

Water Gab



Volume 7, Issue 3 Fall, 2017

NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

SPRING CDD HEARD BY STATE ENGINEER ON REMAND Decision Expected by April, 2018

or two weeks, from September 25th through October 6th, the Nevada State Engineer held a fourth administrative hearing on Southern Nevada Water Authority's pipeline project water rights applications for Spring, Cave, Dry Lake, and Delamar Valleys. SNWA presented its case first week of the hearing, and

GBWN and our allied protestants presented evidence during the second week. Public comment was taken both orally and in writing.



Attorneys Iris Thornton and Simeon Herskovits after the Spring CDD Remand Hearing ended on Oct 6.

As we mentioned in the most recent Water Gab, in this remand hearing the State Engineer was required to recalculate how much, if any, water is available from each of the four targeted valleys, and to define standards, thresholds, or triggers for mitigation of impacts prior to granting any water rights to SNWA for the pipeline project. Despite this clear instruction from the Nevada courts, SNWA chose to present evidence that did not meaningfully address the Court's clear requirements. Rather, SNWA repeatedly insisted that the Nevada courts got it wrong and do not understand Nevada water law, or that water law must, in effect, be re-interpreted to allow its applications to be granted. By taking this approach, SNWA made a mockery of the State District Court's remand decision. As a result, the only evidence in the record that goes directly to the Court's instructions on the issue of water availability is that presented by protestants, and we think that this evidence makes it clear that, under the District Court's remand or-

der, the State Engineer must deny SNWA's applications.

With regard to its deficient monitoring, management and mitigation ("3M") plans, SNWA presented modified but still toothless 3M plans based on the loosest hydrologic and biologic understanding of the affected resources. Once again, SNWA has taken a "just trust us" approach to monitoring, managing and mitigating

(Remand continued on page 2)

LEGAL UPDATE: Federal Case Partial Victory EIS Remanded to BLM on Mitigation Issues and More

On August 23, Judge Gordon issued a decision in our federal case against the U.S. Bureau of Land Management and the Department of Interior challenging the BLM's 2012 decision to grant a right of way to the Southern Nevada Water Authority for its pipeline project. The decision was a victory for GBWN and those who oppose the pipeline project, because it granted our motion for summary judgment in part and remanded the EIS to the BLM to correct deficiencies regarding wetlands and wildlife habitat mitigation. While we did not prevail on a number of other points, the fact that the Federal District Court reversed and remanded the ROW determination back to the BLM on these mitigation issues makes the ruling a significant victory in our battle against the pipeline project.

A bit more particularly, Judge Gordon's ruling will force the BLM to reexamine and make more definite determinations on whether and how mitigation or compensation for affected wetlands and habitat can be achieved. Those specific deficiencies are significant, and they may be difficult for the BLM to satisfactorily fix. While Judge Gordon focused on very specific failures to address harms to wetlands and other wildlife habitat,

Inside This Issue

Utah Update ...3

NV Vested Claims ...3

So. Nevada Update ...4

Swamp Cedars ...5

2017 Timeline....6

Utah Range Expands ..6

2018 SV Calendar...7

Giving Thanks...7

In Memory Of...7

(Federal Case continued on page 2)

Water Gab

(Remand continued from page 1)

impacts, which provides no concrete or enforceable assurance to water rights owners or the public that either existing water rights, the environment, or water resources on which both depend, actually will be protected at all. At the same time, SNWA's witnesses confirmed that the only recourse for impacts to a protestant's senior water rights or the environment would be to file a lawsuit against SNWA to defend those rights. Such an approach unacceptably places financial and legal burdens on senior water rights holders or the public, who under Nevada water law are protected against unreasonable impacts by junior appropriators such as SNWA. The modified 3M plans presented by SNWA falls far short of what the District Court and Nevada law require. The State Engineer should deny SNWA's applications for this reason as well.

Now that the remand hearing has ended, the parties are required to file closing briefs and proposed rulings by January 19, 2018. A ruling is expected no later than April, 2018. As all parties recognize, the State Engineer's ruling inevitably will be appealed to District Court and eventually to the Nevada Supreme Court, which will make the ultimate decision on SNWA's water rights applications for the pipeline project. GBWN is confident that the evidence in the record mandates the denial of SNWA's applications and that we have a strong case for the Nevada State courts should the State Engineer again erroneously decide to grant water rights to SNWA. •

 Iris Thornton, Advocates for Community and Environment stem directly from the fundamental failure of SNWA (and the BLM) to provide any concrete verifiable plan to protect against or mitigate the wide range of po-

(Federal Case continued from page 1)

the deficiencies he has re-

quired the BLM to correct

tentially devastating environmental impacts that SNWA's project would cause. So, while not a com-

Judge Andrew Gordon

plete victory, this is an important win for opponents of the pipeline project and an equally important setback for SNWA and its project.

In early November, the BLM and SNWA appealed Judge Gordon's ruling to the 9th Circuit Court of Appeals. After careful consideration, GBWN and our allies filed a cross-appeal to challenge the points on which Judge Gordon did not rule in our favor. It is unclear whether these appeals will be pursued to conclusion, and a briefing schedule for the dueling appeals has not yet been set. We will keep you posted as the appellate process develops. • — Iris Thornton, Advocates for Community and Environment

SPECIAL THANKS TO LARRY AT **THE BEAD STORE** IN CARSON CITY FOR ASSISTANCE DURING THE HEARING.

WWW.TRADEBEAD.COM





Kena and Patrick Gloeckner, ranchers from Lincoln County, provide information to the State Engineer about their water rights during public comment day at the Spring CDD Remand Hearing in Carson City. At right, Kena points to the map as the State Engineer, staff and attorneys listen. The NSE heard from 15 people that day and received 72 written comments by the October 20 deadline. Link to them from the GBWN website.

Utah Update:

Lake Powell Pipeline Pushers Continue Evasive Maneuvers

hen it comes to explaining how they intend to pay for the Lake Powell Pipeline project, Utah water managers continue their tactics of foot-dragging and evasion, failing to provide direct answers to the public – and to the federal agency evaluating and licensing the project.

In October, the Utah Division of Water Resources (UDWRe) and Washington County Water Conservancy District (WCWCD) first requested additional time to respond to questions from the Federal Energy Regulatory Commission (FERC) regarding the costs of and financing plan for the pipeline, and then within days, sent a letter to FERC that provided – for the first time – preliminary "options" for financing the project.

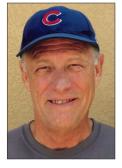
The "financing model", prepared by Las Vegas-based Applied Analysis principal Jeremy Aguero based on data and discussions that date to 2014, clearly fell far short of a development proforma that one could take to a bond brokerage or a bank for a loan. The options being considered, not surprisingly, include a mix of water rate and property tax hikes, increasing

impact/hook-up fees, and state funding and bonded debt. WCWCD estimates that impact fees for a typical residence could rise from \$7,417 to 17,071 and water rates could be raised by \$52 per year for the average household. State sales tax funds earmarked for water development would raise \$34 million annually by 2021. Undefined "economic costs" of the project range from \$1.5 to \$3.2 billion.

Estimates by University of Utah economists are much less sanguine, projecting the District will need to increase water rates 687%, impact fees could rise to \$30,000 per new home, and that the State would need to subsidize 72% of the pipeline cost with an interest free loan.

The St. George Spectrum reported that rather than firm up cost estimates, WCWCD says that "given the unknown number of project variables, any numbers in any financial model are preliminary and speculative". Variables include population projections, exact pipeline alignments, and timing, all of which could be plugged into a pro forma and adjusted to various combinations and scenarios. Federal rules require specific financing details only 90 days before construction begins. Officials say construction needs to start in the mid-2020s to stay ahead of demand, and hope that the NEPA review of the project can begin in 2018.

Meanwhile, the simmering debate over the accuracy and adequacy of the state's water use data reached a boiling point as the Utah Rivers Council requested that State Auditor John Dougall determine whether Utah water officials broke the law by provid-



ing false or misleading information on water use in Washington County. The Rivers Council asserts that the UDWRe and WCWCD inflate the demand forecasts and exaggerates improvements in conservation in order to tout the need for the pipeline.

Some progress on the data-front is being made. In September, two engineering firms, Bowen Collins & Associates and Hansen, Allen & Luce, won a contract of \$300,000 in state funds to review the accuracy and consistency of water use data and reporting statewide, including Washington County, and to make recommendations. And the Utah Division of Water Rights (UDWRi) reported that they

have completed their statewide water use data analysis for 2016. Last year, 523 water systems reported total water use of 627, 215 acre feet. Strikingly, this is 251,238 acre feet less than was reported in 2014 – by 130 fewer water systems! UDWRi considers the 2016 data to be 90% reliable, compared to a 50% quality of data estimate in 2014. • —Steve Erickson, GBWN Board

ATTENTION: NEVADA VESTED WATER RIGHTS HOLDERS

NOTICE OF STATUTE REGARDING PRESTATU-TORY CLAIMS OF VESTED RIGHT, NEVADA

Senate Bill 270 of the 79th Session (2017) Legislature was approved by Governor Sandoval on June 9, 2017. Pursuant to Section 1 of the bill, any claimant of a pre-statutory water right must submit proof of the water use to the State Engineer on or before **December 31, 2027**. If a claimant fails to submit such proof by that deadline, the claim is deemed abandoned. The form for filing proof of the water right may be obtained at http://water.nv.gov or by contacting the Nevada Division of Water Resources.

JASON KING, P.E.

NEVADA STATE ENGINEER

Water Gab

Southern Nevada Update: Messaging and Media



Things are finally winding down in what is one of the biggest and busiest years in GBWN history. There has been much to celebrate – we protected water law at the Legislature, hosted a statewide water tour in partnership with allies, and forced the BLM to fix some of the flaws with their Environmental Impact State-

ment for the pipeline. We made our case before the Nevada State Engineer – again – and will get a decision early next year.

We're excited to take some of that energy and expand our outreach efforts, especially in and around Las Vegas. Reno videographer Kyle Matheney followed the Las Vegas



Kyle Matheney of Chair7Films with Dave Baker on the Water Tour in June.

Water Tour, taking amazing footage of the landscape and Snake Valley Festival and interviewing several longtime supporters of the network and opponents of the water grab. We're happy to announce that we have a 1-minute "trailer" ready and are close to a final cut of a roughly 8-minute video that tells the story of the pipeline with a focus on the people and places affected. We think it's going to help us reach a much wider audience and help them understand the basics of the fight without their eyes glazing over. A premiere will likely be in January, with additional screenings to follow. Follow us on Facebook or get on our email list for more updates.

Our ads in KNPR's Desert Companion magazine have also helped increase our exposure to more socially conscious residents in the Las Vegas area. Thanks to generous support from the Nevada Rangeland Resources Commission, we're helping build connections between us urbanites, the great outdoors we recreate in, and the food we depend on. It really comes down to a simple truth that we're working to lift up: Water is Life.

Water In The Interim: Nevada Legislature's Public Lands Committee Meets in January

While the Nevada Legislature has ended, the discussions on water policy will continue in the state. This interim session looks to be less intense than the last, with neither the Governor's Drought Forum or a specific subcommittee forum convened this time around.

However, water will likely be one of the discussion topics at the Interim Committee on Public Lands. Senator Don Gustavson chaired the committee last year; while no chair has yet been announced, a member of the Assembly from the majority party will lead it this time – likely Assemblywoman Heidi Swank.

We will be monitoring and participating in this committee on water issues. The committee's first meeting is scheduled for Friday, January 12 at 9am at the Grant Sawyer Building in Las Vegas, with videoconferencing to Carson City.

The membership roster is:

Senator Pete Goicoechea

Senator Donald Gustavson

Senator David R. Parks

Senator Julia Ratti

Assemblyman John Ellison

Assemblyman Al Kramer

Assemblyman William McCurdy, II

Assemblywoman Heidi Swank

Debra March, City of Henderson Mayor

—Howard Watts III, Communications Specialist, GBWN

Patagonia, who donated items for the Festival and whose funds made the water tour and video possible, hosted a training for environmental activists at Lake Tahoe in late September, and I was invited to attend. Without going into too much detail, it was a great event that provided us with some new ideas to connect with people, and the tools to do it. Patagonia will be adding to the ways they support the work of their grantees, and we couldn't be more excited. We look forward to continuing this partnership!

To request a showing of the video, just email us at info4gbwn@gmail.com.

—Howard Watts III, GBWN Communications Specialist

Swamp Cedars Now on Historic Register Sacred Cedars At Risk in Latest SNWA Mitigation Plan

he Tribes launched an effort to protect Swamp Cedars. It began after federal agencies signed Stipulated Agreements with the Southern Nevada Water Authority (SNWA), withdrawing their protests to SNWA's water rights applications in eastern Nevada and negating their trust responsibility to protect Tribal rights and resources in exchange for Monitoring, Management, and Mitigation Plans (3M Plans).

The Confederated Goshute, Ely Shoshone and Duckwater Shoshone Tribes took a stand to protect Swamp Cedars. The Tribes requested the Bureau of Land Management to expand the boundaries of the Swamp Cedars Area of Critical Environmental Concern (ACEC). We also requested that the BLM designate Swamp Cedars as an Indian Sacred Site and that BLM continue to



Tribal elder Rupert Steele at the Swamp Cedars

provide access to the site in perpetuity as required under Executive Order 13007. In the spring of this year, we

year, we landed

Swamp Cedars on the official list of the National Register of Historic Properties as a Traditional Cultural Property.

What does it mean to have Swamp Cedars listed on the National Register? It means that the federal government—through the National Park Service—recognizes the exceptional historical, cultural, and spiritual significance of Swamp Cedars pursuant to the National Historic Preservation Act.

In part, the significance comes from the fact that it is the place of repeated massacres of Goshute and Western Shoshone peoples (the Newe). The first massacre was carried out by the United States Army in 1859 and resulted in the deaths of an estimated 500-700 Newe who were involved in a ceremonial gathering. It was the largest Indian massacre in the history of the United States. The other massacres occurred in 1863 and 1897.

Today, Swamp Cedars is more than a place of remembrance. It has always been a place for Tribal ceremonial gatherings and it still remains a place for ceremonies. The spring water is, as Tribal elder Delaine Spilsbury has said, "the milk of Mother Earth." That water has special power used for healing and for medicine. Swamp Cedars has many other special attributes, such as a place to gather traditional foods and medici-

nal plants, a place to pass down traditional cultural knowledge, and a place to honor Newe ancestors who were massacred. Their spiritual embodiments are the

swamp cedar trees.

This is sensitive material, and the Tribes provided it as testimony before and during the



recent hearing on SNWA's water rights applications, on remand after Judge Estes found that SNWA's 2011 3M Plans were severely flawed.

It was shocking then that the information about Swamp Cedars—including the fact that Swamp Cedars was listed on the National Register encompassing 14,175 acres (three times the size of the Swamp Cedars ACEC)—were not even mentioned in the SNWA's new 2017 Spring Valley 3M Plan. More shocking, SNWA's 2017 3M Plan allowed for 100% destruction and loss of swamp cedar trees before SNWA would consider its groundwater pumping impacts to have an "unreasonable effect." SNWA's 3M Plan also allowed for any amount of destruction to Swamp Cedars for five consecutive years before any management and mitigation would be required.



Tribes' legal team (I-r) Monte Sanford, Paul Echo Hawk, Paul Tsosie

But the Tribes took the stand.
Tribal elders Virgil
Johnson and Rupert
Steele provided powerful testimony on the importance of Swamp Cedars, the water, the trees, and the Tribes' cultural and spiritual practices.
Dr. Monte Sanford

provided expert testimony on the Tribes' legal protection efforts for Swamp Cedars, especially the listing on the National Register. Lead attorney, Paul Echo Hawk, guided the Tribes through the rapids of the hearing and into an even stronger legal position.

While the Nevada State Engineer prepares his new ruling, the Tribes are moving forward to obtain higher levels of protection for Swamp Cedars, including national-level significance under the National Register and a National Historic Landmark designation. Our highest goal is a Swamp Cedars National Monument. •

Monte Sanford, Consultant for the Tribes

GBWN's Big Year in a Nutshell: 2017 Timeline



ADVOCATES CELEBRATE PROTECTION OF NEVADA WATER LAW AS NEVADA LEGISLATURE ADJOURNS

Assembly Bill 298 was a proposal by the Southern Nevada Water Authority [SNWA] to lay out the definitions of certain terms and a detailed

monitoring, management and mitigation (or 3M) process in Nevada's water law. The bill died in the face of extensive opposition from environmentalists, sportsmen, ranchers, farmers, rural residents and governments, tribes, and businesses. This broad group of stakeholders argued the language was too permissive and would lead to more of the state's groundwater basins becoming over-allocated.

FEDERAL CASE AGAINST BLM CHALLENGING 2012 RIGHT OF WAY DECISION FOR SNWA'S PIPELINE PROJECT

At oral arguments in Las Vegas, GBWN's attorney Simeon Herskovits presented arguments on behalf of a group of Plaintiffs, including GBWN, White Pine County, rural local governmental entities, and citizens groups. Attorneys for coplaintiffs including the Goshute, Duckwater Shoshone, and Ely Shoshone Tribes, and the Center for Biological Diversity presented argument with Simeon. The arguments challenged the BLM's failure to comply with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the National Historic Preservation Act. While Judge Andrew Gordon did not stop the proposal, he ordered the BLM to take another look at possible environmental effects of SNWA's project, which included whether it will be possible to replace or restore remote wetlands if groundwater pumping begins in the Spring, Cave, Dry Lake and Delamar valleys. Pipeline opponents say ancient water basins beneath the Nevada-Utah state line aren't naturally replenished in today's arid climate conditions. "There can be no question that drawing this much water from these desert aquifers will harm the ecosystem and impact cultural sites," the judge said.

FOURTH STATE HEARING ON CONTROVERSIAL SNWA WATER PIPELINE CONCLUDES

The Nevada State Engineer's Office held two weeks of hearings on the controversial plan by SNWA to take groundwater from eastern Nevada and pipe it over 250 miles to Las Vegas, after the Nevada District Court sided with White Pine County, GBWN, and allies, finding that the previous 2012 rulings on the same applications granted more water than was available. The court also found SNWA did not have specific plans to monitor and mitigate predicted impacts, or guarantee that senior water rights and the environment would be protected. White Pine County and GBWN, along with the Goshute, Ely Shoshone, and Duckwater Shoshone Tribes and the Church of Jesus Christ of Latter Day Saints, presented evidence critical of the project to the State Engineer in this most recent hearing. A decision is not expected until March 2018 at the earliest.

For additional details see GBWN's webpage on this issue. www.greatbasinwater.net

—John Walker, GBWN webmaster

Page 6

Congress Approves Vast Expansion of Utah Desert and Training Range



Despite many serious concerns from citizens of Utah— especially those living in Northern Snake Valley— a piece of legislation championed by Utah Senators Orrin Hatch and Mike Lee as well as Representatives Rob Bishop and Chris Stewart

was added to the 2017 National Defense Authorization Act sponsored by Senator John McCain. This piece of the legislation enlarged the Utah Test and Training Range in Utah's West Desert by more than 625,000 acres.

Eight pieces of land in Juab, Tooele, and Box Elder counties previously owned by the Bureau of Land Management and the state of Utah are now owned and managed by the Air Force and the Department of Defense. The law also transfers lands from the BLM including mining parcels in Central Utah and a potash extraction operation near the Great Salt to the Utah School Trust Lands System.

The Air Force characterizes these added parcels of land as "buffer zones" needed to protect the Air Force from encroachment by its surrounding communities, and asserts that they will facilitate the

testing and training of the next -

generation weapons such as the F-35 and the F-22 aircrafts operating out of Hill Air Force Base.

It's important to note that the Air Force already controls the airspace

above this new expansion. This appears to the local residents to be nothing more than a land grab which gives the military more ability to expand into the desert land at a future date. An increase in dangerous experimentation of chemical and biological dispersion at Dugway Proving Grounds is also of concern.

While the Air Force has promised to protect current grazing rights, local ranchers are apprehensive about changes to the AUM usage and water rights protection issues.

Public access in the expansion areas will remain open, but the Air Force will be allowed to close roads temporarily for safety and security purposes. Although the road closures are not supposed to last more than 3 hours and not occur more than ten times per year, the closures are concerning because of communication difficulties and the lack of alternative roads for the local citizens to use. •

-Annette Garland, GBWN Board

In Our BIG YEAR, Giving Thanks

reat Basin Water Network has much to

be thankful for as 2017 draws to a close. Well, first that the year is almost over. It's been a BIG YEAR for us. Why? There's what we accomplished together—at the Legislatures, on our



Water Tour, and in the legal arena where we succeeded in sending portions of the EIS back to BLM for a do-over, and relived the Groundhog Day Spring CDD hearing. Need we say more?

Yes. Because this demanding year was a success because of you. All of you who made a phone call, wrote a check, came to the Snake Valley Festival, bought a calendar, responded to email alerts, wrote letters to the editor, told the story of the Water Grab to the next generation of warriors, and more were part of our success.

We as a board of directors are especially thankful for our legal team of Simeon Herskovits and Iris Thornton, Advocates for Community and Environment, who were our support every step of the way. We are thankful for our communications guru Howard Watts who keeps GBWN's message in the forefront of social media every day. And for our partnership with White Pine County.

As a small volunteer organization, we truly depend on your financial support to keep us going. Your investment in GBWN and the water fight is in the future of rural places and the environment.

We give thanks that after 28 years, SNWA still has NO groundwater rights from the Valleys of the Grab. Thanks to all of us for that.

-Abby Johnson, GBWN President



Snake Valley Calendar for 2018 to benefit GBWN is available at the Border Inn in Baker, at Purple Avocado in Carson City, or email your request to Susan Wetmore: sywetmore@gmail.com. Above, November calendar photo by Gretchen Baker.

IN MEMORY OF ...

Great Basin Water Network is honored to receive donations in memory of or to honor people who have passed on. In 2013 when Jo Anne Garrett died, we created a fund in her honor to be used to sustain the organization or the work. Since then a number of families have chosen to honor their loved ones by designating Great Basin Water Network as a charity of choice.

Memorial donations have been made in honor of:

Dean Baker Cecil Garland Robin Bell Jo Anne Garrett Jean Crawford Anna Moore

Andrew Ferguson

For more information on designated gifts to GBWN, please email info4gbwn@gmail.com or call 775/881-8304.

How To Stay Involved with GBWN

Staying in Touch with GBWN: The best way to stay in touch and get action alerts in between Water Gab newsletters is to join our new email list! We promise not to abuse your inbox. You can now sign up on our website — www.greatbasinwater.net — right under links to check in with us on social media, where we post a lot of news and live coverage of water meetings. While you're there, check out our new monthly online giving option, and ways to contribute to GBWN when you make purchases via Amazon Smile and Giving Assistant.



GREAT BASIN WATER NETWORK

NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

P.O. Box 75
Baker, NV 89311
775/881-8304
info4gbwn@gmail.com
greatbasinwaternetwork.org





YOUR CONTRIBUTION TO GBWN IS MORE THAN A DROP IN THE



BUCKET.

NEW FESTIVAL DATE: August 31- September 2, 2018 Snake Valley Festival—Labor Day Weekend

Water Gab is a periodic newsletter of Great Basin Water Network to keep in touch with friends and neighbors about what's happening with the water grab fight. To learn more, check our updated website for news updates: www.greatbasinwaternetwork.org.

"Like" the Great Basin Water Network Facebook page to follow current news.



@GreatBasinWater





SHOP, EARN
CHANGE THE WORLD



ONSMILE Bookmark the Amazon Smile website, designate GBWN & You shop. Amazon will donate to GBWN.

Mail your tax deductible donation to: Great Basin Water Network, P.O. Box 75, Baker, NV 89311. Or donate or pledge using PayPal at our website. THANK YOU!

Fine print: Great Basin Water Network is an IRS approved tax exempt 501 (c) (3) organization. Donations may be deductible. Please contact your financial advisor. This statement is required by the State of Nevada.

Water Gab editor: Abby Johnson. Contributors: Steve Erickson, Annette Garland, Abby Johnson, Monte Sanford, Iris Thornton, John Walker, Howard Watts III. Photo credits: Mark Andreasen, Gretchen Baker, Dennis Ghiglieri, Abby Johnson, Monte Sanford.

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