

Utah Tribal Leaders



Joint Inter-Tribal Resolution #UTLAUG-06-11

TITLE: Opposing the Signing of the Utah-Nevada Agreement on the Snake Valley Groundwater Management System

WHEREAS, pursuant to Utah statutory mandate creating the Utah Division of Indian Affairs and as organized through the Utah Division of Community and Culture, the below signing Chairperson and other Tribal leaders met at the Utah Tribal Leaders Meeting on the 11th of August, in Pocatello, Idaho; and

WHEREAS, we the Tribal Leaders of those Tribes located on our lands since time immemorial and now within the State of Utah, have the responsibility to protect and preserve for native people and future generations our sovereign rights of our Indian nations, which are inherent rights reserved and secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the federal government's trust responsibility to Indian people; and

WHEREAS, the land and water comprising the aboriginal Indian lands in the Great Basin region have been central to the culture and religion of the Great Basin Tribes that have purposefully lived in harmony with the water, plants, and animals of aboriginal lands in a delicate natural and spiritual balance; and

WHEREAS, the aboriginal lands contain many cultural sites and natural features, especially wetland areas which include but are not limited to springs, seeps, marshes, wet meadows, streams, rivers, riparian areas, and all permanent and ephemeral water resources, of great spiritual and cultural importance of the Great Basin Tribes; and

WHEREAS, the arid lands within the Great Basin possess diverse water resources which are key to the natural integrity of those lands, key to the existence of life forms that they support, and key to the Great Basin Tribes' cultural and spiritual existence and economic survival; and

WHEREAS, the groundwater is almost the only, and by far the most essential, supply of water available to the Tribes, the farmers, hunters, ranchers, and all residents of the neighboring communities, and the plant and animal life within the Great Basin; and

WHEREAS, because we are charged with the sovereign authority to protect and preserve the natural resources located within our reservations and aboriginal territories, we submit this resolution to enlighten the public and political leaders in the State of Utah toward a better

understanding of our Indian people and our commitment to preserve and protect Indian cultural resources, and otherwise promote the health, safety, and welfare of our Indian people; and

WHEREAS, the proposed Utah-Nevada Agreement on the Snake Valley Groundwater Management System fails to meet any of its stated goals of making an equitable division of shared groundwater, providing protection of existing permitted uses, and providing for protection of the environment, and

WHEREAS, we are convinced that signing the Agreement would be premature. Southern Nevada Water Authority ("SNWA") currently has NO water rights for its pipeline project in the five valleys where it has made applications. SNWA currently has NO right of way (ROW) for the pipeline. The Agreement would undermine both the federal EIS process and the State Engineer's process; and

WHEREAS, the Draft Environmental Impact Statement ("DEIS") considers alternatives – Alternatives D and E, plus the No Action Alternative – which would prohibit a ROW for wells in Snake Valley. If the State and the Governor of Utah sign the Agreement, then Utah has signaled BLM that it doesn't support alternatives that would protect Snake Valley. This position is in direct opposition to Millard County's support for Alternative D, and to a lesser degree Alternative E and No Action. Signing the Agreement would place the Governor and the State of Utah in the awkward position of supporting the pipeline project - in direct contradiction to the overwhelming opposition of Utah Indian Tribes, the Utah public, and the Utah Legislature; and

WHEREAS, signing the Agreement effectively undercuts the legal position of Millard County that the BLM cannot legally grant the ROW for the pipeline project without the bi-state Agreement. It may have the unintended consequence of making the Governor appear to be more beholden to the political powers in Nevada than accountable to his own state's citizens; and

WHEREAS, the Agreement adopts an unreliable and unreasonably high estimate of Snake Valley's perennial yield as the available groundwater supply, setting up an inequitable division between the states and a prescription for excessive pumping and devastating environmental harm that cannot be mitigated. Signing the Agreement would grant to Nevada the State of Utah's blessing to draw down the aquifer on the Utah side of the border by 36,000 acre feet of water per year, and potentially up to 54,000 afy. This division of the shared aquifer, based upon inadequate science, is unnecessary now, and would be particularly unfair to affected Indian tribes; and

WHEREAS, the Agreement fails to provide information on how its division of the groundwater accounts or doesn't account for vested water rights, federal reserved water rights, reserved water rights for the Goshute Tribe, water for future growth, and water needed to prevent adverse impacts to existing permitted uses. No Agreement should be signed until those vested, federal and Tribal rights are adjudicated and/or resolved, including a water settlement for the Goshutes;

WHEREAS, the Agreement unfairly places the burden to demonstrate that SNWA has caused an adverse impact to their water rights on existing water rights owners. (The BLM's

DEIS predicts that 344–500 water rights will be compromised by the Proposed Action.) SNWA should bear the burden of proving its pumping is not responsible for adverse consequences, and water rights holders should not have to negotiate with SNWA for redress; and

WHEREAS, it is clear that the signing of the Agreement is driven, at least in part, by a desire to prevent the Least Chub from being listed as an Endangered Species. Reportedly, state officials say they fear that such listing would put USFWS in charge of the allocation of waters in Snake Valley. This is a specious reason to cede the groundwater of the state and affected Indian tribes. The impact of such a listing will be negligible upon existing, permitted water uses in the valley. The real threat to the Chub is the additional pumping that Utah would sanction with this Agreement. The Agreement does not specify any effectual actions, goals, or commitments to protect this at risk species other than to prevent listing. The draft conservation plan is largely based on monitoring for impacts, which in reality, once detected may be too late to off-set to protect the chub. Pumping in Snake Valley would also adversely impact several invertebrate species associated with groundwater springs and caves, including several species of spring snails which have already been petitioned for protections under the ESA. Nothing in the Agreement addresses concerns regarding these species; and

WHEREAS, distributed pumping was never considered when the agreement was drafted, but is now clearly the preferred alternative for SNWA. The Agreement must be re-negotiated to account for this. Section 9 of the Monitoring & Mitigation Agreement as written is inadequate to address the additional impacts and uncertainties posed by the change applications required by distributed pumping; and

WHEREAS, the Monitoring & Mitigation plan is toothless, unenforceable, vague, unfunded, cumbersome, and lacks the baseline data and triggers for specific responses to adverse impacts, without clearly defined terms or provisions binding SNWA successors or partners to the Agreement.

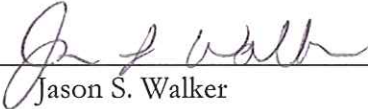
NOW THEREFORE BE IT RESOLVED, that the Utah Tribal Leaders strongly oppose the signing of the Utah-Nevada Agreement on the Snake Valley Groundwater Management System; and

BE IT FURTHER RESOLVED, that the Utah Tribal Leaders demand that the Governor of Utah and Nevada State Engineer respect the Confederated Tribes of the Goshute right to continued physical, economic, cultural, and spiritual survival, and that the Utah Governor and Nevada State Water Engineer recognize that SNWA's groundwater export applications and proposal would drain the aboriginal land of the water necessary for their survival; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of the Utah Tribal Leaders until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the Utah Tribal Leaders at a Meeting on the 11th day of August, 2011 in Pocatello, Idaho, with a quorum present.



Jason S. Walker
Pro-Tem UTL Chairman

ATTEST:



Recording Secretary