



# Water Gab

Volume 6, Issue 2 Fall, 2016



NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

## LEGAL UPDATE: New Hearing Set With Nevada State Engineer Federal Case Likely Heard and Decided in Las Vegas Next Year

**F**irst, an update on our federal case against the U.S. Bureau of Land Management and the Department of the Interior challenging the BLM's decision to grant a right of way to the Southern Nevada Water Authority (SNWA) for its pipeline project: Briefing for the case was completed this past summer. We and all of our co-plaintiffs have requested oral argument on the merits. Now it is up to Judge Gordon to decide whether and when to hold the requested hearing. Given the importance of and unique issues raised by our case, we expect a hearing to be scheduled sometime in the coming months, with oral argument to take place in Judge Gordon's courtroom in Federal district court in Las Vegas. We will make sure everybody is notified once the date is set. Whatever occurs with regard to a hearing, Judge Gordon likely will issue his decision in our case some time in 2017. We believe the law supports our claims in the federal case and hope to prevail in federal court as we did in state court.

Exposing the gross deficiencies in the federal environmental review process, and blocking forward progress on the pipeline project on the federal front is particularly important because we are entering the fourth round of Nevada State Engineer hearings on SNWA's applications for groundwater rights in Spring, Cave, Dry Lake, and Delamar Valleys. These applications are on remand before the State Engineer after the Nevada state courts reversed the State Engineer's grant of water rights to SNWA for the pipeline for the third time. In doing so, the courts sent SNWA's applications back to the State Engineer to recalculate how much, if any, water truly is available from each of the four targeted valleys, and to ensure that no water rights are granted for SNWA's pipeline project unless a sound, enforceable monitoring and mitigation plan is developed and evaluated beforehand.

*(Legal Update continued on page 2)*



Great Basin Observatory depends on dust-free clear skies to be useful as a research-grade observatory.

## GBNP Observatory Depends On Dust-free Clear Skies....And No Water Grab

On August 25, 1916, President Woodrow Wilson signed the "Organic Act" creating the National Park Service. A century later, Great Basin National Park celebrated the anniversary with the "First Light" of the Great Basin Observatory, the first research-grade astronomical observatory located in a national park. The facility was built with over \$800,000 raised by

the Park's non-profit partner, Great Basin National Park Foundation. The Great Basin Heritage Area Partnership contributed the first \$100,000.

The ceremony included addresses from honored guests. Alvin Marques, Chairman of the Ely Shoshone Tribe, recalled his grandmother's stories of the stars above, while Congressman Hardy and Governor Sandoval expressed their fondness for Great Basin National Park and Nevada's starry night skies. Foundation representatives Becky Mills and Mike Niggli shared with the audience how the GBO came to be and the opportunities it creates for students. To learn more, visit [www.greatbasinobservatory.org](http://www.greatbasinobservatory.org).

*(Observatory continued on page 3)*

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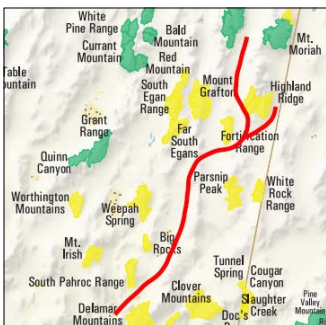
# Water Gab

## Southern Nevada Update: Talking Up Water, Debating Its Costs



The last few months have seen a big increase in outreach down in Las Vegas. It all started with an invitation from our friends at PLAN to give a presentation for Latino Conservation Week, covering the basics of water policy and the Water Grab. We developed a PowerPoint including where water comes from, the drought, Colorado River allocations, the foundations of Nevada water law, and more. From this we are now working with PLAN and Chispa, a Latino outreach program of the League of Conservation Voters, to translate the presentation and our brochure into Spanish and give Spanish language presentations.

We were asked by Friends of Nevada Wilderness to give the same talk at their monthly speaker series. This was also well-received, especially the slide (below) showing all the wilderness areas that would be threatened by the



Source: wilderness.net and GBWN

Water Grab's pipeline path and well fields. REI in Reno invited us to present on November 30 on winter activities in Eastern Nevada and winter's role in the water supply, and in the spring to talk about conservation and water policy at the Legislature. We even spoke to young interns at Planned Parenthood, who were learning about a wide range of issues affecting the state. The monthly meeting of conservation groups in Southern Nevada has also been helpful in raising GBWN's profile in the community.

Finally, I served as the sole "environmental" representative on the Las Vegas Valley Water District's citizens advisory committee to make recommendations for rate changes, now finalized. The overall idea was to broaden the impact so no individual or business was particularly hard-hit. That said, we did remove some loopholes that big business and developers enjoyed, and their connection charges would increase dramatically over the next 4 years to make up for lost revenue. General ratepayers would see smaller increases every year across tiers. While the conservation effect of these changes will probably be minimal, our recommendations are sending a signal that water is an increasingly scarce and valuable resource. The LVVWD board, which is the Clark County Commission, will consider the recommendations and approve final changes in a public meeting scheduled for December 6, for rates to take effect by February, 2017.

Please contact me at [hdubtree@gmail.com](mailto:hdubtree@gmail.com) to arrange for me to speak to your group or suggest groups or contacts.

—Howard Watts III, Communications and Outreach for GBWN

*(Legal Update continued from page 1)*

The State Engineer held a status conference on September 14th to take feedback from SNWA and the protestants and to make a decision on how to move forward. On behalf of GBWN, White Pine County, and many other protestants, we argued strongly that Judge Estes' 2013 order vacating the State Engineer's decisions on SNWA's water rights in these valleys clearly laid out the deficiencies in the State Engineer's Rulings, and that the proper course of action would be to either modify the State Engineer's Rulings to address those problems or, if meeting those requirements is as impossible as SNWA has claimed, to deny the applications outright. We believe another hearing is not necessary because it is not a lack of facts, but an improper decision based on those facts, that needs to be corrected.

Despite the straightforward logic of this argument, the State Engineer issued an interim order on October 3rd calling for yet another hearing on the applications to take place in late September and early October of 2017. At the hearing, the State Engineer will hear evidence related to the amount of available water as well as monitoring and mitigation. Watch the litigation page on our website for motions and orders relating to scheduling and procedure.

Considering we now have a long-running record of SNWA and the State Engineer grasping at new justifications for bad decisions rather than addressing the clearly identified flaws in those decisions, we are prepared for the applications to enter the court system again following a decision in late 2017 or early 2018. Assuming Nevada's courts continue to enforce the State's longstanding, eminently sound, water law, we would expect to prevail yet again in court.

—Simeon Herskovits and Iris Thornton  
Advocates for Community and Environment

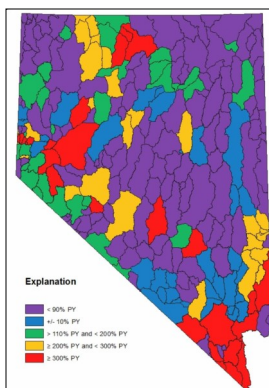


## Nevada Water Law on Chopping Block at 2017 Legislature



Great Basin Water Network (GBWN) and its allies are opposing a radical change in Nevada water law being proposed by the Nevada State Water Engineer

(NSE), seeking the so-called “flexibility” to approve new applications for water rights without having to comply with current requirements protecting existing senior water rights. The NSE would have the broad authority to create these conflicts and mitigate them later, virtually guaranteeing that developers, speculators, and thirsty municipalities can steal water that’s already been appropriated to others. It’s loopholes and magical thinking like this that has led to about 1 in 5 groundwater basins in Nevada becoming over-appropriated.



You’ve seen this before, but it bears re-printing. Nevada State Engineer Viewgraph “Ratio of Committed Water Resources to Perennial Yield by Basin” Red, yellow and green basins are from 110+% to over 300% of perennial yield.

In an attempt to insulate himself against future court reversals for failure to set rigorous monitoring and mitigation plans, the NSE is seeking greater authority to manage potential conflicts. The proposal is so open-ended that he could then approve water applications without a determination that : 1) the water is available 2) the proposed water use would not harm senior water rights holders and 3) the takings is in the public interest. In addition to losing legal protection from water theft by junior users, holders of existing rights would have the burden of proof that the promised miti-

gation is not effective and that the new water use is harming their existing water rights. Also, the current process for the development and evaluation of the effectiveness of a mitigation plan occurs out of the public eye and would limit any legal challenges to the NSE or the junior applicant.

According to a white paper submitted by our attorneys to members of the Legislative Commission’s water subcommittee, the NSE proposal provides no checks or safeguards, such as those used by state and federal agencies in adaptive management for range and forest resources. There is currently no explicit requirement for developing baseline data, setting thresholds that trigger mitigation actions, specifying any actual mitigation measures that will be implemented, or evaluating and changing mitigation measures if ineffective. There’s also no requirement to do any mitigation planning before approving a conflicting junior right.

This of course raises major Constitutional issues. Such changes violate the due process clauses of both the United States and Nevada Constitutions, since existing water rights holders have few to no rights to challenge the State Engineer’s actions. There’s also the issue of government takings from senior rights holders. An explosion of legal claims against the State of Nevada would bring headaches for all and potentially immense financial liability to the state, along with court orders to restore water rights and aquifers damaged by overpumping.

We expect bill draft requests from the NSE on these matters for the 2017 Nevada legislative session. In addition, Senators Goicoechea and Ford committed to working together on a bill draft to address adaptive management. Nevadans should contact their legislators (after the elections) to oppose these egregious changes to Nevada water law. Use GBWN’s website to learn more, and follow us on Twitter for live tweets from the Legislature.

—Rose Strickland, GBWN Board

THE  
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BROAD  
AUTHORITY TO  
CREATE THESE  
CONFLICTS &  
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LATER.

*(Observatory continued from page 1)*

The Great Basin Observatory depends on clean air. Dust in the skies would have an adverse affect on the "seeing" for the telescope, a combination of air clarity, darkness, stability, humidity, etc. Dust is one of the impacts of pumping and piping groundwater for the ambitious groundwater development project.

While it is frustrating that GBWN is too controversial to raise the kind of funds that were amassed for the Observatory, it is safe to assume that some investors, star gazers and astronomy researchers may become allies as our stars align in common cause.

—Abby Johnson, GBWN Board



## OPINION

### Tell Nevada Legislature Not To Undermine Water Law

**O**ur state's top water official – the State Engineer – wants the “flexibility” to manage conflicts if it turns out the State allowed water pumping that impacts the environment or other users of that water resource. That might sound reasonable, but unfortunately various loose interpretations, over-optimistic assumptions, and loopholes since the start of Nevada water law have led one in every five water basins in our state to become over-appropriated, with more rights on paper than water to supply them.

Past State Engineers have ignored the links between ground and surface water, failed to count thousands of domestic wells against a basin's yield, or assumed that not all water rights will be put to beneficial use. Their actions have allowed for the most development, and left future generations on the hook for the results of over pumping.

Our state's water law was designed to protect water resources from being overused, and to protect those that came first from having their water taken by thirsty newcomers. That's why Great Basin Water Network, White Pine County, and others have been successful in court, challenging State Engineer decisions to approve water rights for a massive groundwater pipeline from Eastern Nevada to Las Vegas. Flexibility is the problem, not the solution. What the state needs is clear guidance to be prudent, not a blank check to rubber stamp water rights now and deal with the problems later.

The State Engineer's broad proposal would also contradict Federal and state constitutional protections for due process and property rights. Lawsuits over the government's “takings” could be plentiful and costly for taxpayers as senior rights holders seek compensation for their diminished resources.

On August 26, the Nevada Legislative Commission's Subcommittee to Study Water finalized

its recommendations to change water law during the 2017 Legislative session. State Senators Pete Goicoechea and Aaron Ford committed to drafting a bill to allow flexibility through “adaptive management.” Great Basin Water Network asks them to work with us to make sure changes strengthen our state's water law, not weaken it. Anything half as vague as the State Engineer's plan should be a non-starter.

To be clear, GBWN doesn't oppose mitigation plans. But that process has to happen *before* rights are granted, with specific triggers and remedies. The burden and mandate must be on the applicant as a junior rights holder to scale back when conflicts occur.

We believe that language is already in state law and said as much in our comments to the Water Subcommittee. Perhaps the State Engineer needs it spelled out even more, but giving broad authority to grant water rights *now*, with a promise to deal with conflicts *later* is a mistake. It jeopardizes senior water rights and exacerbates, rather than controls, the state's chronic over-appropriation problems.

It's essential that legislators hear from all Nevadans who depend on consistent and fair water policy— including farmers and ranchers, well owners, and others whose livelihoods depend on water — before the state's law is changed in ways that jeopardize senior water rights and provoke lawsuits over the takings of property rights.

—Howard Watts III, GBWN Communications Specialist

*Editor's Note: GBWN will distribute this guest column in November to Nevada newspapers urban and rural.*

## Utah Update

### Lake Powell Pipeline and Bear River Generate Controversy



The proposed **Lake Powell Pipeline project (LPP)** has been back in the news again, and not in a positive light for its proponents. First, University of Utah economists released their analysis of the Washington County Water Conservancy District's project repayment models, which concludes that without generous

state subsidies – up to 72% of the total cost of the project – the water would be so expensive to customers that no one would want it, thus making the whole project untenable. The District disputed those findings, claiming that the economists misconstrued an “interactive worksheet”, prepared by Applied Analysis of Las Vegas (principal Jeremy Aguero), as a repayment plan.

But the waters were muddled further by scrutiny of an administrative rule governing the expenditure of a percentage of state sales tax revenues - earmarked by the Legislature earlier this year - to finance the LPP and the Bear River Development Project. The rule stated that “beneficiaries of the projects...will be required to provide at least 10% of the project cost” – which could be interpreted to mean all Utah taxpayers could be on the hook for

the remaining 90%. The Utah Division of Water Resources claimed they meant that projects end users would have to make a down-payment of 10% prior to construction of the project, and promised to revise the rule.

Meantime, some still advocate that Cedar City and St. George should drop the LPP and get their water instead from Snake and Hamlin Valleys. A Draft EIS for the LPP is slated to be ready for review as early as September 2017.

That other big water development project, the **proposed diversions of the Bear River**, has also generated controversy of late. A proposed new Cache County Water District on the November ballot has focused attention on whether that new entity would be used to drive approval of the plan to dam and pipe 220 afy out of the Bear and its tributaries to water lawns as far away as Salt Lake County. The Bear supplies 62% of the water in Great Salt Lake, so concerns that the project could prove environmentally catastrophic are quite real. Great Salt Lake, which is critical to the health of over 6 million migratory and nesting birds each year and contributes an estimated \$1.2 billion annually to Utah's economy, is extremely stressed after years of drought and human diversions and this summer matched its 1962 historic low level at 4192 feet above sea level.

UTAH'S  
PROPOSED  
ALLOCATIONS/  
DIVERSIONS OF  
COLORADO  
RIVER WATER:  
341,000 AFY

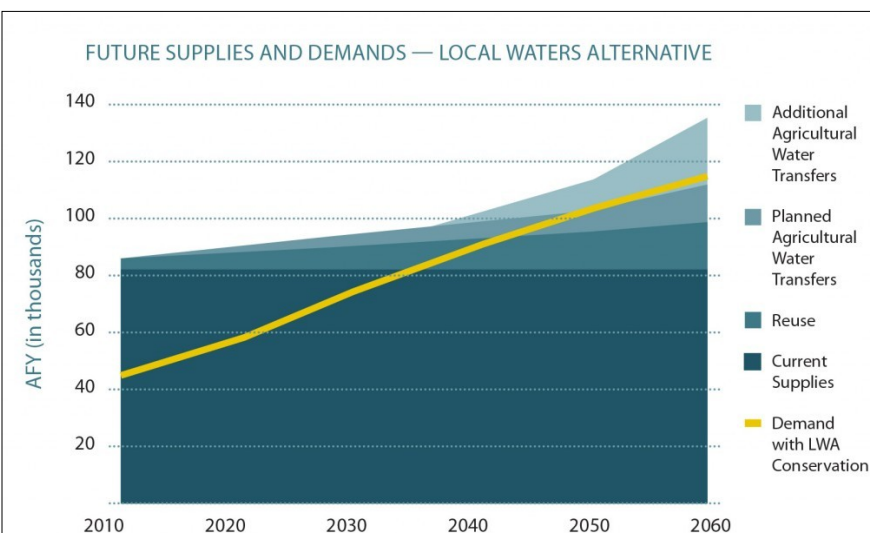


FIGURE 1. The Local Waters Alternative shows that water conservation will minimize future water demand (yellow line), and new, local supplies like reused water and agricultural water transfers will meet Washington County's water needs through 2060 and beyond. Water volumes are shown in acre-feet per year (AFY).

annually to Utah's economy, is extremely stressed after years of drought and human diversions and this summer matched its 1962 historic low level at 4192 feet above sea level.

Amidst all this contention, the **Governor's Water Strategy Advisory Team (WSAT)** is wrapping up its 4 year effort to produce a plan to secure Utah's water future through 2060. WSAT leaders intend to present their recommendations to Governor Herbert before the Legislature convenes in January. The draft plan gives a nod to conservation, but also supports both the LPP and the Bear River development projects. A “minority report” by some WSAT members is expected to object strenuously to this, and call for more robust protections for the environment and the public trust.

—Steve Erickson, GBWN Board

Source: Western Resource Advocates

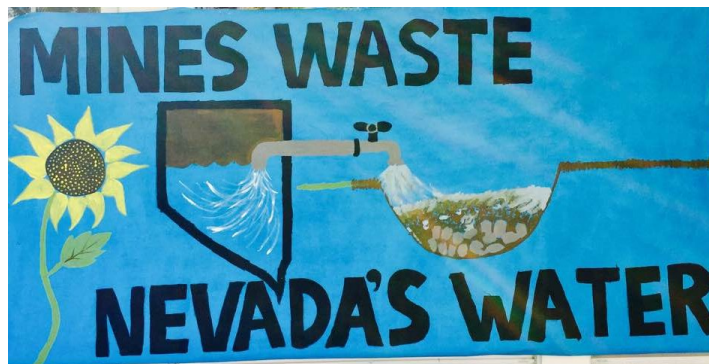
## Downstream Humboldt River Ag Challenges State Engineer in Court

A lawsuit filed in August 2015 against the Nevada State Engineer by Pershing County Water Conservation District has brought into focus rural concerns about effects of open pit mine dewatering on water and agriculture. It calls on the state to bring “over-appropriated groundwater basins surrounding the Humboldt River Basin back to their perennial annual yield.” The action seeks to require the NSE to ensure equitable water distribution that does not give preferential treatment to the mining industry, and that senior water rights holders receive the allocation they are entitled to.

A 2015 study by hydrologist Dr. Tom Myers found that mine dewatering in the Humboldt River Basin over the past 25 years has lowered groundwater levels near the mines and caused substantial drawdown as far as 50 miles from the pit. Just six mines along the Humboldt River have dewatered 3.8 million acre feet (more than 10 times Nevada’s Colorado River allocation) over the past 25 years, drying up seeps, springs and streams.

Industry claims that dewatering does not negatively impact basin flow was debunked in Dr. Myers’ follow up study in 2016, which focused on what happens to the water table after mining and pumping ends, and the pits fill in with water. The study shows that the most significant and long-term impacts come after mining and dewatering end. When operations cease, farmers no longer receive the water that the mines were pumping and dumping into the river, and instead groundwater is being diverted to fill in the pits. This creates a massive drawdown for miles around, in addition to the millions of acre feet of water lost to evaporation from pit lakes each year.

While we can’t see the process of mine dewatering and pit lake formation, the farmers in Lovelock at the end of the Humboldt River are feeling the effects. The legal action calls for a common sense solution: restore the basin to a healthy equilibrium in order to protect water for future generations. —Ellen Moore, PLAN



PLAN is holding art workshops to involve the community and develop banners to convey its messages such as this one.

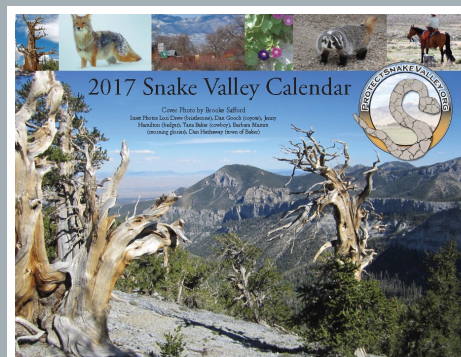
## What Do Black Rock Pipeline, Water and Lithium Have In Common? *It's a TRIC Question*

Idaho rancher Rodney St. Clair has filed applications for water inside the Black Rock/High Rock National Conservation Area. He plans to transport at least 7,000 and up to 14,500 AFY of precious desert water to the Tahoe Reno Industrial Center (TRIC) along Interstate 80. St. Clair has repeatedly filed applications in the Mud Meadows area, only to be told each time by the State Engineer (NSE) to provide more information. The proposed pipeline route is south from Mud Meadows, across the Black Rock Desert, south towards the Pyramid Lake Paiute Reservation, then to Fernley and the Industrial Center. The developer of TRIC has said the site doesn't need the water. The Pyramid Lake Paiute Tribe has received no applications for a pipeline ROW. Neither has the BLM, which manages most of the land between Mud Meadows and TRIC. Mr. St. Clair then approached the Washoe County Commission, which sent a resolution to the NSE encouraging him to do adequate studies. Impacts aside, is it even cost effective to build a 120-mile pipeline for this little water?

Now a lithium company has filed claims to mine lithium on the Black Rock Desert, and wants to use water to create a southbound slurry pipeline to create batteries at...TRIC, home of TESLA's battery plant.

We're watching cautiously as both plans are developing. We are joined in protest (again and again) of St. Clair's applications by Humboldt, Pershing and Churchill Counties, the Summit Lake Paiute Tribe, PLAN, Gerlach General Improvement District, local ranchers, Sierra Club, Friends of Nevada Wilderness, and others.

— Susan Lynn, GBWN Senior Advisor



The 2017 Snake Valley Calendar is now available for purchase at the **Border Inn**, or **call or email Susan Wetmore: 775/234-7265** or [sywetmore@gmail.com](mailto:sywetmore@gmail.com). Quantity discounts available; check GBWN's website. Also **available in Carson City at the Purple Avocado** ([thepurpleavocado.com](http://thepurpleavocado.com)). All proceeds of the Snake Valley Calendar benefit GBWN & help support efforts to protect the natural resources, wildlife, and economy of the Snake Valley. Add water. It's magic. Thank you for your support.



## SNAKE VALLEY WATER FESTIVAL '16

Thanks to all the participants near and far who made the Snake Valley Festival '16 a success. The annual festival raises money for community preservation by supporting Great Basin Water Network's efforts to defeat the Water Grab. To everyone involved: Thank you from Great Basin Water Network! **Mark your calendars for Water Festival 2017: June 16-18, 2017.**

**Info: [ProtectSnakeValley.org](http://ProtectSnakeValley.org) and [greatbasinwaternet.org](http://greatbasinwaternet.org).**







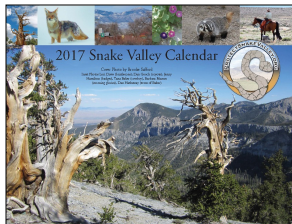
# Water Gab

**GREAT BASIN  
WATER NETWORK**

**NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND**

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2017  
*Snake Valley Calendars*  
Get Them Now!



YOUR  
CONTRIBUTION  
TO GBWN IS  
MORE THAN A  
DROP IN THE  
BUCKET.



## Mark Your Calendars: Snake Valley Water Festival is June 16-18, 2017

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**A grant from the Nevada Rangeland Resources Commission helped to pay for the Water Gab newsletter. THANK YOU!**