



SOUTHERN NEVADA WATER AUTHORITY

1001 South Valley View Boulevard • Las Vegas, NV 89153
(702) 258-3939 • snwa.com

March 30, 2009

Mr. Jason King, P.E.
Acting State Engineer
State of Nevada
Department of Conservation & Natural Resources
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

SUBJECT: Request for Continuance of Hearing Regarding Application Nos. 54022 through 54030

Dear Mr. King:

As you are aware, on October 28, 2008, the State Engineer issued Interim Order No. 2 and Scheduling Order which set the date for the public hearing on the Southern Nevada Water Authority's (Authority) applications to appropriate groundwater in Snake Valley, to reconvene on September 29, 2009. A requirement of that Scheduling Order is for the Authority to develop a hydrologic groundwater model and present specific results of that model to the State Engineer. Concurrently, in preparing for that hearing, the Authority has been working diligently with the Bureau of Land Management (BLM) in the preparation of a hydrologic model for use in the Environmental Impact Statement (EIS) being prepared by the BLM. Due to the interaction between these two distinct processes, the Authority believes that the public interest is best served by utilizing the same model in the hearing as in the EIS, if at all possible.

The Authority's goal was to have this modeling effort completed in time for the June 19, 2009 Initial Evidentiary Exchange required under the Scheduling Order but, due to significant and recurring delays in the BLM's review process, it does not appear likely that the modeling effort will be sufficiently complete by June 19, 2009 so that it could be utilized in the upcoming hearings. Therefore, to ensure a consistent model for both the EIS and hearing, the Authority requests that all dates for the exchange of evidence and reconvening the hearing be extended for one year in order to allow the modeling effort to be completed.

Thank you for your time and consideration in this matter. If you have any questions or concerns please contact me directly at (702) 862-3708.

Sincerely,

Kay Brothers
Deputy General Manager
Engineering and Operations

KB/df

CERTIFICATE OF SERVICE

I hereby certify that, on the 30th day of March, 2009, I deposited for mailing in the U.S. Mail a true and correct copy of *Request for Continuance of Hearing Regarding Application Nos. 54022 through 54030*, postage prepaid and addressed as follows:

Mr. Simeon Herskovits
Advocates for Community & Environment
P.O. Box 1075
El Prado, NM 87529

Ms. Veronica Douglass
Deep Creek Mountains Ranch
380 Callao Star Route
Wendover, UT 84083

Mr. J. Mark Ward
Mr. Richard Waddingham
Utah Association of Counties
5397 South Vine Street
Murray, UT 84107

Mr. Peter Fahmy
Office of the Solicitor
U.S. Department of Interior
755 Parfet Street, Suite 151
Lakewood, CO 80215

Mr. Stephen Palmer
USDI Regional Solicitor
2800 Cottage Way, #1712
Sacramento, CA 80215

Mr. Jerald Anderson
Eskdale Center
1100 Circle Drive
Eskdale, UT 84728

Mr. Aaron Waite
450 Hillside Drive, #203
Mesquite, NV 89027

Mr. George Benesch
190 W. Huffaker Lane, Suite 408
Reno, NV 89511-2092

Mr. Paul Taggart
Taggart & Taggart
108 N. Minnesota Street
Carson City, NV 89703

Mr. Paul Tsosie
Tsosie & Hatch, LLC
7864 South Redwood Road
West Jordan, UT 84088

Mr. John Rhodes
P.O. Box 18191
Reno, NV 89111

Callao Irrigation Company
Callao 225 Pony Express Road
Callao, UT 84083

Mr. Greg Walch
Santoro, Driggs, Walch, Kearney, Holley & Thompson
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101



Patricia C. Daws, Executive Assistant
Environmental & Water Resource Law
Southern Nevada Water Authority



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
Room E-1712
Sacramento, California 95825-1890

IN REPLY
REFER TO:

RECEIVED
2009 APR -8 AM 11:28
STATE ENGINEERS OFFICE

April 7, 2009

Jason King, P.E., Acting State Engineer
Nevada Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701-5250

Subject: Response to Request for Continuance of Hearing by the Southern Nevada Water Authority Regarding Application Nos. 54022-54030

Dear Mr. King:

In accordance with NAC 533.320, the Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS) provide their response to the subject request for continuance. The BLM, BIA, FWS and NPS do not object to the one year extension of the currently scheduled hearing on the subject applications including the dates for the initial and second evidentiary exchanges.

Two copies of this response to the SNWA request are submitted. If you have any questions or need further information, please contact the undersigned.

Sincerely,

Stephen R. Palmer
Assistant Regional Solicitor
Pacific Southwest Region

for Peter Fahmy
Water Rights Attorney
Division of Parks and Wildlife

cc: Susan Joseph-Taylor, Chief, Hearings Section
Service List

CERTIFICATE OF SERVICE

RE: In the Matter of Application Nos. 54022 - 54030

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen, and not a part of this litigation. On April 7, 2009, I served the following:

**“RESPONSE TO REQUEST FOR CONTINUANCE OF HEARING BY THE
SOUTHERN NEVADA WATER AUTHORITY
REGARDING APPLICATIONS NOS. 54022 - 54030”**

by placing the original and one (1) true copy of the foregoing document enclosed in a sealed envelope via Federal Express overnight delivery at Sacramento, California, to the following:

State Engineer of Nevada
State of Nevada
Division of Water Resources
901 S. Stewart, Suite 2002
Carson City, Nevada 89701
775-684-2800

by placing the foregoing document, enclosed in a sealed envelope via regular mail at Sacramento,

California to the following:

Mr. Simeon Herskovits
Advocates for Community & Environment
P.O. Box 1075
El Prado, NM 87529

Ms. Veronica Douglass
Deep Creek Mountains Ranch
380 Callao Star Route
Wendover, UT 84083

Mr. J. Mark Ward
Mr. Richard Waddingham
Utah Association of Counties
5397 South Vine Street
Murray, UT 84107

Mr. Peter Fahmy
Office of the Solicitor
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755 Parfet Street, Suite 151
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Mr. Paul Taggart
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Mr. Jerald Anderson
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Mr. John Rhodes
P.O. Box 18191
Reno, NV 89111

Mr. George Benesch
190 W. Huffaker Lane, Suite 408
Reno, NV 89511

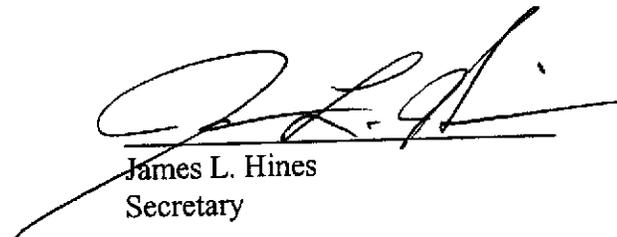
Paul Tsosie/Aaron Waite
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7864 South Redwood Road
West Jordan, UT 84088

John Entsminger
Southern Nevada Water Authority
1001 S. Valeyview Blvd., MS-485
Las Vegas, NV 89153

Callao Irrigation Company
Callao 225 Pony Express Road
Callao, UT 84023

Mr. Greg Walch
Santoro, Driggs, Walch, Kearney, Holley
& Thompson
400 South Fourth Street, 3rd Floor
Las Vegas, NV 89101

I certify that the foregoing is true under penalty of perjury. Executed this 7th day of
April, 2009, at Sacramento, California.



James L. Hines
Secretary

TELEPHONE
(775) 827-3100

LAW OFFICE OF
GEORGE N. BENESCH
190 W. HUFFAKER LANE, SUITE 408
RENO, NEVADA 89511

FAX
(775) 827-3100
2009 APR -3 PM 2:39
STATE ENGINEERS OFFICE
RECEIVED

April 3, 2009

HAND DELIVERY

Nevada Division of Water Resources
Attn: Susan Joseph-Taylor
901 S Stewart St., Suite 2002
Carson City, NV 89701-5250

**RE: Application Nos. 54022-54030
Request for Continuance of Hearing**

Dear Susan:

By letter to Jason King, P.E., Acting State Engineer, dated March 30, 2009, Kay Brothers, in behalf of the Southern Nevada Water Authority, requested that all dates for the exchange of evidence and reconvening the hearing in the Snake Valley Water Applications proceedings be extended for one year.

Please be advised that Protestant Nye County does not offer any opposition to this request.

Very truly yours,



GEORGE N. BENESCH

GNB/b

cc: Nye County Manager

ADVOCATES FOR COMMUNITY AND ENVIRONMENT

Empowering Local Communities to Protect the Environment and their Traditional Ways of Life

Post Office Box 1075

El Prado, New Mexico 87529

Phone (575) 758-7202 Fax (575) 758-7203

April 9, 2009

BY FEDERAL EXPRESS OVERNIGHT DELIVERY

Jason King, P.E.
Acting State Engineer
State of Nevada
Department of Conservation & Natural Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

RECEIVED
2009 APR 10 AM 10:18
STATE ENGINEERS OFFICE

Re: Response to Southern Nevada Water Authority Request for Delay of Hearing on Application Nos. 54022 Through 54030, Inclusive

Dear Mr. King:

On behalf of the protestants listed in my letter to you of July 15, 2008, (the Protestants), the undersigned counsel hereby respectfully submits the following response to Kay Brothers' letter of March 30, 2009, requesting a delay of the hearing regarding Application Nos. 54022 through 54030, inclusive, held by the Southern Nevada Water Authority (SNWA), to appropriate the underground waters of Snake Valley. The Protestants Respond to SNWA's request as follows:

I. In Light Of SNWA's Continued Delay And Lack Of Transparency, The State Engineer Should Exercise His Authority To Find That SNWA Has Failed To Pursue Applications 53022 Through 54030 In Good Faith, And Should Deny Those Applications

Since filing applications 54022 through 54030 in 1989, SNWA has had two decades to prepare for the hearing on those applications. During these twenty years an entire generation of Nevadans has been born, educated, and has begun to have children of their own. Meanwhile, SNWA's applications have effectively locked up all potentially available groundwater in Snake Valley. Having locked up these water resources and having taken no action to pursue them for the better part of those twenty years, SNWA twice¹ tried to rush the hearing on its Snake Valley applications in a thinly veiled effort to mask the many potential harms SNWA's project is likely

¹ First, in late 2005 and early 2006, SNWA tried to pressure the State Engineer into scheduling the hearings on SNWA's connected applications in Spring Valley, Snake Valley, and Cave, Dry Lake and Delmar Valleys in rapid succession during the summer of 2006 with only two weeks between each hearing. Having failed in that effort, after the conclusion of the Cave, Dry Lake, and Delamar Valleys hearing, SNWA again tried to rush the Snake Valley hearing by pressuring the State Engineer into scheduling it in early January 2009, which would have given the Protestants almost no time to prepare for the first evidentiary exchange.

to cause and to prevent the Protestants from having adequate time to present a fully developed case revealing those harmful impacts. Having failed at this tactic, and apparently having discovered that its current groundwater model is inadequate or shows unacceptable impacts, SNWA now seeks to delay for a second time, less than two months before the first evidentiary exchange. Such a course of conduct is simply inconsistent with a good faith effort to bring the merits of these applications and the associated interbasin transfer of groundwater before the State Engineer in a responsible, open, and honest fashion. Given SNWA's history of alternating rush and delay tactics, SNWA's vast financial resources, and the fact that the 2009 hearing was scheduled in September and October at SNWA's request, it is unreasonable for SNWA to request yet another delay using the excuse that it is unable to present an acceptable groundwater model by the June 19 deadline.

SNWA's only justification for this most recent requested delay is that SNWA will not have its groundwater modeling "effort" sufficiently complete by the time of the June 19 evidentiary exchange because SNWA is having difficulty ensuring that its model is approved by the Bureau of Land Management (BLM) for use in the development of an Environmental Impact Statement (EIS) in the federal environmental review process under the National Environmental Policy Act (NEPA). However, there is no requirement that the model used in the State Engineer's hearing on SNWA's Snake Valley water rights applications must have been approved for use in the separate federal environmental review process. In fact, SNWA has repeatedly argued that the federal NEPA process is entirely discrete from the State Engineer's water rights review process and that none of these related water rights hearings depend on or should be delayed in any way on account of the federal NEPA process.

In addition, as revealed in the Cave, Dry Lake, and Delamar hearing and in published articles, *see, e.g., Emily Green, Quenching Las Vegas' Thirst: Part 5: "Owens Valley is the Model of What to Expect," LAS VEGAS SUN, June 29, 2008, available at <http://www.lasvegassun.com/news/2008/jun/29/owens-valley-model-what-expect/>*, it is now well known that SNWA already had devoted millions of dollars and years of preparation to the development of a sophisticated groundwater model that was close to completion by the time of the Spring Valley hearing in 2006, and that SNWA then parted ways with its previous groundwater hydrology consultants and failed to disclose the full scope and results of that modeling effort because the results of that model revealed the extensive, severe long-term impacts that would be caused by SNWA's applications and proposed interbasin transfer. Having abandoned that sophisticated and robust modeling effort in 2006 in a quest to find groundwater modeling evidence more to its liking, SNWA now, in 2009, is engaged in what is undeniably at least its second groundwater modeling effort. The fact that it is not farther along in the process of bringing this most recent effort to a level of completion or adequacy that satisfies the BLM, then, is the result of SNWA's own voluntary choice to abandon and conceal its earlier developed science and develop more self-serving scientific evidence.

Finally, as SNWA's general manager, Patricia Mulroy, has recently conceded in public, with the profound economic downturn that has settled with particular severity on southern Nevada, SNWA's financial base has dramatically contracted. *See I-Team, Dire Predictions Made on Las Vegas Water Supply, CHANNEL 8 EYEWITNESS NEWS, Feb. 11, 2009, available at <http://www.lasvegassnow.com/Global/story.asp?s=9829711>*. This substantial erosion of SNWA's

financial base makes it implausible for SNWA actually to build its multi-billion dollar pipeline project and put the water that is the subject of these Snake Valley applications to the proposed use. The importance of this changed circumstance is bolstered by Ms. Mulroy's further admission to the State Legislature that SNWA does not intend to build the pipeline project "unless it is absolutely necessary, unless there is absolutely nothing else we are going to do." See Brendan Riley, *Authority Keeps Pipeline Options Open: Mulroy Wants Construction Permits In Hand*, LAS VEGAS REVIEW JOURNAL, Feb. 12, 2009, available at <http://www.lvrj.com/news/39483777.html>. Thus, SNWA has conceded that it is cash strapped and that it does not necessarily intend ever to put the water that is the subject of these applications to the proposed use, and certainly not at any particular defined point in time. To allow these water resources to remain indefinitely tied up without any definite financial ability or intent to put the water to the proposed use asserted in the applications, even after they already have been pending for twenty years is contrary to sound water policy and contrary to Nevada's broad public interest.

Thus, there is no genuine basis for SNWA's claim that it must finalize its groundwater model for the EIS process before the model can be used in the State Engineer's Snake Valley hearing. Indeed, such a position is at odds with SNWA's previous position concerning the discrete nature of the federal environmental review and the state water rights review processes. Further, the purported need for the delay is plainly the result of SNWA's abrogation of its earlier groundwater modeling effort and decision to pursue more self-serving evidence. And finally, SNWA's recent public representations strongly indicate a lack of financial ability and lack of definite intent to put the water to the proposed use. All of these circumstances, combined with the extraordinary amount of time during which SNWA's applications have been allowed to tie up any alternative development of available groundwater in Snake Valley, provide the State Engineer with ample grounds for finding that SNWA has not pursued these applications and the proposed use of water in good faith and that therefore the applications should be denied at this time. For these reasons, Protestants respectfully urge the State Engineer to exercise his statutory authority to deny SNWA's Snake Valley applications at this time. NRS 533.370; cf. NRS 533.395 (authority to cancel existing permits for failure to proceed in good faith and with reasonable diligence).

II. If The State Engineer Does Not Deny SNWA's Snake Valley Applications At This Time, He Should Deny SNWA'S Request For A Continuance And Proceed With The Current Schedule For The Snake Valley Hearing

As discussed above, SNWA has had two decades in which to prepare a groundwater model for its applications in Snake Valley. Indeed, testimony was presented in the hearing on SNWA's applications in Cave, Dry Lake, and Delamar Valleys that SNWA already has prepared such a model, but has chosen not to present its results because of the long-term, widespread and severe impacts it suggests SNWA's pipeline project – the proposed use – will cause. Instead, SNWA is preparing a second model, which SNWA now argues it needs more time to complete.

The State Engineer should not accept SNWA's slim rationale for any further delay of this hearing. For all of the reasons explained in the preceding section of this response SNWA'S request for a delay does not have any solid ground in its support.

The Protestants, who have far more limited resources than SNWA, have marshaled and presented significant hydrologic, biologic, and economic evidence in opposition to SNWA's applications in each of the connected hearings to date and are prepared to proceed with the current schedule set by the State Engineer for the Snake Valley hearing. It is simply unreasonable for SNWA to claim that after twenty years it has not had sufficient time to develop an appropriate groundwater model. Accordingly, if the State Engineer chooses to proceed with a hearing on SNWA'S applications in Snake Valley, he should maintain the current schedule and require SNWA to comply with all evidentiary exchange deadlines. If SNWA refuses to come forward, yet again, with its groundwater modeling results, the State Engineer should presume that those results confirm Protestants' claim that the proposed appropriation and interbasin transfer of groundwater from Snake Valley would cause impermissible impacts to existing water rights and to the environment and economy of Snake Valley, and should make his determination based on that presumption and the rest of the properly submitted evidence. *Cf.* NAC 533.330 (matters to be decided on basis of evidence presented at hearing where a party fails to appear).

III. If The State Engineer Decides To Grant Some Delay, He Should Grant Only The Minimum Additional Time Necessary To Complete An Adequate Groundwater Model

The justification offered by SNWA in its March 30, 2009, request for a delay of the Snake Valley Hearing is that its groundwater model will not be completed in time for the June 19 evidence exchange. In that Request, SNWA blames this need for additional time on the BLM, citing the BLM's review process as the source of delays. However, there is no compelling reason for the State Engineer's Snake Valley hearing to be tied to the BLM's process of reviewing SNWA's groundwater model for use in the federal NEPA review process. The Snake Valley hearing before the State Engineer and the federal NEPA process are separate processes with different purposes and functions and different applicable statutory criteria. There is no reason why a proper model could not be used for the Snake Valley hearing even if it may be modified in the future for use in the separate NEPA review process. Thus, there is no reason why SNWA could not use its model in the State Engineer's Snake Valley hearing regardless of the BLM's separate evaluation of that model for use in a different context. And SNWA has offered no reason why it couldn't have its model ready by the June 19 deadline. Thus, any delay granted by the State Engineer should be limited to the minimum time necessary for SNWA to produce and run a groundwater model that meets the State Engineer's criteria for the Snake Valley hearing, and should not be extended merely on account of the BLM's separate evaluation of that model for NEPA purposes.² Protestants respectfully suggest that a delay of no more than one month should be sufficient for this purpose.

² The fact that SNWA now argues to the contrary is ironic and further illustrates SNWA's lack of good faith throughout the State Engineer's hearing process concerning these groundwater applications for SNWA's pipeline project. In the past SNWA has argued strenuously against delaying any of these hearings on account of any part of the NEPA review process – the opposite of its present position. As far as Protestants are concerned, if the State Engineer's hearing process is to be delayed on account of the NEPA review process, then the State Engineer should hold the hearing in abeyance until the NEPA review process has concluded, so that the State Engineer can have the benefit of that more thorough federal environmental review. Indeed, Protestants previously have argued for such a longer, more principled delay.

Further, because several of the Protestants and Interested Persons are ranchers and those parties' need to constantly work on the land does not taper off until October, Protestants request that, if the Snake Valley hearing is delayed, the State Engineer schedule the hearing to commence in mid-October and end no later than the Friday before Thanksgiving. Choosing a hearing schedule along these lines would lessen the burdens on or potential impediments to participation by rancher parties and witnesses. Facilitating participation by the parties and witnesses from the area most likely to be impacted by SNWA's proposed export of groundwater from Snake Valley would, in turn, best serve the State Engineer's interest in receiving the most relevant evidence and testimony concerning these applications.

IV. The State Engineer Should Require SNWA To Submit A Detailed Report Concerning The Status Of Its Progress In Preparing A Groundwater Model And Modeling Evidence For The Snake Valley Hearing Before He Grants Any Delay In The Hearing Schedule, And He Should Condition Any Delay On SNWA's Submission Of Similar Reports During The Period Of Delay

Given the history of SNWA's alternating tactics designed to either speed or slow the process, combined with its history of misrepresenting and concealing groundwater modeling evidence, the State Engineer should require SNWA to demonstrate to him and to the other parties to this proceeding that it is, indeed, acting in good faith to develop such evidence for the Snake Valley hearing. To that end, Protestants respectfully request that, before he grants any delay of the Snake Valley hearing, the State Engineer require SNWA to submit a report to the State Engineer, Protestants, and Interested Persons that provides meaningfully detailed information regarding the current status of SNWA's progress in completing its groundwater model and preparing modeling evidence for the hearing. Such a report will enable the State Engineer to make an informed decision as to what length of delay, if any, is genuinely warranted. Further, should the State Engineer choose to grant a delay after reviewing that report, the State Engineer should order SNWA to submit one or more updated status reports of a like nature during the period of delay as a condition for granting the delay.

Respectfully submitted,



Simeon Herskovits
Advocates for Community and Environment
Attorney for Protestants

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 2009, I served or caused to have served, a complete copy of the foregoing PROTESTANTS' RESPONSE TO SNWA REQUEST FOR DELAY by first class mail, postage prepaid, addressed to the following persons:

Paul Taggart
Taggart & Taggart
108 N. Minnesota Street
Carson City, NV 89703

Peter Fahmy
Office of the Solicitor
U.S. Dept of Interior
755 Parfet Street, Suite 151
Lakewood CO 80215

Kay Brothers
Deputy General Manager
Engineering and Operations
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, NV 89153

Jerald Anderson
Eskdale Center
1100 Circle Drive
Eskdale, UT 84728

Stephen Palmer
USDI Regional Solicitor's Office
2800 Cottage Way, #1712
Sacramento, CA 80215

George Benesch
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Santoro, Driggs, Walch, Kearney,
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Callao Irrigation Company
Callao 225 Pony Express Road
Callao, UT 84083

Veronica Douglass
Deep Creek Mountain Ranch
380 Callao Star Route
Wendover, UT 84043

J. Mark Ward
Attorney for Millard County
5397 South Vine Street
Murray, UT 84107

John Rhodes
P.O. Box 18191
Reno, NV 89111


Iris Thornton

EskDale Center
1100 Circle Drive
EskDale, UT 84728

April 6, 2009

Mr. Jason King, P.E.
Acting State Engineer
State of Nevada

RECEIVED
2009 APR -9 AM 10:45
STATE ENGINEERS OFFICE

SUBJECT: Applicant (SNWA) Request for Continuance of Hearing Applications 54022 thru 54030

Dear Mr. King:

We appreciate the situation the applicant describes in the request for a continuance. Efficiency in performance of a complex task is a desirable result. No one wants to have to duplicate such an enormous effort if done correctly.

The scope and implications of the issues related to these applications demand that all efforts be made to produce a comprehensive, sustainable analysis both in the decision making process in evaluation of the resources available and the potential impacts of the applications, but also in preventing irreparable damage to the affected areas during any groundwater withdrawal.

As Protestants, EskDale Center would appreciate any additional time and opportunity which produce additional data and analysis to expand the understanding of Snake Valley's groundwater characteristics and processes in this complex ecosystem and our own socioeconomic situation.

Our concern with this Request for Continuance is the basis of the request. The Interim Order establishing the schedule and requirements for both the Applicant and Protestants placed all parties under the same agreed-upon set of constraints. It provided no linkage between evidence and products required for other issues not related to the purview of the Nevada State Engineer. If this request is granted, The State Engineer is conceding *de facto* that its role is subordinate to that of other agencies. If the State Engineer wishes to require that the BLM documents be available for these Hearings, it should so state and define the state of completion it requires for the Hearings.

The Applicant is the motivating factor in the schedule for these Hearings. The Protestants have no such similar grounds to request delays and continuances, and are more directly affected by a new schedule. Our resources are limited compared to the Applicant's, and are more easily consumed by additional time once this process was started. Although continuing the Hearings may be more convenient and cost-effective for the Applicant, the extension places the Protestants at a relative disadvantage due to increased costs and delays in available information.

Additionally, granting this Request gives credence to the view that the Applicant will be allowed to take any actions it desires to ultimately gain access to the groundwater in Snake Valley through the application hearing process. This reduces the process to one of strategy and tactics against the Protestants, rather than one of information and analysis.

EskDale Center asks the Office of the State Engineer to review these issues in consideration of this Request, and to specify actions and requirements which support any change in the Hearing schedule and evidence.

Respectfully,

A handwritten signature in black ink, appearing to read "Jerald Anderson". The signature is fluid and cursive, with a large initial "J" and "A".

Jerald Anderson
EskDale Center

April 7, 2009

RECEIVED
2009 APR -8 AM 11:28
STATE ENGINEERS OFFICE

Mr. Jason King, P.E.
Acting State Engineer
State of Nevada
Department of Conservation and Natural Resources
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

**Re: In the Matter of Applications 54022 through 54030, Snake Valley Basin:
Protestant Millard County's Response to the Applicant's Hearing Delay
Request**

Dear Mr. King:

Thank you for the opportunity to respond to the Applicant Southern Nevada Water Authority's request for a one-year continuance of the Snake Valley hearing and pre-hearing deadlines. Protestant Millard County's response is two fold:

**I Millard County Defers to the Position of the Protestant Bureau of Land
Management Concerning the Applicant's Delay Request**

The Applicant has kept the substance of its hydro model a secret thus far to all but the BLM. Therefore, Millard County lacks enough information to advise the State Engineer whether the delay request is necessary or reasonable in length. The BLM as EIS project administrator presumably has enough information about the Applicant's alleged hydro model problems to assess and advise the State Engineer on the technical aspect of the Applicant's delay request.¹ This is especially so since the Applicant appears to allege that the BLM is at least partly responsible for the current hydro model delays. Accordingly Millard County defers to whatever response the BLM makes to the Applicant's hearing delay request.

II Several Questions Should Be Addressed In Any Event

Having said that, the Applicant's delay request has raised several perplexing questions for Millard County, questions which presumably are or ought to be of interest

¹ Millard County assumes that BLM the Protestant (the right hand) knows what BLM the EIS administrator (the left hand) knows about the Applicant's alleged hydro model woes.

to the State Engineer if only for the sake of maintaining public confidence in the integrity of this now 20-plus year long application process. Those questions are:

1. Why delay submitting a hydro model if it meets the State Engineer's technical requirements, just because the model allegedly may not yet meet the BLM's? Are the BLM and State Engineer processes not separate and distinct as stated by the Applicant? The State Engineer should ascertain whether the Applicant needs more time to meet the Engineer's requirements, or simply more time to meet the BLM's requirements. If it is only the latter, then the State Engineer should determine whether the Applicant's stated desire to merge both models into one, unreasonably frustrates the State Engineer's process.

2. How can the public be assured that the delay request is *not* motivated because the hydro model's current groundwater draw-down predictions may not be to the Applicant's liking? With due respect to the Applicant, this skeptical view of the delay request is not insubstantial in the public's current consciousness. Perhaps to maintain the public image of orderliness and integrity, the Applicant should be ordered to produce any preliminary draw-down predictions obtained thus far with an explanation as to why those draw-down predictions are or are not reliable due to as yet-unresolved hydro model problems. Again, perhaps Protestant BLM has a comfort level on this question given its additional role as EIS administrator and reviewer of the hydro model, which is why Millard County chooses to defer to the BLM. But even still, the public's perplexity and mystification over the timing and extent of this delay request could be addressed with such an order from the State Engineer.

3. Why is a delay of one full year necessary? If technical information is available to satisfactorily answer this question, such information should be given to the State Engineer, the Protestants and the public. Again, Protestant BLM may or may not already have enough information to achieve a comfort level on this question given its dual role as EIS administrator, which again is why Millard County chooses to defer to the BLM on the overall question of the delay request. But the State Engineer, the other Protestants and the public are equally deserving of such information given the intense public scrutiny of the Snake Valley proceeding.

4. Are other problems besetting the Applicant's case which motivate the delay request? Can the Applicant certify its readiness to meet the current timetable on all other issues raised by the protests and which arise under the state law governing the approval of groundwater applications and inter-basin transfers, including those issues reopened by the State Engineer's Interim Order No. 2? For example, that Order reopened the issue of whether there is sufficient future need to justify the Snake Valley part of the project and sufficient ability for the Applicant to finance it. Does the current economic downturn in the Las Vegas area, with its severe decline in construction and

substantial decline in water consumption, motivate the Applicant to defer the hearing until better economic times and growth projections hopefully come back in a year, thus salvaging the future need and cost prongs of its case? This question inter-relates to the previous question: why delay the hearing one full year? Again, there may be good technical grounds for delaying the hearing one full year, and Millard County defers to Protestant BLM who presumably is more informed on those technical questions. But the State Engineer should ascertain whether there are still other problems motivating the current requested delay of one full year.

5. Is the delay request motivated by dynamics and processes which are extraneous to the State Engineer's Snake Valley proceeding? Examples are the timing and progress of the LCCRDA² contemplated though not mandated Nevada-Utah negotiations and the timing and progress of the BLM groundwater project EIS, discussed above. This is a legitimate question, because the State Engineer proceedings should not have to wait on those other proceedings; rather those other proceedings should wait on the State Engineer's proceeding.³

6. What consequences should await the Applicant it fails to meet a new hydro model deadline? Should the State Engineer grant the continuance request for one full year as the Applicant requested (or any length of time for that matter), would it be useful for the State Engineer to provide that failure to produce an acceptable hydro model by the next deadline will constitute grounds for dismissing Applications 54022 – 54030 outright? After 20 plus years, how many more lines in the sand have to be drawn?

Millard County appreciates the opportunity accorded by the State Engineer to respond to the Applicant's delay request. Needless to say, Millard County would appreciate a fairly quick decision on this delay request, so it is known whether work

² Lincoln County Conservation, Recreation and Development Act of 2004.

³ The LCCRDA does not even mandate that the pipeline reach Snake Valley, much less mandate that Nevada and Utah reach any agreement. Congress cannot constitutionally compel the two States to do anything in this regard. The Act merely provides in effect that if the BLM approves a pipeline ROW from a basin shared by the two states, then the BLM may not allow an actual water transfer therefrom unless and until the two States reach an agreement for dividing groundwater in the relevant common regional groundwater flow system, which in this case is not just the Snake Valley hydrographic basin but the Great Salt Lake Regional Flow System (including Spring Valley with its now scientifically acknowledged inter-basin recharge effect on Snake Valley's water budget). BLM approval of the Snake Valley pipeline is a big "if," as the BLM announced in December its intention to have two main alternatives in the EIS to keep the pipeline out of White Pine County. In other words, there is no formal or informal reason for the State Engineer to wait upon these other processes, as they are uncertain at best.

Jason King, P.E.
Acting Nevada State Engineer
April 7, 2009
Page 4

should continue at the current pace to meet the June 19, 2009 initial evidentiary exchange deadline.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Mark Ward", written over a horizontal line.

J. Mark Ward
John B. Rhodes
Counsel for Protestant Millard County

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing letter were mailed to the following individuals by U.S. Mail First Class, postage prepaid and addressed as follows on this 7 day of April, 2009.

Paul Taggart
Taggart & Taggart
108 N. Minnesota Street
Carson City, NV 89703

Kay Brothers
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1001 South Valley View Boulevard
Las Vegas, NV 89153

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Callao 225 Pony Express Road
Callao, UT 84083


Debbie Goodwin
Executive Assistant to J. Mark Ward



From the desk of: Stacy D. Harrop
e-mail: SHarrop@nevadafirm.com

April 9, 2009

Via Overnight Delivery

Jason King, P.E.
Acting State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

RECEIVED
2009 APR 10 AM 11:52
STATE ENGINEERS OFFICE

RE: Response to SNWA's Request for Continuance of Hearing Regarding Application
Nos. 54022 through 54030

Dear Mr. King:

This letter is in response to SNWA's letter of March 30, 2009, requesting a year-long continuance of the hearing on Applications 54022 through 54030 in Snake Valley. In that letter, SNWA did not provide any real basis for the request of such a long delay. Without more information, the protestants cannot make an informed decision whether to agree to the requested continuance or oppose it.

In its letter, SNWA only provided that "significant and recurring delays" with the BLM will prevent SNWA from sufficiently completing the hydrologic model for the BLM's environmental impact statement (EIS) before June 19, 2009. However, that statement provides no information regarding what work has been accomplished to date, what work still needs to be done, what "significant and recurring delays" SNWA is referring to, why SNWA cannot use its current modeling to develop the information required by the State Engineer instead of relying on the model that it is developing for the EIS, or indeed any explanation why an entire year is necessary to complete SNWA's required modeling effort.

April 9, 2009

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SNWA should be required to justify its request to put off these hearings for another year. That the BLM review process for its EIS may take some time provides no explanation as to why the hydrologic model cannot be prepared timely for purposes of the hearings, nor does it provide any basis for the requested year-long continuance. Accordingly, the below-named protestants respectfully request that the State Engineer require SNWA to provide to the Parties a detailed report outlining those matters highlighted in the preceding paragraph so that they can make an informed response to SNWA's continuance request.

Sincerely,

SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON



Stacy D. Harrop

*Attorneys for Protestants Baker Water & Sewer
General Irrigation District, Dean Baker, and
Estate of Carl F. Baker*

SDH:sdh

CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of April, 2009, I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing Response to SNWA's Request for Continuance of Hearing Regarding Application Nos. 54022 through 54030; postage prepaid and addressed to:

Bryan L. Stockton, Esq. Deputy Attorney General Attorney General's Office 100 North Carson Street Carson City, NV 89701-4717 Facsimile: 775-684-4601 <i>Attorney for State Engineer of Nevada</i>	Paul Taggart, Esq. 108 N. Minnesota Street Carson City, Nevada 89703 Facsimile: 775-883-9900 <i>Attorney for Southern Nevada Water Authority</i>
Tracy Taylor, State Engineer of Nevada Division of Water Resources 901 S. Stewart St., Suite 2002 Carson City, Nevada 89701	Simeon Herskovitz Advocates of Community and Environment P.O. Box 1075 El Prado, New Mexico 87529
John Entsminger Southern Nevada Water Authority 1001 S. Valley View Blvd. Las Vegas, Nevada 89153	George N. Benesch, Esq. 190 W. Huffaker Lane, Suite 408 Reno, Nevada 89511
J. Mark Ward Richard Waddingham Utah Association of Counties 5397 South Vine Street Murray, Utah 84107	Stephen Palmer USDI Regional Solicitor 2800 Cottage Way, #1712 Sacramento, CA 80215
Aaron Waite 450 Hillside Drive, #203 Mesquite, NV 89027	John Rhodes P.O. Box 18191 Reno, NV 89111
Veronica Douglas Deep Creek Mountains Ranch 380 Callao Star Route Wendover, UT 84083	Peter Fahmy Office of the Solicitor U.S. Department of Interior 755 Parfet Street, Suite 151 Lakewood, CO 80215
Jerald Anderson Eskdale Center 1100 Circle Drive Eskdale, UT 84728	Paul Tsosie Tsosie & Hatch, LLC 7864 South Redwood Road West Jordan, UT 84088

RECEIVED
2009 APR 10 AM 11:52
STATE ENGINEERS OFFICE


An employee of SANTORO, DRIGGS, WALCH,
KEARNEY, HOLLEY & THOMPSON

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

**IN THE MATTER OF APPLICATION) ELY SHOSHONE TRIBE'S
NOS. 54022 THROUGH 54030,) RESPONSE TO APPLICANT'S
INCLUSIVE, FILED TO FILED TO) MARCH 30, 2009, REQUEST FOR
APPROPRIATE THE) CONTINUANCE
UNDERGROUND WATERS OF)
SNAKE VALLEY (195),)
HYDROGRAPHIC BASIN)**

COMES NOW, the Ely Shoshone Tribe, and objects to Applicant Southern Nevada Water Authority ("SNWA")'s March 30, 2009, request for a one-year continuance of the State Engineer's hearing on this matter. SNWA has had ample time – almost 20 years – to prepare its case and water model for its Snake Valley applications. The State Engineer should deny and dismiss SNWA's applications.

The Confederated Tribes of the Goshute Reservation and Wells Band Council of the Wells Band of Te-Moak Tribe of Western Shoshone, who are seeking interested person status together with the Ely Shoshone Tribe in pending litigation, also object to the continuance.

DATED this 10th day of April, 2009.



Aaron M. Waite, Esq.
450 Hillside Drive #203
Mesquite, Nevada 89027
702-346-0820 Telephone
801-561-0904 Fax
aaron@thlawfirm.com
Counsel for Ely Shoshone Tribe

Ely Shoshone Tribe
Response To Applicant's March 30, 2009, Request For Continuance
Application Nos. 54022 - 54030
Page 1 of 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2009, I deposited for delivery via certified mail, postage prepaid, and fax, a true and correct copy of the foregoing, addressed to:

Paul G. Taggart, Esq.
Taggart & Taggart, Ltd.
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Southern Nevada Water Authority
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Las Vegas, Nevada 89153

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Carson City, Nevada 89701
Fax: (775) 684-2811

Nevada Office of the State Engineer
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Ken Albright
Southern Nevada Water Authority
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Las Vegas, Nevada 89193-9956

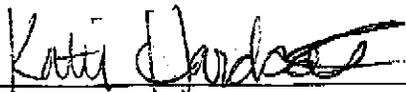
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County of Nye
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Tonopah, Nevada 89049

Greg Walch
Santoro, Driggs et al.
400 S. Fourth St., 3rd Floor
Las Vegas, Nevada 89101



Ely Shoshone Tribe
Brief Re: Administrative Notice
Application Nos. 54022 - 54030
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