

Water Gab

Volume 9, Issue 1 Spring, 2019



NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

LEGAL UPDATE: FIRST BRIEFS FILED IN APPEAL OF NSE RULING NSE Denied SNWA Apps But Wrongly Approved Deficient 3M Plans

On April 1, 2019, GBWN, our allies including White Pine County, and SNWA all filed Opening Briefs in the Nevada State District Court appeal of the State Engineer’s August 17, 2018, Ruling (Ruling No. 6446) on SNWA’s water pipeline applications in Spring, Cave, Dry Lake, and Delamar Valleys (SCDD). The appeal was initiated in September when GBWN, the other protestants, and SNWA all filed petitions for judicial review.

5	IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA	
6		
7	IN AND FOR THE COUNTY OF WHITE PINE	
8	WHITE PINE COUNTY, et al., and)
9	CONSOLIDATED CASES,)
	Petitioners,)
	vs.)
	TIM WILSON, P.E., Nevada State Engineer,)
	DIVISION OF WATER RESOURCES,)
	DEPARTMENT OF CONSERVATION AND)
	NATURAL RESOURCES,)
	Respondent.)
6	PETITIONERS WHITE PINE COUNTY, ET AL. OPENING BRIEF	

All of the petitions have been consolidated and again are being heard by Senior Judge Robert Estes. In 2013, Judge Estes issued the Remand Decision that overturned the State Engineer’s (NSE) prior attempt to approve SNWA’s applications, sending them back to the State Engineer for reconsideration regarding the availability of water and the adequacy of the monitoring, management, and mitigation plans (“3M Plans”) for SNWA’s massive pipeline project. We expect oral arguments before Judge Estes later this year.

While NSE Ruling 6446 denied all of SNWA’s SCDD applications because SNWA failed to provide evidence that sufficient water is available, the ruling was a complicated one. While denying SNWA’s water rights applications, the State Engineer still approved SNWA’s clearly deficient 3M Plans, which he held could be imple-

(SCDD continued on page 2)

SNAKE VALLEY FESTIVAL SET FOR JUNE 6-9 IN BAKER

Friends and supporters will gather in Baker, Nevada for the eleventh annual Snake Valley Festival to celebrate and raise funds in support of community preservation. All proceeds from the festival events will benefit the Great Basin Water Network to help protect the water and environment in eastern Nevada and the west desert of Utah.

An ice cream social and bingo at Baker Hall will kick off events **Thursday** night at Baker Hall lawn and Community Center. **Friday** (from 6-9 pm) the Whispering Elms hosts a beer tasting party and silent auction. All of the brews featured at the beer tasting are brewed with water from the Great Basin. **Saturday** will begin at 7 am with a pancake breakfast at Kerouac’s Café in downtown Baker. The town parade, with a water theme, will start at 10 am and complete its circuit twice, lest any spectators blink and miss it. Activities continue with a community yard sale, food and craft booths, a book sale, a silent auction, bake sale, live music, kids’ games, and a massive water fight. The day will culminate with a BBQ at the Border Inn, 5:30 pm NV time. **Sunday**, the festivities officially end with the local Farmer’s Market (from 9 – noon) located at the Church Pavilion and a community softball game at noon. For more information and a list of events, go to www.protectsnakevalley.org or e-mail SnakeValleyFestival@gmail.com.



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Water Gab

(SCDD continued from page 1)



Tim Wilson is now Acting State Engineer, replacing Jason King who retired in January.

mented at some point in the future should the rest of the ruling be reversed and SNWA's applications be granted. The State Engineer also made a direct attack on the District Court's interpretation of

Nevada water law and asked Judge Estes to change his ruling and approve groundwater mining, the perpetual lowering of the groundwater table, for the first time in Nevada's history. The State Engineer's approval of SNWA's 3M Plans and his attack on longstanding

principles of Nevada water law forced GBWN and our fellow protestants and allies to appeal Ruling 6446 to overturn the State Engineer's approval of deficient 3M Plans and ensure it is not leveraged to support SNWA's pipeline project in the future. We hope this ensures that the State Engineer's distortion of Nevada's water law does not stand. So

even though Ruling 6446's denial of SNWA's applications was an important victory for foes of the pipeline, securing that victory by correcting these fundamental errors is imperative.

During the 2017 remand hearing, GBWN and our allies advocated for the denial of SNWA's applications by the State Engineer because, despite the District Court's explicit directions,

SNWA failed to produce any evidence demonstrating: (1) that any amount of water is available for appropriation in the targeted valleys; (2) that its applications would not conflict with existing rights; (3) that its applications would be consistent with the public interest; or (4) that its applications would be environmentally sound in relation to the basins of origin. Because SNWA chose not to even address or present evidence that cured these deficiencies, despite the District Court's explicit order that these deficiencies be remedied, we think it is clear that the NSE correctly denied SNWA's applications consistent with Nevada law and the District Court's Remand Decision.

Everyone recognizes that this case is headed to the Nevada Supreme Court, which likely will be called on to make the ultimate decision on the issues that will determine the fate of SNWA's water rights applications and pipeline project. We believe the law plainly required the State Engineer to deny SNWA's applications in Ruling 6446 and the District Court should affirm the State Engineer's denial of SNWA's applications, while correcting misstatements of law and fact regarding water availability and the 3M Plans. While the case works its way through the courts, SNWA will remain without any water rights to support its pipeline project, despite having now had four bites at the proverbial apple. In contrast, GBWN and our allies will work to protect our latest victory in the fight to protect rural communities and the environment of eastern Nevada and western Utah against SNWA's ill-conceived, costly water grab.

When the oral arguments before Judge Estes are scheduled, GBWN will get the word out through email, Facebook and Twitter.

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

... EVEN THOUGH DENIAL OF SNWA'S APPLICATIONS WAS AN IMPORTANT VICTORY...SECURING THAT VICTORY BY CORRECTING THESE FUNDAMENTAL ERRORS IS IMPERATIVE.

Sagebrush Heathen: The Art of Jack Malotte

June 8 - October 20, 2019
Nevada Museum of Art in Reno

Jack Malotte makes artworks that celebrate the landscapes of the Great Basin, with a unique focus on contemporary political issues faced by Native people seeking to protect and preserve access to their lands. Malotte's most recent work reconsiders historical narratives and myths of the American West, refers to Western Shoshone and Washoe traditions and legends, and highlights long-time political, environmental, and legal struggles of Native communities.

Water Gab



GBWN Board Welcomes New ED

The GBWN Board of Directors is pleased to announce the appointment of Kyle Roerink as Executive Director. In 2018 the Board decided to take the organization and the water fight to the next level by hiring its first paid staff person as ED/lobbyist/fundraiser/administrator. Kyle trained as a journalist and worked for the Las Vegas Sun, covering water issues before serving as Congresswoman Dina Titus' communications director. He returned to Reno, where he now lives, to work for the Question 6 ballot measure. He is protecting our interests at the Nevada legislature and fully engaged in the challenges of program, policy, and fundraising.

I'm very pleased to NOT be at the legislature this session and that GBWN has Kyle's energy, skill set and passion to help us move the water fight forward. Kyle plans to attend the Snake Valley Festival (unless there's a special session) and looks forward to meeting everyone. —Abby Johnson, GBWN President •

was two years old when the Las Vegas Valley Water District filed the original permits in 1989 to facilitate the pipeline. The times have changed — and I have too — but one thing remains: The Southern Nevada Water Authority wants water that doesn't exist.

The GBWN board hired me as the organization's first executive director in December. It didn't take long for me to step into the line of fire. But I am happy to report that as of press time we have been successful in the Legislature at fending off dangerous proposals by state regulators to upend Nevada water law as we know it. AB 30 and AB 51, as originally written, were pro-pipeline bills — plain and simple. AB 51 will not be moving forward, and AB 30 was gutted in favor of a compromise that doesn't harm senior rights or pave the way for a water grab. But the brouhaha exemplifies that we are still in the fight of our lives.

It is true that the ratepayer-funded attack on Eastern Nevada is still in full swing. Aside from the legislative battles, we are back in Nevada's Seventh District Court fighting the State Engineer and SNWA. But unlike the days of old, the Water Grabbers have now deployed a strategy in which they tell lawmakers, lobbyists, and others that the

pipeline is no longer a top priority and that the bills they want to pass have nothing to do with the water grab. They are wrong, and their actions in court and the Legislature tell the real story.

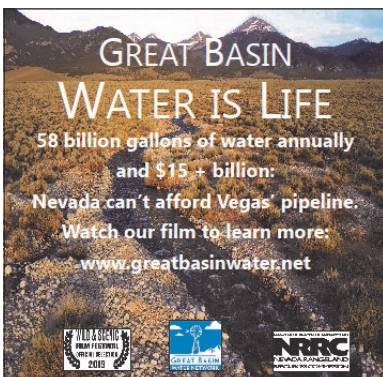
So, when people ask, "Is the Pipeline fight still ongoing?" Your answer is an unequivocal, full-throated YES! In fact, it is up to you to help us raise awareness. Follow us on Facebook and Twitter and join our email list to stay up to date and spread the word. Additionally, please consider donating to GBWN.

Our future success requires that we must maintain our best line of defense: unity.

GBWN's strength is our strange-bedfellows coalition. On every other issue, folks aligned in our network may disagree. On the pipeline, however, we are a united front. We consult with farmers, ranchers, rural Nevada officials, tribal members, and environmentalists. That will not change. As long as you are opposed to the pipeline, your voice and your concerns will be heard and respected. Call me. Email me. I want to hear from you.

The greatest privilege about my job is working with such a diverse coalition. From ranchers like Hank Vogler to new GBWN board members like Chris Giunchigliani, I am inspired by our collective opposition to SNWA's water grab. Where else can we find this type of consensus on such a contentious issue? The pipeline's wide-ranging opposition represents the best elements of our democracy. This is an existential threat that we are fighting together.

Unity — as it has been shown in the last three decades — will protect what matters most. After all, water is life. —Kyle Roerink kyle4gbwn@gmail.com •



UTAH UPDATE:

2019 Legislature OKs Watered Down Metering Requirements

The Utah Legislature concluded a tumultuous session the evening of March 14, serving up the usual dose of good, bad and ugly on the environmental front. Overall, it was a positive, productive session for water policy, as some new initiatives were launched and some long-standing, contentious matters of water law were resolved.

A top priority bill, SB 52-Secondary Water Metering Requirements, was enacted after hard deadlines for compliance were “watered down” and without the requested \$10-\$20 million in General Funds to support progress in metering. The final bill does require that all new construction of untreated, pressurized water systems be metered, and lays the groundwork for eventual metering of all existing secondary water systems. Legislators also approved moving forward with studies, plans and funding for a water banking pilot program (SJR 1).

SB 17 defines the extent of and process for municipalities to continue to exercise jurisdiction over water sources outside of their political boundaries in order to protect and maintain water quality in entire watershed of their source of supply. HB 31 contributed by describing the process by which a municipality may provide water to customers outside of the municipality’s boundaries. And HJR 1 will ask voters in 2020 to amend the Utah Constitution to allow municipalities to sell surplus water rights or resources while preventing illegal water speculation. If approved by the voters, these three bills should resolve the sticky issue of “extraterritorial jurisdiction”.

Resolutions were passed urging congressional approval of the long-awaited Utah Navajo water rights settlement (SCR 9), and supporting efforts to keep sufficient water in Great Salt Lake to protect its resources and habitats (HCR 10). Competing bills to either withdraw previous legislative approval of a hazardous waste landfill on the shores of Great Salt Lake (HJR 23) or to exempt the same Promontory Point waste dump from further environmental review (SB 266) failed to win approval.

Unfortunately, so did two good water conservation bills. HB 377 would have required the State Capitol Complex to create and implement a water use plan and cut its consumption by 25%. And HB 143 would have required retail water suppliers and water conservation districts (wholesalers) to evaluate specific measures, and their costs and avoided costs to reduce water use to 175 gallons per capita per day.

No action was taken on the major water supply development/diversion projects (the Lake Powell Pipeline and the Bear River Dams/Diversion Project).

Major progress was made to improve Utah’s air quality with \$29 m. in new initiatives and investments, and a number of wildfire preparedness and management provisions were enacted and funded. But on the negative side, HB 220 greased the skids for possible approval for Energy Solutions to dump “depleted uranium” in its shallow West Desert landfill (DU gets hotter over time, peaking in radioactivity after 1 million years). And HB 433 authorizes the Utah Inland Port Authority to expand its jurisdiction and taxing authority to rural “hubs” to expedite export of coal, oil and gas, and other natural resources. Related Inland Port legislation directed \$53 million to the effort to buy its way into a coastal export facility for bulk commodities, to improve transportation infrastructure within Port borders, and to establish a baseline of air and water quality data and conduct continuing environmental monitoring.

Stay tuned for updates on the implementation of water policies enacted in 2019 in Utah. —Steve Erickson, GBWN Board



LOWER WHITE RIVER FLOW SYSTEM UPDATE

The Nevada State Engineer issued Interim order #1303 in January, 2019. He designated Coyote Spring Valley (yes that’s what the NSE calls it) and five other areas as a joint administrative unit for administration of water rights, and imposed a temporary moratorium regarding final subdivision for development and construction in order to determine the total quantity of groundwater that may be developed with the LWRFS.

In order to determine the total quantity of groundwater that may be developed within the LWRFS, he established the following schedule: He set a June 3 deadline for reports and other analysis to be submitted to his office, and a report rebuttal date of July 18. The NSE will hold a hearing in September (date TBD) to take comments on the reports. Find the order on the NSE website here: <http://water.nv.gov/documents/1303o.pdf>

NEVADA LEGISLATIVE UPDATE:

GBWN Plugs Potential Leaks In Nevada's Water Law

Editor's Note: Information provided is current as of mid-April. With luck, the Nevada legislative session ends June 3.

The 2019 legislative session has seen a number of attempts to amend Nevada's water law, spearheaded primarily by the State Engineer whose stated goal has been to ensure that NRS 533.370, governing the permitting process for water rights, is internally consistent and clear. Specifically, the State Engineer has advocated for AB30, which expressly provides for the use of monitoring, management, and mitigation plans ("3M Plans") to avoid conflicts with existing rights. While GBWN is not categorically opposed to the use of 3M Plans to address, or avoid, conflicts, we believe that the current law is clear on the use of 3M Plans and that AB30 is not necessary.

Any new statutory provision permitting the use of 3M Plans must maintain rigorous standards to ensure that senior water rights and the environment are adequately protected. Any loosening of the standards applicable to the use of 3M Plans could facilitate

SNWA's pipeline project in the future. So, we are working hard to ensure that any version of AB 30 that passes does nothing more than clarify existing law and preserves the longstanding protections for existing rights and the environment. We successfully argued for the removal of an unnecessary and dangerous provision in AB30 that would have sanctioned use of so-called replacement, or mitigation, water to remedy a junior water user's conflict with an existing senior water right without any assurance that water of the necessary quantity and quality would be available.

GBWN also fought hard to successfully defeat AB30's companion bill, AB51, which did not pass out of Assembly Natural Resources by the April 12 deadline. It purported to authorize the State Engineer to promulgate conjunctive management regulations, an endeavor which GBWN would support, in concept. However under the guise of conjunctive management it would have gutted existing water law, destroyed priorities between water rights, and resulted in takings of property rights. Because the bill would have profoundly undermined Nevada water law and facilitated SNWA's proposed water grab, GBWN worked with allies to ensure that AB51 died in committee.

Not every water-related bill working its way through the Legislature is controversial or detrimental. In fact, there are two that all Nevadans can champion. **AB163**, sponsored by GBWN alumnus Assemblyman Howard Watts, is a bipartisan, forward-looking measure to ensure that water utilities are doing more to account for every drop of water. The legislation requires utilities to perform a water audit that targets any losses incurred. The bill also requires homebuilders to use more efficient fixtures on new construction, recognizing every drop saved is a drop not fought over.

Sen. Pete Goicoechea spearheaded a symbolic bill to ensure that we don't over-appropriate any more of our groundwater basins (about 1/3 are over-appropriated in Nevada). **SB140** requires the State Engineer to create a 10 percent reserve in basins where unappropriated groundwater remains. Sen. Goicoechea's legislation is a much-needed first step in solving Nevada's long-term water needs. - Simeon Herskovits, Iris Thornton & Kyle Roerink ●



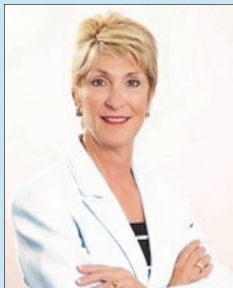
GBWN Welcomes New Board Members

The board of Great Basin Water Network welcomes two new members.

Aaron Altshuler Originally from upstate NY Aaron has called the Western US home for the last 12 years. He is the Store Manager of the Patagonia Outlet in Reno. Aaron is passionate about public land protection as well as water issues. He worked on campaigns to remove obsolete dams on the Lower Snake River in Eastern Washington as well as to oppose the creation of an oil terminal at the Port of Portland, OR. Aaron enjoys snowboarding, climbing and backpacking with his wife and daughter.



Chris Giunchigliani (Chris G) For more than 28 years, Chris Giunchigliani served Nevadans in the Legislature and Clark County Commission, advocating for responsible growth, conservation, and social equality during a time of immense change in the state. A former director on the SNWA Board, Giunchigliani's unparalleled opposition to the Las Vegas Pipeline is reflected in her voting record and public rhetoric against the \$15.5 billion project that will siphon 58 billion gallons of water annually from the desert.



The board also thanks Monique Normand for her service on the board. And thanks to all for your participation!

DROUGHT CONTINGENCY PLAN: SHORT TERM FIX ON COLORADO RIVER

It's obvious that we don't always see eye-to-eye with SNWA. But we are not beyond commending the water authority when it's deserved.

SNWA's steady hand and poise during the negotiations in crafting the Drought Contingency Plan made it an easy sell for Congress and Nevada



Source: DOI Bureau of Reclamation website

residents. We recently sent a letter to the Nevada Congressional delegation urging support of the DCP.

As long as Lake Mead's elevations are between 1045 feet and 1090 feet, the 8,000 acre-foot cuts Nevadans face are reasonable response measures to ensure the fu-

ture health of the river in the coming years. The alternatives would be much worse if we did nothing between now and 2026, the year in which DCP as agreed upon by the Basin States expires.

Nevertheless, a shrinking Colorado River puts immense pressure on Nevada's non-Colorado - River water resources and encourages the promotion of dangerous and misguided proposals like SNWA's \$15.5 billion, 300-mile pipeline.

We don't believe DCP to be a backhanded way to usher that catastrophic project to fruition. But we do worry that Upper Basin States are working out-

side the scope of DCP on a number of pipeline and diversion proposals of their own that will negate the positive effects all parties seek to achieve. In our letter to the delegation, we also asked that Nevada's lawmakers work with their peers in Congress to fend off some gratuitous and unnecessary projects in the Upper Basin.

For example, the Lake Powell Pipeline and the Green River Block Exchange proposed by water regulators in Utah will have a direct and adverse impact on the Colorado River, Nevada, and the other Lower Basin States. The modification at Fontenelle Dam, West Fork of Battle Creek Dam, and the Big Sandy Reservoir Expansion in Wyoming are other proposals that we fear would impede our long-term water outlook. Colorado's Gross Dam Expansion and the Windy Gap Firming Project are additional proposed threats to Lake Mead.

The diversion, dam, and pipeline projects are just a few efforts to tap the already over-allocated Colorado River and its tributaries for more water. Consequently, those wanton efforts upriver will further embroil Nevada's intra-state water wars by putting greater demand on Southern Nevada to find alternatives faster.

The best route for Upper Basin States is conservation. Cities must realistically calculate and plan for their growth while encouraging less grass, fewer swimming pools and more efficient appliances to help us stave off the harsh reality arid climates bring. Simply put: Water conservation and regional planning is cheaper, environmentally feasible, and in tune with the climate realities we face in the West. The alternatives are much too dangerous. —Kyle Roerink, GBWN

IF GBWN IS NOT TAKING ON SNWA, WHO WILL?

Loyal reader, every day we are on the front lines battling to ensure that our water rights, water future, and water bills are not harmed by a \$15.5 + billion, 300-mile boondoggle. We are working in the Legislature, courts, regulatory arena, and with the general public to protect our collective interests.

So we want to ask, instead of (or in addition to) buying that next bottled water, cauldron of coffee, or case of (insert beverage here), consider donating to GBWN. A \$20 per-month gift to GBWN will ensure that we can remain engaged in the community and work to protect Nevada's flora, fauna, and human life while defending the state's heritage on the range and on the farm.

Remember, the BLM admitted that the pipeline would destroy 305 springs, 112 miles of streams, 8,000 acres of wetlands and 198,000 acres of shrubland habitat in the desert. Vegas ratepayers' water bills would skyrocket. Eastern Nevada would never be the same.

So ask yourself: If GBWN is not taking on SNWA, who will? Please use the enclosed envelope, send a check to P. O. Box 75, Baker NV 89311, or donate via the GBWN website: www.greatbasinwater.net. Many thanks!



SNAKE VALLEY FESTIVAL

Thursday, June 6th

5 - 8pm
ICE CREAM SOCIAL
and BINGO
Community Center

Friday, June 7th

6 - 9pm
BEER TASTING and
SILENT AUCTION
Whispering Elms

June 6-9, 2019
Baker, Nevada



**11th Annual Fundraiser
and Fun-Raiser**

*Support Snake Valley in the
Legal Battle to Keep Water Local*

Saturday, June 8th 7am - 10pm

7-10am: 💧 Pancake Breakfast at Kerouac's

10am: 💧 Water-Themed Parade

8am-3pm: 💧 Craft Fair 💧 Silent Auction 💧 50:25:25 Raffle

💧 Bake Sale - Book Sale - Yard Sale 💧 Music

💧 3pm Massive Water Fight

💧 5:30pm BBQ Dinner

7:30pm Snake Valley Revue

at the Border Inn 💧

Sunday, June 9th

Noon

SOFTBALL FOR ALL

Bring a picnic and
play a friendly game
of softball on the
newly renovated
field in South Baker



For more information visit www.protectsnakevalley.org



Water Gab

**GREAT BASIN
WATER NETWORK**

NEWS FROM THE GREAT BASIN WATER NETWORK HEARTLAND

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*June 6 - 9
Snake Valley Festival*

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



NEW SNAKE VALLEY FESTIVAL DATE: June 6 - 9, 2019 Water-Themed Parade Starts 10 am June 8

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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twitter

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**SHOP, EARN
CHANGE THE WORLD**



Bookmark the Amazon Smile website, designate GBWN & 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!**

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