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September 17, 2009

Allen Biaggi
Snake Valley Agreement
Nevada Department of Conservation and Natural Resources
Suite 5001
901 S. Stewart St.
Carson City, NV 89701

RE: Comments on Nevada/Utah Bi-State Agreement Regarding Snake Valley Groundwater

Dear Allen:

Please consider the following comments when revising the Nevada/Utah Agreement regarding the division of the waters beneath the Snake Valley. I am a property owner, homeowner, and part time resident of Baker, Nevada. Overall I am skeptical that this agreement will provide the promised protection to water users in Snake Valley, and I believe that the division of the groundwater in Snake Valley facilitates the Las Vegas pipeline project which threatens not only the future of Snake Valley, but most of rural Nevada.

General Comments

1. I do not believe there are 132,000 af of water available, and I think it is a mistake to use that number to base decisions for the future of Snake Valley.
2. Both states should provide adequate review time and formal public hearings on the draft agreement. The two week extension of comment time to September 30 is welcome, but inadequate for the complexity and detail of an agreement forged in secret over a four year period. Both states should hold formal public hearings to gather testimony and provide additional forums for discussion of the provisions.
3. Both states should provide the public the opportunity to review and comment on the revised draft after comments on the first draft have been considered and addressed.

4. The Governors of Nevada and Utah should hold bi-state hearings in Snake Valley on the revised draft agreement before deciding whether to sign the document. It should be the Governors who sign rather than their designees.
5. Additional studies are needed. BARCASS 2 is needed. The studies should be conducted by an independent third party, peer reviewed and quality controlled. If the State Engineer directs SNWA to pay USGS to do the studies and data collection, the quality and accuracy of the data will be ensured. Studies should not be piecemealed, which is why BARCASS 2 is needed.
6. Implicit in this agreement is the assumption that the current set of conditions will exist in the future. While Nevada's current administration and State Engineer may be open to considering the concerns of Snake Valley, it is likely that in the future, those posts could be controlled by the same people who want to drain rural Nevada. The agreement needs to incorporate language that commitments made in the future are incorporated into the agreement and approved by both states. The agreement also needs language to bind the successors of Southern Nevada Water Authority as well as other private and public entities who provide water or build pipelines under contract , lease or other arrangement.
7. I also reference and adopt the comments of the Great Basin Water Network.

Specific comments

Page 1, 1.1 a. The term "demonstrated" should be further defined.

Page 2, 1.4 "beneficial use" does not include the use of water by wildlife. Is this intentional? Why are wildlife not protected? Is it not the responsibility of the state to protect wildlife?

Page 2, 2.0 Findings: At a minimum, the findings section should provide a statement that Nevada water rights holders may seek redress from the Nevada State Engineer under existing Nevada water law. It is my understanding that the team felt it was unnecessary to state that. However, the agreement leaves the impression that only Utah residents in Snake Valley have recourse for the adverse effects of pumping by SNWA.

Page 3, 2.4 How does the acknowledgement that the existing information is insufficient reconcile with the Table 1 division of the waters? This statement, which is true, should also appear on page 4 as an additional sentence under 3.2

Page 3, 2.5 Instead of “sophistication” use “complexity.”

Page 4, 3.2 The use of 132,000 af requires additional explanation and a citation of the study from which this was derived. Suggested rewrite: “The States and other parties acknowledge that existing information is insufficient to determine with precision the Available Groundwater Supply. However, based on the best currently available data (insert citation here) the States agree that the Available Groundwater Supply as of the date of this Agreement is 132,000 af.” However, I am very uncomfortable basing this agreement on one study, rather than taking that study into consideration with the other studies that have been done. I also think that if 49,000 af flows from Spring Valley into Snake Valley, as postulated in the USGS BARCASS study, that the water is being counted twice. There should also be an explanation of why Pleasant Valley and Hamlin Valley are considered to be part of Snake Valley for this purpose.

Page 4, Table 1 The explanation should state that vested water rights are taken into consideration in the Allocated block. There was some confusion among the Nevada team about that, and it needs to be clear where vested rights are accounted for in Table 1.

Page 6, 5.3 It is my understanding that this provision is designed to provide each State Engineer with veto power, but it is not clear in the language of this provision.

Page 9, 6.4 This requirement is written in the passive voice, as if SNWA were not responsible for the $3 million. Instead, for the last sentence, “In no event will SNWA allow the balance of the mitigation fund to be reduced below $3 million while SNWA (or its potential partners or successors in interest) maintains groundwater development and withdrawal facilities in Snake Valley. “ The details of the mitigation fund should be more explicit. The fund should not be SNWA’s but should be under the jurisdiction of the State Engineers. Who issues the checks? Who controls the money? What are the consequences if SNWA does not maintain the mitigation fund at $3 million or above?

Thank you for considering my comments. To the extent that the agreement protects water users in the Snake Valley, both Nevadans and Utahans, from the adverse impacts of pumping, I support it. However, the best protection for water users in the Snake Valley is not to build the water pipeline and not to allow pumping of the Snake Valley, which is in balance. It is not clear that SNWA can be trusted to meet the terms of the monitoring agreement. Ultimately, this agreement, if signed, will depend on the resources of the State of Utah and the court system to protect users of water in the Snake Valley. The example of Owens Valley is instructive in this

regard. Therefore, to the extent that this agreement facilitates the Las Vegas Water Grab and the destruction of Snake Valley, I oppose it. Furthermore, as stated earlier, I do not believe there are 132,000 af of water available, and I think it is a mistake to use that number to base decisions for the future of Snake Valley.

Sincerely,

Abigail C. Johnson

cc: Governor Jim Gibbons
Utah Department of Natural Resources
Dean Baker
Great Basin Water Network
Nevada Department of Wildlife