Ruling, in essence, hopes for the best while committing to  
19 undo itself if the worst occurs. This is arbitrary and capricious.  
20

21 104. Ruling #6164 is arbitrary and capricious and an abuse of discretion in that it  
22 granted the Applications even while acknowledging significant uncertainty due to a lack of  
23 evidence.  
24

25 105. The State Engineer’s ruling is not supported by substantial evidence. Instead, the  
26 State Engineer specifically acknowledged the need for additional evidence: “In order to ensure  
27 that existing rights are not impacted, additional information is necessary.” Ruling #6164, at p.  
28

1 151. This is an express acknowledgment that SNWA did not meet its burden. “Staged  
2 development, in conjunction with an updated and more comprehensive Management Plan is also  
3 necessary to assure the Applications will not conflict with existing rights or domestic wells, and  
4 to assure pumping is environmentally sound.” *Id.* The State Engineer acknowledges the need  
5 for “further data collection ....” *Id.*  
6

7 106. The State Engineer arbitrarily refused to consider evidence of impacts after 75  
8 years, even though the undisputed evidence showed that groundwater mining would continue  
9 perpetually and that the GWP would never reach steady-state conditions.

10 107. The State Engineer’s ruling ignores the “best *available* science” and grants the  
11 Applications despite the fact that the *available* science predicted perpetual groundwater mining  
12 and significant impacts to existing rights.  
13

14 108. Ruling #6164 is arbitrary and capricious in that it adopts no standards for  
15 monitoring or mitigation, or for determining when intervention is necessary to protect existing  
16 rights and the public interest.

17 109. Ruling #6164 is arbitrary and capricious and against the public interest in that it  
18 gambles billions of dollars in public money on the hope that the project will not interfere with  
19 existing rights and have to be significantly curtailed or shut down.  
20

21 WHEREFORE, Petitioner respectfully requests that this Court declare the State  
22 Engineer’s Ruling #6164 invalid and unenforceable as to SNWA Applications ##54009 - 54015,  
23 and 54020; and

24 Petitioner also respectfully requests that this Court grant such other and further relief as  
25 the Court deems just and proper, including, but not limited to, relief requiring that to the extent  
26 any portion of Ruling #6164 may remain operative, a more robust monitoring system be imposed  
27 to determine impacts to the Ranch’s water rights, and that the Ruling be clarified that the 4,000  
28

1 afa reserved by the State Engineer for "future use" in the Spring Valley Hydrographic Basin be  
2 reserved for parties other than SNWA.

3 DATED this 19TH day of April, 2012.

4 LIONEL SAWYER & COLLINS

5 By 

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15 Attorneys for Petitioner, Corporation of the Presiding  
16 Bishop of The Church of Jesus Christ of Latter-day  
17 Saints on behalf of Cleveland Ranch

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of April, 2012, a true and correct copy of the foregoing Petition for Judicial Review of the Corporation of the Presiding Bishop on Behalf of the Cleveland Ranch and accompanying Appendix to Petition for Judicial Review was served by certified or registered mail on the following:

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Conservation and Natural Resources  
Division of Water Resources  
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Carson City, Nevada 89701-5250

Southern Nevada Water Authority  
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Las Vegas, Nevada 89153

Great Basin Water Network  
Simeon Herskovits, Esq.  
Advocate for Community & Environment  
P.O. Box 1075  
El Prado, New Mexico 87529

Juab County & Millard County, Utah  
J. Mark Ward  
Utah Association of Counties  
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Nye County, Nevada  
George N. Benesch, Esq.  
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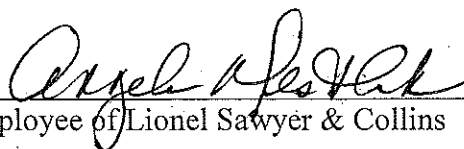
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An employee of Lionel Sawyer & Collins

**Appendix Exhibits**

- 1
- 2 1 State Engineer's Ruling #6164
- 3 2 SNWA Application No. 54009
- 4 3 SNWA Application No. 54010
- 5 4 SNWA Application No. 54011
- 6 5 SNWA Application No. 54012
- 7 6 SNWA Application No. 54013
- 8 7 SNWA Application No. 54014
- 9 8 SNWA Application No. 54015
- 10 9 SNWA Application No. 54020
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- 12 10 State Engineer's 3/22/12 Letter accompanying Ruling #6164
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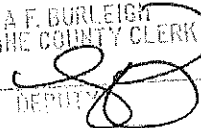
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Case No. CV1204049  
Dept. 1

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LINDA F. BURLEIGH  
WHITE PINE COUNTY CLERK  
BY   
DEPUTY

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, E.T.. al.,

Plaintiffs,

vs.

**DECISION**

JASON KING, P.E., NEVADA STATE  
ENGINEER, STATE OF NEVADA,  
DIVISION OF WATER RESOURCES,

Defendant.

This matter is an appeal from the Nevada State Engineer, Jason Kings' rulings 6164, 6165, 6166 and 6167 concerning the grant of water rights to Southern Nevada Water Authority in Spring Valley (Lincoln and White Pine Counties), Cave Valley, Dry Lake Valley and Delarmar Valley.

Petitioners include the Great Basin Water Network, (GBWN),<sup>1</sup> White Pine County, Nevada, Millard and Juab County, Utah, Ely Shoshone and Duckwater Shoshone Tribes, Confederate Tribe of the Goshute Reservation and the Presiding Bishop of the Churchill of Latter-Day Saints on behalf of the Cleveland Ranch.

As explained below, the State Engineer's rulings is remanded: for recalculation of water available from the respective basins; for additional hydrological study of Delamar, Dry

<sup>1</sup> GBWN is a non-profit corporation formed by over fifty individuals and related conservation groups.



1 Lake and Cave Valley; and to establish standards for mitigation in the event of a conflict with  
2 existing water rights or unreasonable effects to the environment or the public interest.

3  
4 I  
HISTORY

5 In 1989, Las Vegas Valley Water District applied for unappropriated water in  
6 hydrographic basins 180, 181, 182 and 184; Cave Valley, Dry Lake, Delamar Valley and  
7 Spring Valley respectively. In 1991, the current real party in interest, South Nevada Water  
8 Authority (SNWA) became the successor in interest to the Las Vegas Valley Water District.

9 Several protests were filed against the application in July of 1989. The Nevada State  
10 Engineer (Engineer) was required to rule on the application within one-year of the protest's  
11 filing date. NRS 533.370(2). The applications were not ruled on within one-year, however,  
12 hearings on the application were held in 2006. By 2006, the water rights had changed hands  
13 many times and few right holders received notice of the 2006 hearings. Great Basin Water  
14 Network v Nevada State Eng'r, 126 Nev. Adv. Op. 20, 234 P.3d 912 (2010).<sup>2</sup>  
15

16 Prior to the 2006 hearings, The National Park Service, Bureau of Fish and Wildlife,  
17 Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) were actively  
18 protesting the orders granting water rights to SNWA. All of these entities are divisions of the  
19 Department of the Interior. ROA 000007. Each entity entered into an agreement with SNWA,  
20 withdrawing their protests in exchange for implementation of a hydrologic and biologic  
21 Monitoring, Management and Mitigation plan. ROA 000012; 020791; 020806; Ex. SE 041.  
22 This plan's stipulation was affirmed prior to the 2011 hearings, id. and later revised to the  
23 current plan approved by the Engineer. Certain specifics of this agreement will be addressed  
24 later in this order. The Engineer is not a party to the stipulation, but has approved of the  
25 agreement and incorporated its terms into his rulings. ROA 000103-000106.  
26

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28 

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<sup>2</sup> Subsequently, the Engineer's orders were vacated, new notices were sent, and the hearings  
rescheduled for September and November, 2011.

1 After the Fall 2011 hearings, the Engineer approved 61,127 acre-feet annually (afa)  
2 to SNWA from Spring Valley and reserving 4,000 afa for future growth in Order 6164 (March,  
3 2012). ROA 000216. Other terms of the Order include:

- 4 A. First stage pumping is limited to 38,000 afa for eight  
5 years, data to be collected, modelled reported to the Engineer  
6 annually.
- 7 B. Stage two pumping shall be limited to 50,000 afa  
8 for a minimum of eight years with the data collection  
9 and modelling to be reported annually.
- 10 C. Stage three, SNWA will be allowed to pump the full  
11 61,127 afa.

12 Id.

13 Further, the Enginner must approve each stage of pumping and SNWA must comply with the  
14 MMM plan prepared by SNWA and approved by the Engineer. ROA 000216-000217.

15 Orders 6165, 6166 and 6167 concern the water rights granted to SNWA in Cave  
16 Valley, Dry Lake Valley and Delamar Valley respectively. All three orders condition the water  
17 grants as Compliance with the Hydrologic MMM plan prepared by SNWA and the Biological  
18 Monitoring plan. ROA 00387-8; 000551; 00713-4. The MMM plan shall be subject to  
19 modification by the Engineer. SNWA must report annually and provide 10-25-100 year  
20 predictive models to the Engineer.

21 The Cave Valley appropriation is 5,235 afa with 50 afa reserved for future growth.  
22 Dry Lake Valley's appropriation is 11,584 afa, 50 afa for future growth. Delamar Valley's  
23 appropriation is 6,042 afa and 50 afa for future growth. Id.

24 The four rulings by the Engineer represent the largest water appropriations in Nevada  
25 history. The water basins concerned including Spring, Cave, Dry Lake and Delamar Valleys  
26 encompass 20,688 square miles of Nevada. ROA 000125.

27 The basins size has been compared to New England, encompassing great portions of  
28 Vermont, New Hampshire, Massachusetts, Connecticut and some of New York.

1 SNWA Ex. 339, ROA 020181. It is likely the largest interbasin transfer of water in U.S.  
2 history.

3  
4 **II**  
**AUTHORITY AND OBLIGATIONS OF THE STATE ENGINEER**

5 The Engineer "[s]hall approve an application submitted in proper form which  
6 contemplates the application to beneficial use if:"

- 7 (a) The application is accompanied by the prescribed fee;
- 8 (b) The proposed use or change, if within an irrigation district,  
9 does not adversely affect the cost of water for other holders  
10 of water rights in the district or lessen the efficiency of the  
11 district in its delivery or use of water; and
- 12 (c) The applicant provides proof satisfactory to the State  
13 Engineer of the applicant's:
- 14 (1) Intention is good faith to construct any work necessary to  
15 apply the water to the intended beneficial use with  
16 reasonable diligence; and
- 17 (2) Financial ability and reasonable expectation actually to  
18 construct the work and apply the water to the intended  
19 beneficial use with reasonable diligence.

20 NRS 533.370 (1).

21 Additionally, the Engineer must determine;

- 22 1. Whether there is unappropriated water;
- 23 2. Whether the proposed use will conflict with existing rights  
24 and/or domestic wells; or
- 25 (a) If the appropriation threatens to prove detrimental to  
26 the public interest,

27 "The State Engineer shall reject the application" NRS 533.370 (2).

28 The Engineer must also consider:

- (a) Whether the applicant has justified the need to import the  
water from another basin.
- (b) If the State Engineer determines that a plan for conservation  
of water is advisable for the basin into which the water is to be  
imported, whether the applicant has demonstrated that such a  
plan has been adopted and is being effectively carried out;

- 1 (c) Whether the proposed action is environmentally sound as it  
2 relates to the basin from which the water is exported;
- 3 (d) Whether the proposed action is an appropriate long-term use  
4 which will not unduly limit the future growth and development  
5 to the basin from which the water is exported; and
- 6 (e) Any other factor the State Engineer determines to be relevant.

6 NRS 533.370(3).

7 **III**  
8 **STANDARD OF REVIEW**

9 After the Engineer issues the rulings, an aggrieved party is entitled to have the order  
10 or decision reviewed by the District Court, in the nature of an appeal. NRS 533.450. On a  
11 petition for judicial review, the Court is confined to considering the administrative record.  
12 NRS 533.450 (1). The proceedings in every case must be heard by the Court, and must be  
13 informal and a summary, but a full opportunity to be heard must be had before judgment is  
14 pronounced. NRS 533.450 (2).

15 In reviewing the record, the Court must treat the State Engineer's decision as "prima  
16 facie correct, and the burden of proof shall be upon the party" challenging the decision. NRS  
17 533.450 (9). The Court may not substitute its judgment for that of the State Engineer, but is  
18 limited to determining whether there is substantial evidence in the record to support the  
19 decision. Revert v. Ray, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979). Substantial evidence  
20 is "that which a reasonable mind might accept as adequate to support a conclusion." Bacher  
21 v. Office of the State Eng'r of Nev., 122 Nev. 1110, 1121, 146 P.3d 793, 800 (2006).

22  
23 [A] conclusion that substantial evidence supports the findings of  
24 the State Engineer does not, however, dispose of the . . . appeal.  
25 The applicable standard of review of the decisions of the State  
26 Engineer, limited to an inquiry as to substantial evidence,  
27 presupposes the fullness and fairness of the administrative  
28 proceedings: all interested parties must have had a "full  
opportunity to be heard," See NRS 533.450 (2); the State  
Engineer must clearly resolve all the crucial issues presented, see  
Nolan v. State Dept't of Commerce, 86 Nev. 428, 470 P.2d 124  
(1970) (on rehearing); the decision maker must prepare findings in  
sufficient detail to permit judicial review, *id.*; Wright v State

1                    *Insurance Commissioner*, 449 P.2d 419 (Or. 1969); see also *NRS*  
2                    233B.125. When these procedures, grounded in basic notions of  
3                    fairness and due process, are not followed, and the resulting  
4                    administrative decision is arbitrary, oppressive, or accompanied  
5                    by a manifest abuse of discretion, this court will not hesitate to  
6                    intervene. *State ex rel. Johns v. Gragson*, 85 Nev. 478, 515 P.2d  
7                    65 (1973).

8                    *Revert*, 95 Nev. At 786, 603 P.2d at 264.

9                    The Court is free to decide purely legal questions de novo. *Town of Eureka v. Office*  
10                    *of the State Eng'r of Nev.*, 108 Nev. 163, 165, 626 P.2d 948, 949 (1992). A purely legal  
11                    question is one that is not dependant (sic) upon, and must necessarily be resolved without  
12                    reference to, any fact in the case. *Beavers v Department of Motor Vehicles & Pub. Safety*,  
13                    109 Nev. 435, 438 n.1, 851 P.2d 432, 434 n.1 (1993). While the State Engineer's  
14                    interpretation of law is persuasive, and the court should give it great deference when it is  
15                    within the language of the applicable statutory provisions, it is not controlling. *Town of*  
16                    *Eureka*, 108 Nev. at 165, 826 P.2d at 950; *Andersen Family Assocs., v Ricci*, 124 Nev. Adv.  
17                    Rep. 17, 179 P.3d 1201, 1203 (2008).

#### 18                    IV

#### 19                    NEVADA ENGINEERS' RULINGS COMMON TO 20                    SPRING, DELAMAR, CAVE AND DRY LAKE VALLEY

21                    "The State Engineer held a hearing on the Spring, Cave, Dry Lake and  
22                    Delamar Valley application between September 26, 2011, and November 18, 2011." ROA  
23                    000010. NRS 533.370 (1) (c); (2) and (3) requires findings that water is available to be  
24                    appropriated and that the statutory criteria for granting the water is satisfied by substantial  
25                    evidence. "Both the Applicant [SNWA] and protestants submitted thousands of pages of  
26                    scientific information, evidence and testimony for consideration during a record-long six-week  
27                    hearing." ROA 000029.

28                    The Engineer made the following findings of fact:

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That Southern Nevada provided substantial evidence of need for additional water "independent of the Colorado River," ROA 000037, and that "current available supplies [are] insufficient to meet projected future water demands under normal conditions." ROA 000038.

That Southern Nevada provided substantial evidence that it "intends to construct the works necessary and put water from the applications to beneficial use . . . with reasonable diligence." ROA 000046.

That Southern Nevada provided substantial evidence of financial ability and a "feasible conceptual plan of development. ROA 000047.

These findings were opposed by many of the Protestants and countered with expert opinions. However, there is no real question that the Engineer's findings above were not based on substantial evidence acceptable to a reasonable mind. Further, the Protestants had a full and fair opportunity to present their evidence. Thus, the Engineer's findings were not arbitrary or capricious.

**V  
OBJECTIONS MADE BY PROTESTANTS**

Virtually all of the Protestants which include Cleveland Ranch (Corp. of the Church of Latter-Day Saints), White Pine, Eureka, Elko, and Nye counties, Nevada, The Confederate Tribes of the Goshute Reservation, Ely and Duckwater Shoshone Tribes and Millard and Juab counties, Utah, object to the Engineer's orders on the basis of the Monitor, Manage and Mitigate Plan (MMM). The Protestants allege that as the plan is currently written it cannot adequately protect existing rights or the environment.

Most of the Protestants object to the Orders alleging that any amount of water awarded to SNWA is excessive or should not be granted at all, citing to evidence and arguments presented to the Engineer at the 2011 hearings. Essentially, the objections are that the award is neither environmentally sound nor in the public interest, pursuant to NRS 533.370. The objections are either relating to the entire Spring Valley Basin and/or Delamar,

1 Cave or Dry Lake Valleys, or localized areas inhabited or used by the Ely, Duckwater and  
2 Goshute Native Americans.

3 Other, more specific objections are that NRS 533.3705 (which allows staged  
4 development of a water award) is inapplicable to the instant case because the statute is not  
5 retroactive to SNWA's 1989 application; and that hydrological knowledge of the respective  
6 basins is so incomplete that any water award is premature and; that the perennial yield of  
7 Delamar, Dry Lake, and Cave Valley, as part of the White Pine River Flow System is already  
8 appropriated in the lower parts of the flow system.

9  
10 Some of the Protestants argue that SNWA failed to meet its burden of proving need,  
11 good faith intentions to construct the infrastructure, and financial ability to perform the  
12 construction. As stated above, this court finds the Engineer's ruling valid regarding need,  
13 good faith and financial ability.

14 Regarding the argument that NRS 533.3705, allowing staged development, does not  
15 apply retroactively, as interpretation is a matter of law, this court finds that NRS 533.3705  
16 does apply in this case. Enacted in 2007 the law states "[u]pon approval of an application to  
17 appropriate water, the State Engineer may limit the initial use of water to a quantity that is  
18 less than the total amount approved for the application." The applications in question were  
19 approved in March, 2012, after the enactment of the statute. *See generally* PEBP v LVMPD,  
20 124 Nev. 138 (2008).

21  
22 Millard and Juab counties, Utah, object that Ruling 6164 does not specifically include  
23 Snake Valley, Utah in the mitigation process. Snake Valley is specifically to be monitored by  
24 six (6) wells and sixteen (16) monitoring sites. ROA 000114-115. Snake Valley, Utah is not  
25 specifically mentioned as a mitigation site. Whether the omission was inadvertent or not,  
26 Ruling 6164 is remanded to include Snake Valley, Utah in the mitigation plan.

27  
28 The Confederated Tribes of the Goshute Reservation argue that pursuant to the  
Public Trust Doctrine, the Spring Valley awards must be vacated.

1 If the current law governing the water Engineer does not clearly  
2 direct the Engineer to continuously consider in the course of his  
3 work the public's interest in Nevada's natural water resources, the  
4 law is deficient. It is then appropriate, if not our constitutional  
5 duty, to expressly reaffirm the Engineer's continuing responsibility  
6 as a public trustee to allocate and supervise water rights so that  
7 the appropriations do not substantially impair the public interest in  
8 the lands and waters remaining. [The public trust] is an affirmation  
of the duty of the state to protect the people's common heritage of  
streams, lakes, marshlands, and tidelands, surrendering that right  
of protection only in rare cases when the abandonment of that  
right is consistent with the purposes of the trust. Our dwindling  
natural resources deserve no less.

9 Lawrence v Clark County, 127 Nev. Adv. Op. 32, 254 P.2d. 606, 611 (2011).

10 The Goshute's argument is well taken, but whether Spring Valley groundwater is part  
11 of the Public Trust Doctrine or not, Nevada law requires the Engineer to oversee an  
12 environmentally sound stewardship of the water, the same goal as the doctrine.

13 **VI**  
14 **SPRING VALLEY APPROPRIATIONS**

15 **A. THE AWARD OF 61,127 AFA VIOLATES THE STATE ENGINEER'S RULES**

16 The Engineer relied on substantial evidence, produced from numerous sources, when  
17 determining the amount of water available for the Spring Valley appropriation granted to  
18 SNWA. ROA 000057-000090. Considering the evidence of evapotranspiration, inter-basin  
19 flow and recharge, the Engineer found 84,000 afa available. ROA 000090. Further, he  
20 found, "there is no substantial evidence that the proposed use will conflict with protectable  
21 interests in existing domestic wells, or that the use will threaten to prove detrimental to the  
22 public interest." ROA 000215.

23  
24 The Engineer began his calculation of the Spring Valley appropriation with the  
25 "estimated average groundwater evapotranspiration (E.T.)," at 84,100 afa. Thus, the  
26 perennial yield of Spring Valley is 84,000 afa. ROA 000214. Existing water rights are 18,873  
27 afa and "an additional 4,000 afa is reserved for future growth and development for a total of  
28



1 22,873 afa of water committed to the basin. Subtracting 22,873 afa from the perennial yield  
2 of 84,000 afa leaves 61,127 afa available for appropriation." ROA 000215.

3 Perennial yield has been for many years defined by the Engineer as:

4 The perennial yield of a groundwater reservoir may be defined as  
5 the maximum amount of groundwater that can be salvaged each  
6 year over the long term without depleting the groundwater  
7 reservoir. Perennial yield is ultimately limited to the maximum  
8 amount of natural discharge that can be salvaged for beneficial  
9 use. The perennial yield cannot be more than the natural  
10 recharge to a groundwater basin and in some cases is less.

9 ROA 000056.

10 In theory, with enough time the water removed from the system equals the recharge  
11 of the system thereby reaching equilibrium. However, reaching equilibrium may take  
12 hundreds of years, and "always involves the depletion of water from transitional storage."  
13 Engineer Ans. Brief, p.54. If more water comes out of a reservoir than goes into the  
14 reservoir, equilibrium can never be reached. This is known as water mining and "[w]hile  
15 there is no statute that specifically prevents groundwater mining, the policy of the Engineer  
16 for over one hundred (100) years has been to disallow groundwater mining. This policy  
17 remains today. Id.

19 The Engineer defines groundwater mining as pumping exceeding the perennial yield  
20 over time such that the system never reaches equilibrium. ROA 56. Natural discharge in  
21 Spring Valley is almost exclusively E.T. ROA 000057. E.T. occurs by plants and  
22 phreatophytes discharging the groundwater from the basin through use. In Spring Valley,  
23 this is the water sought for beneficial use. Of course, to do so, the phreatophytes must be  
24 completely eliminated. Engineer Ans. Brief, p.53-54.

25 Obviously, any water-well cannot capture all of the E.T., and while pumping and E.T.  
26 are both occurring, the water table drops. A reasonable lowering of the water table and  
27 death of most of the phreatophytes is a trade-off for a beneficial use of the water. "It is a  
28 condition of each appropriation of groundwater acquired under this Chapter that the right of

1 the appropriator relates to a specific quantity of water and that the right must allow for a  
2 reasonable lowering of the static water level at the appropriator's point of diversion." NRS  
3 534.110(4). The Engineer specifically found "there is no provision in Nevada water law that  
4 addresses time to capture, and no State Engineer has required that E.T. be captured within a  
5 specific period of time. It will often take a long time to reach near equilibrium in large basins .  
6 . . . and this is no reason to deny water right applications." ROA 000090. The Engineer is  
7 correct that the time to reach equilibrium is not a valid reason to deny the grant of water, but  
8 it may very well be a reason to limit the appropriation below the calculated E.T.  
9

10 Here, there is no valid evidence of when SNWA will capture E.T., if ever. Evidence  
11 was submitted at the hearing over many days, the Engineer stated that seventy-five (75) year  
12 models of groundwater pumping are appropriate due to "existing data." ROA 000146.  
13 However, over seventy-five (75) years becomes less certain. Id. Moreover, the Engineer did  
14 not require SNWA to prove that they could capture all of the E.T. SNWA did claim that after  
15 two hundred (200) years; their evidence showed that eighty-four (84%) percent of the E.T.  
16 would be captured and eighty four percent [is] close to a hundred percent." SNWA Ans. Brief  
17 p.288. Simple arithmetic shows that after two hundred (200) years, SNWA pumping and  
18 evapotranspiration removes 70,977 afa from the basin with no equilibrium in sight. That is  
19 9,780 afa more than SNWA's grant.  
20

21 Mr. Stockton, arguing on behalf of the Engineer stated that, "requiring these E.T.  
22 salvage projects . . . it's just not appropriate. It can't be done in most basins because the  
23 federal government owns the land. They're not going to allow it to be dotted with wells all  
24 over the place and the State Engineer found that it wasn't appropriate to require an E.T.  
25 salvage project." SE Ans. Brief, Vol. I, p.54. SNWA stated that "[t]he whole question of  
26 groundwater mining and E.T. capture and timed equilibrium are not part of the water law and  
27 they are not necessary." SNWA Ans. Brief, Vol. I, p.69.  
28

1 The Engineer acknowledged that it is unlikely all of the E.T. in a basin will be  
2 captured. Additionally, "[i]t is unclear where [Cleveland Ranch] got the impression that  
3 groundwater development in Nevada is required to be an E.T. salvage project, which is  
4 certainly not contained in statutory law." Engineer Ans. Brief, p.54. Perhaps Cleveland  
5 Ranch and the other Protestants "got the impression" from the Engineer's definition:  
6 "Perennial yield is ultimately limited to the maximum amount of natural discharge that can be  
7 salvaged for beneficial use." ROA 000056. Moreover, in the Engineer's Ruling 5726 he  
8 defined perennial yield as an "assumption that water lost to natural E.T. can be captured by  
9 wells and placed to beneficial use." Cleveland Ranch Opening Brief, App. 1 at 27, citing  
10 Ruling 5726. The Nevada Supreme Court stated, "[t]he perennial yield of a hydrological  
11 basin is the equilibrium amount or maximum amount of water that can safely be used without  
12 depleting the source." *Pyramid Lake Paiute Tribe of Indians v Ricci*, 126 Nev. Adv. Op. 48;  
13 245 P.3d 1146, 1147 (2010).

14  
15 The Engineer's finding that equilibrium in Spring Valley water basin will "take a long  
16 time" was not based on substantial or reliable evidence, and is incorrect. Indeed, by his own  
17 statements – and evidence – equilibrium will never be reached.

18  
19 The Engineer has also said that "[d]rawdown of less than 50 feet over a seventy-five  
20 year period is generally a reasonable lowering of the static water table." ROA 000132.  
21 However, after two hundred (200) years of pumping the water table is losing 9,780 afa over  
22 and above the amount SNWA has been authorized to pump. SNWA's expert certified that  
23 uncaptured E.T. would have to be deducted from the perennial yield. ROA 34928. This, the  
24 Engineer did not do.

25  
26 This Court finds that the Engineer's own calculations and findings, show that  
27 equilibrium, with SNWA's present award, will never be reached and that after two hundred  
28 (200) years, SNWA will likely capture but eighty-four (84%) of the E.T. Further, this court  
finds that losing 9,780 afa from the basin, over and above E.T. after 200 years is unfair to

1 following generations of Nevadans, and is not in the public interest. In violating the  
2 Engineer's own standards, the award of 61,127 afa is arbitrary and capricious.

3 This finding by the court requires that this matter be remanded to the State Engineer  
4 for an award less than the calculated E.T. for Spring Valley, Nevada, and that the amended  
5 award has some prospect of reaching equilibrium in the reservoir.

6  
7 B. THERE ARE NO OBJECTIVE STANDARDS AS TO WHEN THE MITIGATION  
8 PART OF THE MONITOR, MANAGE AND MITIGATE PLAN GO INTO EFFECT

9 SNWA's expert reports make it clear that the hydrology of Spring Valley, as well as  
10 Delamar, Dry Lake and Cave Valley, is not completely understood. Much of the data  
11 collected over the years is analyzed by computer models and is "significantly" limited in  
12 accuracy concerning the hydrological framework, actual precipitation, recharge and other  
13 factors. ROA 010704; 010708-9. The experts recognize that inaccuracies exist because of  
14 a lack of data collection over vast areas of Spring Valley, Delamar, Dry Lake and Cave  
15 Valleys. ROA 010706. For example, 10 years of data collection generally means an  
16 accurate predictive model for the next 10 years. ROA 000146. Thus, the Engineer has  
17 stated that a 75 year model is a reasonable simulation because there are 75 years of existing  
18 data. "Over 75 years becomes less certain." *Id.* "[U]ncertainty is reduced overtime as more  
19 baseline and operational data become available." ROA 013244. "Much is not known about  
20 the groundwater-influenced ecosystems in the [initial biological monitoring area] (e.g.,  
21 relationship, between groundwater levels and spring-flow: relative dependence of certain  
22 vegetation on groundwater versus other sources of water), and the response of these  
23 systems to groundwater withdrawal by SNWA." Biological Monitoring Plan Spring Valley  
24 Stipu. ROA 020648.

25  
26 Recognizing that no one really knows what the impact of pumping water from Spring  
27 Valley on such a large scale will be (ROA 000135-6 and 020066), the Engineer found that  
28 staged pumping is environmentally sound and will insure no conflicts with existing rights.

1 ROA 000151. Additionally, the Engineer adopted the MMM Plan created by SNWA and the  
2 National Park Service, Bureau of Fish and Wildlife, and the Bureau of Indian Affairs. A  
3 description of the plan is contained in State Engineer's Order No. 6164. ROA 000103-120.

4 The MMM plan is a stipulation between SNWA and Federal agencies (supra). In  
5 summary, SNWA's pumping will be managed to avoid "unreasonable harm to scenic values"  
6 in the Great Basin National Park and the "loss of surface vegetation." ROA 020496. The  
7 three principal components are:  
8

9 *Monitoring Requirements* – including, but not limited to monitoring  
10 wells, spring flow measurements, water chemistry analyses,  
11 quality control procedures, and reporting requirements; and

12 *Management Requirements* – including, but not limited to the  
13 creation of a Technical Review Panel ("TRP") to review  
14 information collected under this Plan and advise the Executive  
15 Committee (a group consisting of one management-level person  
16 from each Party, as described below in Management  
17 Requirements), the use of an agreed-upon regional groundwater  
18 flow system numerical model(s) to predict effects of groundwater  
19 withdrawals by SNWA in the Spring Valley HB, and the  
20 establishment of a consensus-based decision-making process;  
21 and

22 *Mitigation Requirements* – including, but not limited to the  
23 modification relocation or reduction in points of diversion and/or  
24 rates and quantities of groundwater withdrawals or the  
25 augmentation of Federal Water Rights and/or Federal Resources  
26 as well as measures designed and calculated to rehabilitate,  
27 repair or replace any and all Federal Water Rights and Resources  
28 if necessary to achieve the goals set forth in Recital G of the  
Stipulation.

ROA 20791.

Similarly, the Biologic Monitoring, Management and Mitigation Plan has been  
instituted to "determine the appropriate course of action to avoid and/or mitigate any effects  
to Water-dependent Ecosystems . . . within the Great Basin National Park [and other  
Federal] 'Areas of Interest.'" ROA 020806. The Biologic monitoring is to "determine potential  
indicator species and appropriate parameters to monitor for early warning of unreasonable  
adverse effects and of any effect within the boundaries of Great Basin National Park . . .

1 resulting from SNWA's withdrawal of ground water from the Spring Valley HB." Id. The  
2 Mitigation portion of the Plan briefly describes what could possibly be done to mitigate  
3 unreasonable effects. Id.

4 Appendix B of NSE Ruling 5726 contains objectives 6, 7, and 8 of the "Plan":

5 6. During the Pre-Withdrawal Phase, establish the range of  
6 variation for each indicator (or suite of indicators) that will be  
7 considered acceptable.

8 7. Define what constitutes an "unreasonable adverse effect"  
9 during the Pre-Withdrawal Phase.

10 8. In coordination with TRP, during the Pre-Withdrawal Phase,  
11 establish criteria that will initiate the BWG consultation process as  
12 outlined in the Stipulation.

13 The Stipulation directs there be no "unreasonable adverse effect"  
14 to groundwater-influenced ecosystems in the IBMA and no  
15 adverse effect to GBNP as a result of SNWA's groundwater  
16 withdrawal in Spring Valley. In order to meet these requirements,  
17 it is imperative that impacts are detected and assessed, and  
18 appropriate management actions are initiated, prior to such effect  
19 occurring.

20 ROA 020647.

21 As noted above, the Engineer has instituted the MMM Plan as a condition of the  
22 SNWA appropriations (ROA 000181), and has been involved in developing the Plan. ROA  
23 013243-44. However, the MMM Plan is flawed in several respects, most notably: "Mitigation  
24 planning is not part of this plan but will be handled separately when impact location and  
25 magnitude are better understood." ROA 020648. Nonetheless, the MMM Plan emphasizes  
26 that mitigation will cure any adverse effects and the Engineer has found that the existing,  
27 non-Federal rights are sufficiently protected by the Plan. ROA 000215.

28 There are no objective standards to determine when mitigation will be required and  
implemented. The Engineer has listed what mitigation efforts can possibly be made, i.e.,  
stop pumping, modifying pumping, change location of pumps, drill new wells, or increase or  
improve leopard frog populations in a different location from one that suffers an

1 unreasonable impact. ROA 000190. Also, the Engineer has noted that if pumping has an  
2 adverse effect on swamp cedars, SNWA could mitigate, ROA 000189. but does not cite  
3 objective standards of when mitigation is necessary. The Engineer states: "where  
4 unreasonable impacts may occur and how bad the impacts may be is not understood and  
5 thus mitigation cannot be part of the plan at the present." Not knowing where or how bad an  
6 impact is, is not the same thing as defining what an adverse impact..  
7

8 The Engineer has found that it is "premature to attempt to set quantitative standards  
9 or triggers for mitigation actions," because "[f]actors such as natural variation in the  
10 environmental resources must be understood before any standards or triggers are set." ROA  
11 000311. "Selecting specific standards before a full baseline is developed would be  
12 premature. It would not lead to sound scientific decisions." ROA 000182-183.  
13

14 While this Court cannot completely disagree with the Engineer's statement above, he  
15 has also stated: "The State Engineer finds that the applicant [SNWA,] gathered and  
16 presented substantial environmental resource baseline material and that the environmental  
17 resource baseline information provides a platform for sound, informed decision making."  
18 ROA 00176. Thus, if SNWA, and thereby the Engineer, has enough data to make informed  
19 decisions, setting standards and "triggers" is not premature. Curiously, the Engineer has  
20 made the finding that a failure to even make "Mitigation" a part of the current MMM plan  
21 "demonstrates Applicant's determination to proceed in a scientifically informed,  
22 environmentally sound manner." ROA 000183. It seems that if there is enough data to make  
23 informed decisions, exactly when an unreasonable impact to either the environment or  
24 existing rights occurs, the Engineer or SNWA should recognize it and make the decision to  
25 mitigate. If there is not enough data (as shown earlier, no one really knows what will happen  
26 with large scale pumping in Spring Valley), granting the appropriation is premature. The  
27 ruling is arbitrary and capricious.  
28

1 Still other flaws with the MMM Plan are evident. The Engineer stated: "the regulation  
2 of water rights is in the State Engineer's purview, and the State Engineer proactively  
3 monitors impacts to existing rights and the environment." ROA 000183.

4 Also, "[t]he State Engineer finds that the potentially impacted water rights . . . are or will be  
5 monitored and that this monitoring will allow for early warning of potential impacts to these  
6 water rights . . . and will exercise his authority as needed to protect these existing rights and  
7 will require mitigation if needed." ROA 000139-140.

9 The Engineer found that lowering the Spring Valley water table by 50 feet is  
10 "reasonable," but has avoided any mention of what is unreasonable. Nor did he state how  
11 monitoring will be accomplished, or what constitutes an impact, potential or otherwise. There  
12 is no standard to know how much of an impact is unreasonable to leopard frogs, or to swamp  
13 cedars, before mitigation is necessary. The Engineer gives a vague statement of how  
14 mitigation can be done, but has no real plan or standard of when mitigation would be  
15 implemented. Without a stated, objective standard, the ruling is arbitrary and capricious.

17 Regarding monitoring and proactive monitoring by the Engineer, there is no plan.  
18 The Federal/SNWA stipulation requires yearly reports to the Engineer, but even a cursory  
19 examination of the stipulation reveals that between SNWA, the Federal agencies and  
20 existing water right holders, the goals and motivations of each party will certainly conflict.  
21 The Engineer finds that he has jurisdiction to oversee the "environmental soundness" of the  
22 project "and will do so." ROA 000178. Again, he has not stated how this will be  
23 accomplished. If the Engineer believes that his department will monitor the non-Federal  
24 rights and environment, he has not said how it will be done. The Engineer pointed out in  
25 *Great Basin Water Network v. State Engineer*, 126 Nev. Adv. Op. 20; 234 P.3d 912 (2010),  
26 that he is short staffed. There are 172,605 acres in Spring Valley alone. ROA 18788.  
27 Without a plan to monitor that large of an area, a statement that the Engineer will monitor the  
28 area is also arbitrary and capricious.





1  
2 Cave, Dry Lake, and Delamar Valley (CDD) are contiguous and linear, stretching from  
3 White Pine County, Nevada, southerly, into Lincoln County. It is approximately sixty (60)  
4 miles from the Northern tip of Cave Valley to the Southern end of Delamar Valley.

5 ROA 020507. Unlike Spring Valley, which is a "closed valley", the CDD basins are "not  
6 closed". ROA 000599. In closed valleys, natural water discharge is by evapotranspiration  
7 (E.T.). In CDD, water is discharged by water flow from one basin into another. "Just like  
8 water in streams, groundwater moves from areas of higher hydraulic heads to areas of lower  
9 hydraulic heads." ROA 017407.

10  
11 The Engineer described the CDD basins as part of the White River Flow system,  
12 consisting of ten (10) additional hydrographic basins, which discharge primarily into the  
13 White River Valley, Pahrnagat Valley, and the Muddy Springs Area. ROA 000599.  
14 Approximately 2,000 afa flow into Dry Lake Valley from Pahroc. ROA 010588. "There is no  
15 groundwater E.T. in Dry Lake Valley, (ROA 017415) so all groundwater in Dry Lake Valley  
16 flows down gradient to the south to Delamar Valley." Id. and continues from Delamar to  
17 northern Coyote Springs Valley. Id.

18  
19 The Protestants allege that the CDD water allocation to SNWA, has been previously  
20 appropriated. The awarding SNWA water from the higher gradient of the White River Flow  
21 allows SNWA to take the water before it recharges the lower basins, which conflicts with  
22 earlier established water rights. In other words, the same water has been awarded twice,  
23 once in the upper basins, and again in the lower basins.

24  
25 The Engineer tacitly acknowledges the double appropriation of the same water but  
26 rationalizes it in two different ways. First, he refers to the rights in Coyote Springs as "paper  
27 water rights." Oral Arg. Trans., Vol. II, p.255. Exactly what the Engineer means by "paper  
28 water rights" is unclear, but this Court takes it to mean: valid, existing rights. If the rights  
were invalid, there would be no over appropriation. Second, the Engineer states that "up-

1 gradient use will not, if at all, measurably affect down-gradient supply for hundreds of years."  
2 ROA 000599-600. Further, he found that "if no measurable impacts to existing rights occur  
3 within hundreds of years, then the statutory requirement of not conflicting with existing water  
4 rights is satisfied." ROA 000600.

5           Considering that models which project water disbursement longer than seventy-five  
6 (75) years are uncertain (ROA 020061) -- and giving some deference to the Engineer's  
7 ruling, (see *Town of Eureka*, 108 Nev. 163 (1992)), this Court cannot agree with the  
8 Engineer's interpretation of NRS 533.370 (2). The statute is unequivocal, if there is a conflict  
9 with existing rights, the applications "shall" be rejected.

11           Moreover, it is also unseemly to this court, that one transitory individual may simply  
12 defer serious water problems and conflict to later generations, whether in seventy-five (75)  
13 years or "hundreds," especially when the "hundreds" of years is only a *hoped* for resolution.

14           There may be water from the CDD basins which could properly be appropriated  
15 without conflicting with down-gradient rights. The current orders do not contain such a  
16 calculation. For this reason, rather than an outright reversal of the appropriations from Cave,  
17 Dry Lake and Delamar Valleys, the matter is remanded to the Engineer for recalculation of  
18 possibly unappropriated water.

20           **B.     LIKE SPRING VALLEY, THE MONITOR, MANAGE AND MITIGATION  
21           PLAN REQUIRES SPECIFIC STANDARDS TO BE AN EFFECTIVE  
22           PLAN**

23           The analysis of the MMM Plan and the requirement for standards to be applied to  
24 determine when mitigation is necessary in the Cave, Dry Lake and Delamar Valleys is much  
25 the same as in Spring Valley. There is still a great deal of uncertainty regarding the  
26 hydrology of CDD. ROA 000671. Because of the unknowns, the Engineer has adopted the  
27 MMM Plan in the CDD valleys:

28           The State Engineer finds an effective management program that  
includes monitoring activities, management tools and mitigation  
options is critical to the determination that the Applications will not

1 conflict with existing water rights or with protectable interests in  
2 existing domestic wells.

3 ROA 000632.

4 The Engineer has also found that a drawdown of less than fifty (50) feet over a  
5 seventy-five (75) year period is a reasonable lowering of the static water table "made on a  
6 case-by-case basis". ROA 000653. He has presumably accepted testimony of SNWA's  
7 expert predicting one (1%) percent to seventeen (17%) percent spring flow reductions in the  
8 White River and Pahranaagat Valleys and has determined a seventeen (17%) percent flow  
9 reduction is reasonable.

10 Additionally, he found that "Federal and state laws, including the National  
11 Environmental Policy Act ("NEPA"), the [Environmental Species Act (ESA)], the Clean Water  
12 Act ("CWA") and Nevada water law, require environmental protection through comprehensive  
13 permitting and regulatory process." ROA 000683. "The ESA imposes strict substantive  
14 protections, in the form of reasonable and prudent alternatives, that include minimization and  
15 mitigation measures that prevent jeopardy to listed species or their critical habitat." ROA  
16 000684. Further, "non-listed" species will also be protected – "resulting in an even greater  
17 breadth of coverage." *Id.* Notwithstanding the Federal involvement, the Engineer states that  
18 he still has the jurisdiction and responsibility to determine environmental soundness  
19 independently of other agencies – "and will do so." ROA 000684.

20 The Engineer has, in effect, relinquished his responsibilities to others. Again, the  
21 Engineer has failed to state under what specific conditions he will require mitigation. The  
22 Engineer also recognizes that SNWA will extensively monitor springs and sensitive sites in  
23 the CDD valleys and finds that the Applicants' monitoring plan will be effective. ROA  
24 000636-000640.

25 Like the Spring Valley Plan, the Engineer finds that it is premature to set standards  
26 and/or triggers because there is not enough "baseline" data. ROA 000641. Yet, the  
27  
28

1 Engineer has also made the specific finding "that the Applicant gathered and presented  
2 substantial environmental resource baseline material and that the environmental resource  
3 baseline information provides a platform for sound, informed decision-making." ROA  
4 000683. Whether this is contradictory or not (sufficient baseline data v. insufficient baseline  
5 data), standards, triggers or thresholds, however phrased, must be objective to provide  
6 notice of when and where mitigation is necessary. Without standards, any decision to  
7 mitigate is subjective and thus, arbitrary and capricious.  
8

9 Stated differently, the Engineer decided that because the final configuration of the  
10 wells and locations of wells within the valleys is unknown at the present, setting quantitative  
11 standards, "or triggers" for mitigation is pre-mature because it must be known how the  
12 aquifer responds to pumping. ROA 000641. It seems that when and where unreasonable  
13 effects occur, is not the same as recognizing an unreasonable effect, wherever or whenever  
14 it appears. Paraphrasing Samuel Clemens, show me a man who knows what's reasonable  
15 and I'll show you a man who knows what isn't.  
16

17 Further, the Engineer found that "natural variability in the system must be  
18 documented to determine if observed changes are due to pumping, rather than natural  
19 fluctuations due to seasonal recharge or other factors." ROA 000641. The Engineer has  
20 already found that SNWA has gathered and presented enough baseline data to make sound  
21 and informed decisions, not to mention that SNWA has been studying the basins and valleys  
22 for at least twenty-five (25) years and likely longer. In short, without standards, triggers or  
23 thresholds the MMM Plan is not a "comprehensive" plan, "critical to the determination that the  
24 Applications will not conflict with existing water rights or with protectable interests in existing  
25 domestic wells". ROA 000632.  
26

27 This Court is charged with "determining whether there is substantial evidence in the  
28 record to support the [Engineer's] decision." *Revert v. Ray*, 95 Nev. 782, 786 (1979). Here,  
the Engineer said, however not quite consistently, that there is not enough evidence to

1 implement, what he has characterized as "critical," the MMM Plan. Thus, if there is  
2 insubstantial evidence and it is premature to set triggers and thresholds, it is premature to  
3 grant water rights.

4 As stated in the Plan, a definition of an unreasonable adverse effect, i.e. a trigger, a  
5 standard, a threshold must be defined. ROA 020647. Absent a thorough plan and  
6 comprehensive standards for mitigation, any mitigation, (or lack thereof) is subjective,  
7 unscientific, arbitrary and capricious. This matter must be remanded to the Engineer so that  
8 objective standards may be established.

10 **VIII**  
11 **CONCLUSION**

12 After an in-depth review of the record this Court will not disturb the findings of the  
13 Engineer save those findings that are the subject of this Order. This Court remands orders  
14 6164, 6165, 6166 and 6167 for:

- 15 1. The addition of Millard and Juab counties, Utah in the mitigation plan so far as  
16 water basins in Utah are affected by pumping of water from Spring Valley Basin,  
Nevada;
- 17 2. A recalculation of water available for appropriation from Spring Valley assuring  
18 that the basin will reach equilibrium between discharge and recharge in a  
19 reasonable time;
- 20 3. Define standards, thresholds or triggers so that mitigation of unreasonable  
21 effects from pumping of water are neither arbitrary nor capricious in Spring  
Valley, Cave Valley, Dry Lake Valley and Delamar Valley, and;
- 22 4. Recalculate the appropriations from Cave Valley, Dry Lake and Delamar Valley  
to avoid over appropriations or conflicts with down-gradient, existing water rights.

23 DATED this 10<sup>th</sup> day of December, 2013.

24   
25  
26 ROBERT E. ESTES  
27 SENIOR DISTRICT JUDGE  
28

Case No. CV-1204-049 (And Consolidated Cases)

Dept. No. 1

Affirmation pursuant to NRS 23913.030

The undersigned affirms that this document does not contain the personal information of any person.

**IN THE SEVENTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WHITE PINE**

MILLARD COUNTY, UTAH and JUAB )  
COUNTY, UTAH, et al. )

Consolidated Petitioners. )

v. )

JASON KING, P.E., in his official capacity as )  
the NEVADA STATE ENGINEER; and the )  
NEVADA DEPARTMENT OF )  
CONSERVATION AND NATURAL )  
RESOURCES, DIVISION OF WATER )  
RESOURCES. )

Respondents. )

and )

SOUTHERN NEVADA WATER )  
AUTHORITY )

Respondent-Intervenor. )

**NOTICE OF ENTRY OF  
DECISION**

PLEASE TAKE NOTICE THAT on the 13th day of December, 2013, a **Decision** was entered in the above captioned matter.

///

///

A copy of the **Decision** is attached hereto as Exhibit "A".

DATED this 2nd day of January, 2014.



---

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2014, I served, via email, a complete copy of the foregoing **NOTICE OF ENTRY OF DECISION** addressed as follows. This document applies to Case Nos. CV-1204049, CV-1204050, CV-1204051, CV-1204052, CV-1204053, CV-1204054, CV-1204055, CV-0418012, and CV-0419012.

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