



A Q&A with environmental lawyer Simeon Herskovits

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By Launce Rake

Simeon Herskovits was once on track to be a lawyer for business interests on Wall Street, but a calling to address critical issues of environmental, social and economic justice brought him to the Southwest. A former staff attorney and director of the Western Environmental Law Center's southwest office, his permanent office is now in Taos, N.M., where he is the president of the firm Advocates for Community and the Environment.

He represents Great Basin Water Network, White Pine County and a host of others working to stop the Groundwater Development Program of the Southern Nevada Water Authority, the \$15 billion plan to pump groundwater from rural Nevada.



Last month, a Nevada judge heard arguments from SNWA and Herskovits in the opponents' challenge to a Nevada state engineer's decision that would allow SNWA to pump 84,000 acre-feet — more than 27 billion gallons — annually from the arid Eastern Nevada valleys. *CityLife's* Launce Rake (who once worked with Great Basin Water Network and conservation groups opposing the project) questioned Herskovits on issues surrounding the pipeline.

When did you first become aware of the project?

I think it was in 2005. Susan [Lynn] and Rose [Strickland, both activists with Great Basin Water Network] were working on Walker River and Walker Lake issues with me. They became aware of my earlier, successful work on the issue of the Cadiz Groundwater Development Project in Southern California, and that made them think I was experienced in this kind of work and this kind of issue. It may have been 2004, when they approached me to talk about Coyote Springs [a stalled project to build 250,000 homes on the Clark/Lincoln county line] and Harvey Whittimore [the developer]. At that time they alluded to what they suspected was the connection between the proposed Coyote Springs development and SNWA's big proposed groundwater pipeline.

Clearly, the opponents to this project, from Native American groups to local governments to conservation groups, don't have significant financial resources, so you're not into this for the money. What motivates you personally?

In terms of a more general motivation, I made the choice to leave a Wall Street law job to do environmental work with a social justice component because those values always appealed to me. At the Western Environmental Law Center, I was really drawn into water and other resource management issues. They bring together a broad variety of socio-economic and environmental factors. There's a fascinating mix of issues, and types of people. These factors make me feel that the work is very valuable and targeted towards achieving a kind of sound, holistic approach to resource management. I try to make a contribution to the effort to move public policy in a more sustainable, less destructive direction.

What is the overall problem with the groundwater plan from your perspective?

In the West, water is scarce and everyone knows it. It's always been a very serious resource management issue, but now the level of pressure has really grown because of development in the West. There is a worsening imbalance in places like Las Vegas or Southern California between the aggressive development plans of cities and the reality of available resources.

In this particular case, the proposal is a grossly irresponsible and ill-conceived project that is going to have permanent and severe effects, that will affect specific federal lands, and that will have terrible impacts on communities and individuals. ... It will destroy core aspects of tribal lands and devastate the livelihoods and ways of life of ranchers and farmers.

The project is a tremendous threat to the communities and the social and environmental integrity of the region.

SNWA and its supporters say the opposition has got it all wrong, that there are safeguards in place to stop environmental or economic damage to rural Nevada and Utah. Is the real issue just dislike for Las Vegas and the urban values that the city brings to the table?

I don't think people, most people, are anti-Las Vegas. I don't think the people opposing the project are anti-growth and anti-development. A few may be, but personally speaking I am not opposed to growth and development at all. But all of them, they are in favor of a much more responsible and measured approach to growth everywhere and especially in Las Vegas and the West, and everywhere where resources are stretched thin.

A core issue, separate from the issue of water resource management, is more generally, shouldn't growth be managed with a longer view, and address the question of how to balance the trajectory and shape of growth, balance communities so they are less intensive in the demands they put on resources such as water?

Last month, SNWA and the pipeline opposition presented arguments for and against the state engineer's decision. Where are you in the effort to block that from actually happening?

There are a variety of fronts, I guess you can say, or a variety of different forums in which the issue needs to be addressed. One of them is the state water-law legal proceedings, before the Nevada state engineer, and now that it is in the (state) courts. We briefed it and now we are

before a judge. It is in the judge's hands, and he will rule when he has the opportunity. [Ed note: Herskovits said he doesn't realistically expect a decision before September.]

I don't mean to presume anything, but the decision will very likely be appealed, whatever that decision is. If we win, the other side will appeal to the Nevada Supreme Court. If they win, we will appeal, almost certainly. I don't pre-judge any case or ruling until I've had a chance to review it, but both sides have really dug into these issues deeply over a period of years now. The issues have tremendous importance to the state. So I think it's highly likely that one side or the other will take this issue up to the Supreme Court. That's the state process.

Then there is a federal process [a Bureau of Land Management decision gave SNWA the right to build wells and pipelines last year] that is going to be subject to litigation, and that whole process has not really started but its turn is coming. It would be realistic to anticipate four to six years of federal litigation.

One of those other issues appears to be the decision by Utah Gov. Gary Herbert to decline to sign an agreement, called for by federal law, that would allow SNWA to extract water in the Snake Valley, which is shared by Utah and Nevada. Did Gov. Herbert's decision surprise you?

I was surprised, but the fact that Southern Nevada is taking this kind of intransigent approach, that doesn't bode well in my mind for some kind of quick or easy resolution. It is my impression that Utah [in the years of discussions between the two states] tried to do justice to itself and to the residents. The truth is, they [Utah negotiators] gave in on most everything. SNWA would receive an inequitable allowance of water that doesn't even exist in the valley. There are people who believe that the agreement is a good thing, but I think there is a very serious question whether the apparent and proposed mitigation procedures would be genuinely enforceable.

If not rural water, what is the long-term answer for Vegas' water needs?

Las Vegas needs a genuinely visionary and ambitious set of people running its water agencies. The current crop is not those people. The current crop talks about conservation while from the other side of their mouths they are disparaging conservation and conservation methods. I don't think you can overstate the role that conservation, more efficient use, is going to play and has to play in the Southwest. ... I think conservation is the key thing.

Desalination of ocean water has had issues with energy use and environmental impacts, but the problems, they are all eminently fixable. There are progressive solutions being worked on that will make it more cost-efficient, more energy effective and more environmentally benign. A relatively modest amount of desalination could revolutionize the water resource situation for the Southwest and for Las Vegas. I'm sure it will be done at some point.

Will rural and urban Nevada ever be able to resolve this struggle over water?

I don't know the answer to the question. The best and maybe only way to end [the struggle] is for the project to end. SNWA has enormous financial resources. ... They can afford to continue that game for a long time. If they eventually come to their senses and realize there are possibly more affordable and responsible alternatives, then the fight can come to an end.

I don't see the opponents giving up or going away because I think they are right, there is not a sound scientific basis for going forward with this project. The costs are pretty clearly going to be

severe. What's more, for many of the project's opponents, the struggle is existential. So they cannot and will not ever give up fighting. SNWA publicly says it will pump responsibly and not pump what they have been given the right to pump if there are substantial negative impacts — but there is no guarantee that this would be enforceable, and frankly, it's just not credible.