



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:

October 2, 2009

Via FederalExpress Mail and Email

Snake Valley Agreement
c/o Utah Department of Natural Resources
Division of Water Rights
1594 West North Temple, Suite 220
Salt Lake City, Utah 84114

Snake Valley Agreement
Nevada Department of Conservation and Natural Resources
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701

Re: Comments on the Agreement for Management of the Snake Valley Groundwater System between the States of Nevada and Utah (NV/UT Agreement) and the Snake Valley Environmental Monitoring and Management Agreement between the State of Utah and the Southern Nevada Water Authority (UT/SNWA Agreement).

To Whom it May Concern:

This letter presents comments from the United States Department of the Interior Bureaus (DOI Bureaus), Bureau of Land Management, Fish and Wildlife Service and the National Park Service, on the subject agreement.¹ DOI Bureaus commend the two states on the release of the Draft Agreement for Management of Snake Valley Groundwater System and support the concept of interstate coordination of groundwater resources. Our comments raise certain questions and

¹ The Bureau of Indian Affairs and the Confederated Tribes of the Goshute Reservation and other affected Tribes are still reviewing the Agreement and will provide their comments in a separate letter at a later date.

observations that we would like to bring to the States' attention for your consideration as you finalize the agreement. Below we raise certain general questions and observations and have provided additional more detailed comments in the attachment to this letter.²

In our review of the NV/UT Agreement, it is not clear how the Agreement addresses protection of non-consumptive beneficial uses of water that are not covered by a water right but that are none-the-less protected by state law. These beneficial uses of water include those necessary to protect various species that rely on a particular water source that could be impacted by the withdrawal of groundwater. In our reading of the NV/UT Agreement, the Agreement protects "Existing Permitted Uses" which are limited to consumptive uses of groundwater in Snake Valley Groundwater Basin pursuant to water rights granted or recognized by either State.³ If this reading is correct, the Agreement does not provide protection to those beneficial uses of water that are not covered by a water right that occur in one state and may be adversely affected by an appropriation in the other state.

The Agreement provides that the Nevada State Engineer will continue to address such adverse impacts to water rights in Nevada, which indicates that water-dependent resources in Nevada will continue to be protected under Nevada Law for appropriations in Nevada.⁴ What is not clear is whether the Agreement adequately addresses impacts to such water-dependent resources in Utah that may be impacted by a Nevada appropriation or water-dependent resources in Nevada that may be impacted by a Utah appropriation.

Additionally, we note that the NV/UT Agreement focuses on mitigating for adverse impacts once they occur instead of focusing on avoiding such impacts before they occur. For example, Section 6 of the Agreement requires SNWA to mitigate for an injury, not take actions to avoid such injury. This limitation in the NV/UT Agreement does not seem consistent with the intent of Appendix C of the Agreement, the UT/SNWA Agreement that provides for the monitoring and management of the Snake Valley groundwater system. In Section 1 of the UT/SNWA Agreement, the Parties agree to include early warning indicators in the monitoring program to indicate potential effects to the hydrologic, biologic and air resources caused by SNWA's pumping and to manage the system to initially avoid actions that cause the undesired effect,

² We understand that these comments will be considered by both Nevada and Utah even though provided after the stated deadline for comments of September 30, 2009. Please see attached email message sent to both States on September 30, 2009.

³ "Existing Permitted Uses" also expressly includes the water rights for the Fish Springs National Wildlife Refuge, although the specific amount of water allotted to the Refuge under the NV/UT Agreement is less than the total quantity of water rights held by the Refuge.

⁴ Under Nevada law, the Nevada State Engineer may not approve an application for the appropriation of groundwater if he determines that the appropriation, among other factors "threatens to prove detrimental to the public interest" and with respect to inter basin transfers of groundwater, that such appropriation is not "environmentally sound as to the basin from which water is exported." See NRS 533.370. Utah has similar provisions regarding the approval of applications to appropriate water. See Utah Code 73-3-8. These provisions of state law provide for the protection of water-dependent resources that are not covered by a water right but that may be adversely affected by a proposed appropriation in the state in which the resource is located.

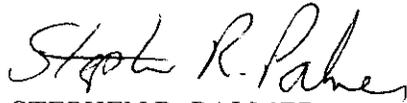
second to minimize the effect and last to mitigate. It is not clear if this important management program is carried through to the NV/UT Agreement to provide the necessary protections to existing water rights and water-dependent resources. The concept of “early warning” to avoid adverse impacts is especially critical in a groundwater system such as Snake Valley. We believe it is important to consider whether the concept of “Available Groundwater Supply” should be an absolute quantity that is available for consumptive use; or rather should it include the concept of avoiding adverse impacts to existing uses, even though this may result in less water being available for appropriation than the amount identified in the Agreement.

It is not clear to us whether the UT/SNWA Agreement includes monitoring, early warning indicators and management of responses for any adverse effects from SNWA’s pumping on the hydrologic, biologic and air resources in both states, including those resources managed by or under the jurisdiction the DOI Bureaus. The Agreement does not appear to recognize that many of the “key areas of biological concern” and related resources and water rights are located on federal land. Because many of these resources are located on federal land, we recommend that representatives of the DOI Bureaus be regular standing members, although non-voting members, of the Technical Work Group. We also recommend that the DOI Bureaus be afforded the opportunity to participate in the numerical modeling described in Section 8.1. In addition, we recommend that the model development and use include oversight by the two states and other stakeholders, peer review and public comment and not preclude the use of other models that are suitable for analysis of the potential impacts from SNWA’s pumping.

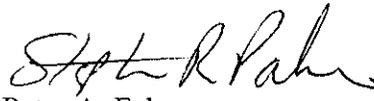
We also are unclear why the Tier I Monitoring Area was not expanded to include southern Spring Valley and the Interbasin Monitoring Zone of Hamlin Valley which are up gradient of and may be affected by SNWA pumping sooner than more distant portions of Snake Valley and has not integrated the monitoring in Snake Valley with the ongoing monitoring program for Spring Valley. It would be helpful if the Agreement addresses how this integration will be accomplished. Further, there appears to be an oversight in the Agreement in that it does not address monitoring of phreatophytic shrublands and areas containing saline and sodic soils. Monitoring of these resources is important because the loss of such vegetation and exposure of the soils could adversely affect the air quality which is an expressed concern in the Agreement.

We request that the States consider including in its expression of cooperation as provided in Section 4.8 of the NV/UT Agreement, to work cooperatively to manage the Snake Valley hydrologic basin and adjacent basins as a whole and consider related cumulative effects of that management. The DOI Bureaus welcome greater participation in the ongoing monitoring and management activities related to Snake Valley Groundwater Basin as referenced in these comments. We are pleased that the two states are diligently working to put into effect an agreement to address the beneficial use of water in Snake Valley and ask that you consider our concerns and comments in the process. Please contact, the undersigned with any questions regarding these comments.

Sincerely,



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Attachments