

Water Gab

Volume 10, Issue 1 Spring, 2020

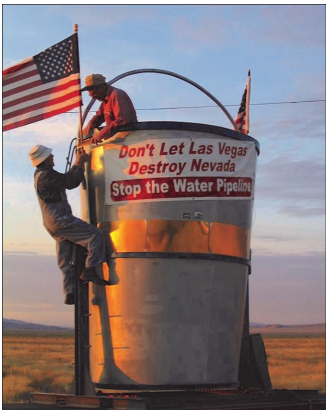


NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

SNWA LOSES COURT BATTLE

District Court Rules in GBWN's Favor; SNWA and State Engineer Give Up On Appeal

While all of us understand the gravity of the COVID-19 pandemic afflicting the nation and the world, GBWN, our allies, and our supporters have great reason to give thanks and to celebrate our legal victory in the long fight to stop Southern Nevada Water Authority's proposed massive water grab. This stunning defeat of SNWA and the State Engineer came about through two dramatic steps that came in quick succession this spring representing the culmination of our 31-year-long fight and 15 years of active legal battles.



Judge Estes' Decision

First, on March 9th, four months after a two-day standing room only oral argument in Ely, Senior Judge Robert Estes of Nevada's Seventh Judicial District Court issued a final Decision upholding the State Engineer's 2018 Ruling, Ruling No. 6446, denying SNWA's water rights applications in Spring, Cave, Dry Lake, and Delamar Valleys (the "Pipeline Project"). In his March 9th Decision, Judge Estes agreed with GBWN and White Pine County on every significant issue we have raised, briefed, and argued repeatedly in this long-running case. He issued a strong, well-reasoned opinion which held conclusively

(Legal Update continued on page 2)



THE VICTORY AND THE REALITY

We have many reasons to celebrate Judge Estes' decision and SNWA's choice to not appeal it. It is one of the best outcomes we could have ever imagined.

But that doesn't mean we are letting down our guard.

Judge Estes shredded the inadequacy of SNWA's plans and berated the State Engineer's decision making. His decision vindicated what GBWN and its allies have been saying all along: **The pipeline project is illegal.**

With that said, his ruling doesn't exclude the potential for legislative shenanigans or chicanery in the regulatory arena. It doesn't negate that SNWA still owns seven ranches in Spring Valley. It doesn't protect sacred tribal sites or revoke the 190,000 acre feet per year (afy) worth of applications for water that SNWA maintains in Snake, Railroad, Tikaboo, Three Lakes and Indian Springs Valleys, dating back to 1989.

It would be unwise to think that there won't be continued efforts to haul the water away from its local source. However, we can sleep a little easier knowing that the courts affirmed what we've been saying for 31 years.

SNWA's work cannot be undone with the snap of a finger.

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that: (1) there is insufficient water available in Spring, Cave, Dry Lake, and Delamar Valleys for SNWA's proposed Pipeline Project, which would amount to perpetual groundwater mining; (2) SNWA's proposed groundwater pumping in all of those valleys would re-

**... SNWA
IS WITHOUT ANY
WATER RIGHTS
FOR ITS
PIPELINE
PROJECT.**

sult in impermissible conflicts with existing water rights and unreasonable environmental harms; and (3) the monitoring, management, and mitigation plan ("3M Plan") offered by SNWA is grossly insufficient on its face to guard against the devastating conflicts with existing water rights and environmental harms those applications would cause.

In other words, SNWA's applications do not meet the requirements of Nevada water law and the State Engineer properly denied them in 2018, but he erred in approving SNWA's revised 3M Plan, which remains fatally deficient. Not only did Judge Estes make clear findings as to the unavailability of water, the likelihood of impermissible conflicts with existing water rights and unreasonable harm to the environment, and the deficiencies of SNWA's 3M Plan, he also systematically and forcefully exposed the invalidity of SNWA's and the State Engineer's attempts to misstate the law and misrepresent the facts of the case.

This District Court win is a monumental victory for GBWN, White Pine County and our allies, because it

represents the culmination of a long line of interim victories we have won against SNWA, and because this is the first time we have obtained such a clear, thoroughly reasoned, and final ruling. GBWN's District Court victory is especially significant because Judge Estes' Decision is a final ruling on the merits of the case, conclusively holding in our favor on all the fundamental issues and not providing for any additional remand to the State Engineer that would give him and SNWA the chance to revisit any of the issues or to attempt to rehabilitate any of his or SNWA's errors. In recognition of the fact that SNWA has had numerous opportunities to present its case for water rights to support the Pipeline Project and in recognition of the fact that SNWA's Project is impermissible under the law, rather than remand the State Engineer's Ruling 6446 back to the State Engineer again, in his March 9th Decision Judge Estes made clear that all of his rulings are final. Thus, SNWA is without any water rights for its Pipeline Project. The only option SNWA and the State Engineer were left with was to appeal Judge Estes' March 9th rulings to the State Supreme Court.



Senior Judge
Robert Estes

No Appeal of Judge Estes' Ruling

Second, perhaps as a consequence of how thoroughly reasoned and systematically devastating Judge Estes' Decision is with regard to their legal arguments and their misrepresentations regarding the evidence, we learned on Thursday, April 16, that SNWA and the

(Legal Update continued on page 3)

(Victory and Reality continued from page 1)

Federal laws, state laws, stipulated agreements, real estate deals, regulatory filings and other factors are all playing a role in what we view as the endgame. And our position is simple: We will decide when this project is dead.

While we can all breathe a sigh of sweet, sweet relief – we cannot let down our guard. What do you think will happen in the 2021 legislative session? Maybe a push to change water Nevada law? In our line of work, there's an old saying: Our victories are temporary – theirs last forever.

Whatever happens, we will continue to inform you and call on you when we need help. Our greatest strength is the uncanny coalition that has punched above its weight class year after year. Indeed, we just landed a knockout blow in this bout. But that doesn't mean we won't ever be back in the ring.

— Kyle Roerink, GBWN Executive Director

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(Legal Victory continued from page 2)

State Engineer both had formally decided not to appeal Judge Estes' Decision. That means that Judge Estes' March 9th Decision is the last word on this case. After more than a decade of repeated bruising losses to us, the State Engineer and SNWA appear finally to have given up.

Victory In Court

The recent decision not to appeal Judge Estes' Decision is an extraordinarily abject admission of utter defeat, because for over a decade both SNWA and the State Engineer have publicly insisted that this case ultimately would be appealed to and decided by the Nevada Supreme Court. Both SNWA and the State Engineer twice previously tried to appeal our prior district court victories on the substance of the case to the State Supreme Court, and twice they have been frustrated in those attempted appeals. However, SNWA and the State Engineer both seem to have finally realized that they simply cannot prevail.

More than fifteen years ago, when we started to battle SNWA in the first of the State Engineer's pre-hearing conferences on Pipeline water applications, nearly all of the supposed experts on Nevada water law and politics dismissed us and our arguments as hopelessly Quixotic. Nonetheless we persisted, and over the years began to amass an unbroken series of victories over the State Engineer and SNWA, changing the nature of and assumptions underpinning the public discussion regarding water rights and water resources in Nevada. For now, we finally have prevailed in our fight against the SNWA Pipeline Project in state court.

While we cannot say for certain that SNWA will not come back at some point in the future and try again to

grab rural Nevada's water, it still is worth taking a step back from our fighter's crouch to marvel at how we have successfully prevented what would have been a disastrous water export project by forcing two of Nevada's mightiest institutions to comply with the law, which ensures the long-term sustainable use of Nevada's precious and scarce water resources. And rest assured, GBWN and our allies will continue to work to ensure that this critical victory is enforced



Simeon Herskovits and Susan Lynn

and maintained to protect the future of rural communities and the environment of eastern Nevada and western Utah.

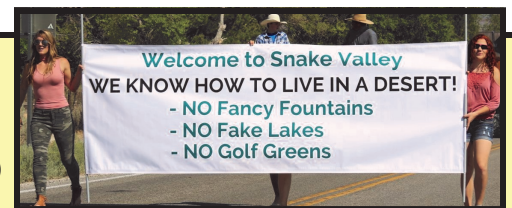
—Simeon Herskovits and Iris Thornton, Advocates for Community and Environment

Friends of the Great Basin,

*Let's take a moment to rejoice and to reflect on what we have accomplished together. This is a huge victory for GBWN and our steadfast allies and a vindication of our decades long David v Goliath battle, although more work must be done to extinguish all Water Grab applications. Our diverse coalition team-effort spanning decades and generations, feisty determination, volunteer zealots, brilliant attorneys, and versatile executive director are a winning combination. **All hail to all who helped, donated, and sacrificed to get us here.***

*But our work is not done. **Please consider a matched donation (see page 7) to keep the pressure on to end the Grab.** Thanks be to all!*

—Abby Johnson, President, GBWN



2020 SNAKE VALLEY FESTIVAL CANCELED Community Events Considered for Autumn

The twelfth annual Snake Valley Festival has been canceled for 2020 due to the coronavirus. Community organizers met (virtually) in March and April to discuss options going forward. Popular events such as the community yard sale could occur during summer or fall. **The Snake Valley wall calendar is being produced for 2021**, with availability for purchase in the fall. Please stay tuned through emails and social media for announcements.

For eleven consecutive years, the community of Snake Valley has organized the Snake Valley Festival to celebrate and raise funds in support of community preservation. All proceeds from festival events benefit the Great Basin Water Network to help protect the water and environment in eastern Nevada and the west desert of Utah. This community support has helped immensely with the legal expenses for the water fight.

Check www.protectsnakevalley.org or e-mail SnakeValleyFestival@gmail.com for info updates.

UTAH UPDATE:

Legislature OKs Water Banking; Cheers Lake Powell Pipeline

It already seems long ago, but the recently concluded Utah legislative session was a difficult one for conservationists, despite reasonable progress on water issues. The Legislature managed to address a few long-standing, cumbersome and sometimes controversial issues with water law, passed some new initiatives that could have some significant future benefits for flexibility in local water management, and largely avoided meaningful action on the controversial Lake Powell and Bear River water development projects.

The Utah Division of Water Rights is in the midst of a General Adjudication of water rights in the most-populous County of Salt Lake, as part of a planned statewide adjudication. This process prompted the State Engineer to seek clean-up of some technical legal issues, and those were enacted in [HB 94](#), [HB 95](#), and [HB 96](#). [HJR 3](#) will put before the voters this November the removal of an anachronistic provision in the Utah Constitution that absolutely prohibits municipalities from “directly or indirectly” leasing, selling, alienating or disposing of water rights, water works or sources of supply. The change would keep these prohibitions but allow water rights and sources exchanges between municipalities, and allow them to provide water service to areas outside of municipal boundaries. This recognizes work-arounds in current practice, so not much changes on the ground.

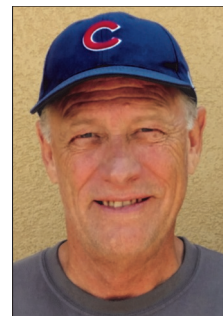
Two bills passed which offer farmers and ranchers opportunity for flexible use or nonuse of their water rights without jeopardy of forfeiture. [SB 26](#) allows for establishing local water banks to facilitate voluntary and temporary transfer of water rights from one user to another. This will support agricultural producers financially while allowing for municipal or environmental use of the water they don't need or choose to use. The state will oversee and regulate all water banks and rights deposited within them. This is framed as a 10-year pilot program to see if there is demand in the market, and it will be monitored and modified as needed.

The companion to SB 26 is [HB 130](#), which allows for split-season leasing to encourage flexible use and sharing of water among users. Change applications may be set for a fixed-time of up to 10 years, and water right holders may change how, where and when they use that right. For instance, a farmer might fallow fields in late season and lease that used irrigation water to a neighbor for third cuttings of hay. The intent is to conserve water in times of shortages or growing demand.

We were relieved that there were no major legislative actions to facilitate the Lake Powell Pipeline or Bear River development, though legislators couldn't resist a resolution supporting LPP and Utah's right to develop its allocation of the Colorado River under the Compact ([HCR 22](#)). Or to study diverting Green River water to the Wasatch Front ([HB 322](#)). More importantly though, the Bureau of Reclamation is now preparing a Draft EIS for the LPP under a greatly compressed schedule, so watch for that release later this year. And planning and expenditures continue for damming or diverting up to 220,000 afy from the Bear, including a proposal to store this water in Bear Lake. This water would be for continued growth and development along the Wasatch Front, and is an existential threat to Great Salt Lake, which gets 60% of its water from Bear River.

Lastly, Kent Jones, State Engineer since 2009, ended his 39-year career with the Utah Division of Water Rights. Boyd Clayton, Deputy Director of DWRi, whom many of you know as the liaison to GBWN throughout the last 15 years of our fight against the Water Grab, also retired. We wish them both a long and enjoyable retirement! And we congratulate new State Engineer, Theresa Wilhelmsen, and wish her well in her challenging position.

—Steve Erickson, GBWN Board



STANDING TALL FOR THE SWAMP CEDARS IN SACRED WATER VALLEY

Indigenous leaders in Eastern Nevada and Western Utah are working with GBWN to educate the public about Spring Valley's most sacred place.

You may have heard of the area locally called Swamp Cedars or Shoshone Cedars. My ancestors, the Newe people that lived in the area prior to Western Expansion, called it the "Sacred Water Valley" or Bahsahwahbee.

Prior to white settlement, Bahsahwahbee was a gathering area where people from across the Great Basin traveled to worship, celebrate, and heal. Today, that remains true. For the Duckwater Shoshone, Ely Shoshone and the Confederated Tribes of the Goshute Reservation, the site is the equivalent to Vatican City for a Catholic or Mecca for a Muslim.

Because of factors like drought, climate change, SNWA, and other attempts at water pillaging, many of us are mobilizing to ensure that Bahsahwahbee remains for future generations. Right now, we are working on a series of educational initiatives, events and outreach efforts. As a member of the Ely Shoshone and board member of GBWN, I am uplifted by the synergy of efforts in the community to tell Bahsahwahbee's story and preserve its sanctity.

Bahsahwahbee is not just a piece of tribal history. It is American history and a harbinger of the future of indigenous communities.

Military officials and vigilantes murdered Newe people there during three massacres between 1850

and 1900. Victims included women, children and elders whose bodies were viciously mutilated. Because it was such a violent event, the spirits of those desecrated are believed to remain in the shallow-rooted Rocky Mountain Juniper trees, referred to as Swamp Cedars. We Shoshone people still visit this location to show our respect for our Elders. To this day, Bahsahwahbee remains a place of mourning for my people.

My grandmother, Laurene Mamie Swallow, survived the Bahsahwahbee massacre of 1897. Oral histories that she and other tribal elders shared, along with documentation from military officials, have served as the historical basis for what we know about the site today.

Despite that information, it is important to note that Bahsahwahbee is more than a place in history.

The Swamp Cedars would be lost forever if large-scale pumping were to occur at the site. And, therefore, the ability for indigenous people to practice their spiritual beliefs would be gone too.

We are grateful that tribal leaders, the Great Basin Heritage Area, and other groups are committed to educating, sharing, and enlightening the public about the significance of Bahsahwahbee. We want to especially thank Chairman Rupert Steele who is tirelessly working with local communities on initiatives to help others understand the value of Bahsahwahbee.

Together, I hope we can continue to protect such a special place. No matter what happens with SNWA in the future, we must ensure that Spring Valley remains sacred.

— Delaine Spilsbury, GBWN Board

**THE SWAMP CEDARS
WOULD BE LOST
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AT THE SITE**



Delaine Spilsbury among the sacred swamp cedars in Spring Valley

WILL URBAN SPRAWL BE THE RISE OR FALL OF VEGAS?

LANDS BILLS COULD ENABLE SPRAWL-ATHON

Right now, officials in Clark County are pushing to sprawl the state's largest city by selling off public lands to real estate developers.

They are hoping that Nevada's Congressional Delegation will push the lands bill in the current Congress – potentially during a public health crisis.

In the nation's driest state, you would think this development conversation would center around long-term water availability. Unfortunately, it's not.

No public conversations or debates about the *Southern Nevada Economic Development and Conservation Act's* effect on Las Vegas' water supply have happened. For rural Nevada, that's not comforting.

In the targeted basins slated for new development in Clark County, there is no groundwater available to support growth. That means water will have to be piped in from existing sources for new subdivisions and shopping malls to sprout up in the desert. In the case of Clark County, that means relying on the Colorado River and future resources.

With lands bills of this kind, there's an inherent implication that water will be there. Water is available today in the Colorado River. But considering climate change, drought and the specter of new demands among the Colorado River communities in seven states, we should have in-depth conversations about what the next 100 years

look like before putting families and businesses in water-less areas currently undeveloped. Southern Nevada will need a new supply of water in 30 years if high-demand, drought and climate change plague the Colorado River, according to SNWA.

Accordingly, we weren't surprised to see a loophole for the pipeline in an early draft of the bill.

Thanks to GBWN and its allies, the pro-pipeline language was removed.

However, GBWN continues to oppose this legislation because urban sprawl was the genesis of the pipeline's purported need. If Southern Nevada relied on a growth model that valued sustainability more than volume, we may not be in the current situation. A bill like what's being proposed will only exacerbate the core issue: more people living in a desert community where 60 percent of the water is not recycled.

After GBWN's major court victory, SNWA is now promising to remove the pipeline from its 50-year resource portfolio in return for more conservation and downriver collaboration in California.

The Water Authority is currently looking to increase rates to raise \$3.2 billion. It would invest \$728 million of that on Colorado River collaborations that would likely lead to investments in desalination or water treatment facilities in California or Mexico.

These deals are still in their preliminary stages and assume that there will always be water in an already over-allocated and over-taxed river.

We applaud SNWA for investigating these opportunities while promising to get tougher on water waste in Southern Nevada. Those tactics will be essential for meeting the long-term needs of current residents. And GBWN will always support the Water Authority in those efforts.

However, the push to expand the footprint of Las Vegas is a water problem in search of a water solution that won't bode well for rural areas in the nation's driest state. —Kyle Roerink, GBWN ED

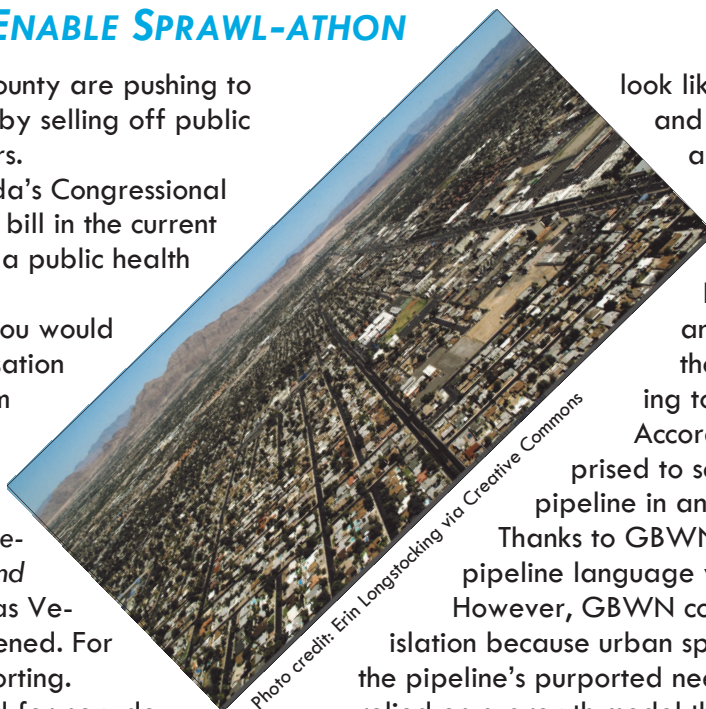
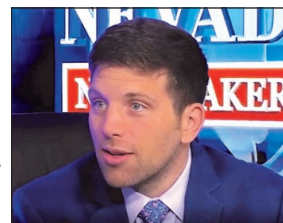


Photo credit: Erin Longstocking via Creative Commons



What About Coyote Springs?

We are expecting a ruling from the Nevada State Engineer on Order 1303 any time. Order 1303 is just an attempt to characterize the hydrology. Painful cuts to water rights holders and existing pumping will likely be necessary, and a separate order will address how that happens. In the meantime, if there isn't sufficient water for current pumping, then there certainly won't be for Coyote Springs, so the fate of the city in the desert is looking dubious at this time.

We'll provide an update in our next newsletter on Clark County's move to purchase the portion of Coyote Springs development in the County. Stay tuned...



EXECUTIVE DIRECTOR UPDATE

Fellow water warriors, I write to you at a time when our nation is undergoing a major public health crisis. It's hard to compare a crisis like COVID-19 to fighting the water wars. But one common thread is the unpredictability of both the virus and the long-term water supply in the nation's driest state.

We can never predict what the future holds. That's why the coronavirus outbreak underscores the importance of protecting water in communities like Baker, Ely, Lund, Duckwater, Ibapah, Panaca, Pioche and other rural towns in the pathway of the water grab.

Water availability in our aquifers, streams and springs is like going to the store for groceries. Year after year, there's always toilet paper, milk and bread. Many of us take it for granted. Then one day it's not available like it once was, and things get scary.

The Great Basin Water Network is working to ensure that there won't be a day when springs fail to bubble, stock tanks don't brim and streams can't flow in Eastern Nevada and Western Utah.

When we budgeted for 2020-2021, we could not imagine what we are now witnessing. And now, it is fair to say that a pandemic like this can even affect our effort to keep water local.

We recognize the unprecedented uncertainty gripping all of our communities right now. But please know that we all play an important role for the future of the region. In these dreary times, **please know that you have made a difference and can continue to make a difference by supporting GBWN any way you can** — whether that be sharing our posts on social media, writing a letter to local officials, or sending us a check. Every ounce of positive energy you can spare helps our cause.

Thanks to you we have achieved a

major legal milestone this year — winning by such a devastating margin in district court that SNWA and the State Engineer didn't appeal. We have undertaken projects to educate folks about rangelands, sacred tribal sites, and wildlife. We have strengthened our relationships in Las Vegas to further spread the message that conservation and collaboration are better options than the pipeline. The way we overcome COVID-19 is the same way we have worked to thwart the water grab. We put aside our differences, focus on a goal, and work together to achieve the desired outcome.

I can't predict the future. But I know our collective resilience and spirit can overcome any virus, any water grab.

—Kyle Roerink, GBWN Executive Director

OUR WORK IS NOT COMPLETE Donor To Match Up To \$15,000

We have overwhelmingly won in court against SNWA. Thank you for the calls, texts, emails and social media posts. Many thought this moment was impossible. But folks like you knew our fight was one worth fighting. Our recent victory completed an unbroken line of seven legal upsets against SNWA in our 31-year battle. That success would not have been possible without you. Please join us in celebrating the decades of work undertaken to stop this project.

Inspired by our court victories, a generous donor reached out last week to rejoice and express continued support — **promising to match all contributions made to GBWN by June 1 or up to \$15,000, whatever comes first.** Please consider taking advantage of this opportunity by [writing us a check](#) or [donating with a credit card online via PayPal](#).

A number of outstanding issues remain:

- 1989 Water Grab applications in Snake Valley, Railroad Valley, Three Lakes Valley, Tikaboo Valley and Indian Springs remain — totaling some 190,000 acre feet per year.
- There's lingering uncertainty about the "double set" of SNWA applications that resulted from our 2010 victory in the Nevada Supreme Court.
- SNWA's BLM Right of Way application still remains.
- SNWA owns seven ranches in Spring Valley — with more than 30,000 afy of water rights and 900,000 acres of grazing allotments.
- Stipulated agreements managed by SNWA publicly muzzle federal agencies and repress rural communities.
- Threats to indigenous sacred sites like the swamp cedars and communities like Duckwater remain.

If GBWN isn't working to protect the resources that define these places — who else will? There's no better time than now to reaffirm your commitment to protecting our special places with a donation to GBWN. We are not going to back down now.

In our line of work there's an old saying: Our victories are temporary while our opponents' victories last forever. There's more work to do. And it cannot be done without you. [Please donate whatever you can, to be matched by our generous donor.](#) Our water, our heritage, and our future depend on it. —Kyle Roerink, ED



Water Gab

**GREAT BASIN
WATER NETWORK**

NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

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*Water Grab
Win!!!*

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



2020 SNAKE VALLEY FESTIVAL CANCELLED

Possible events this Fall

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.



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Water Gab editor: Abby Johnson. Contributors: Patrick Donnelly, Steve Erickson, Simeon Herskovits, Abby Johnson, Kyle Roerink, Delaine Spilsbury, Iris Thornton. Photo credits: Gretchen Baker, Abby Johnson.

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