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September 30, 2009

Allen Biaggi, Director  
Nevada Dept. of Conservation and Natural Resources  
901 S. Stewart St. #5001  
Carson City, NV 89701

Mike Styler, Director  
Utah Department of Natural Resources  
Division of Water Rights  
1594 West North Temple #220  
Salt Lake City, UT 84114

Re: Draft Utah-Nevada Agreement for the Management of Snake Valley Groundwater System and the Snake Valley Environmental Monitoring and Management Agreement

Dear Directors Biaggi and Styler:

As a life-long Nevadan and conservationist I am writing these comments to express my concern about the negative impacts on the environment and rural communities that I believe are manifest in the draft agreement cited above. The agreement is a response to the application by the Southern Nevada Water Authority (SNWA) for 51,000 acre-feet-annually (AFA) from Snake Valley, a groundwater basin of eastern Nevada and western Utah, and required before SNWA can export any water through a pipeline to the greater Las Vegas area.

The agreement purports to support an equitable division of groundwater in three of the valleys it covers. The agreement is premised on a "yield" of 132,000 AFA. It divides the groundwater into existing rights and "new" rights and "reserved" rights. There are no rights specified in the agreement for water for protecting the environment in either Nevada or Utah. The lack of any specific right or guarantee to water which today flows in springs and wetlands and sub-irrigated meadows and groundwater dependent streams is a fatal flaw of the agreement and the agreement needs to be redrafted to incorporate specific protections for the groundwater dependent environment. A thorough agreement requires that both the environment and the economic interests of the valley are fully protected.

A side agreement between the SNWA and Utah to monitor and establish "management" committees is inadequate to protect the environment. Further, the side agreement completely ignores the serious environmental impacts of pumping to the portion of Snake Valley which lies in Nevada. In fact, the agreement offers no protections whatsoever for Nevada wildlife or natural groundwater dependent springs, wetlands, sub-irrigated meadows and streams. The Great Basin National Park, one of the important economic generators of the region, is given no mention or protection in the agreement. Any protection for

environmental resources in Utah is exclusively through the side agreement and does not actually call for any specific action to prevent loss of wetlands and springs. The agreement provides no defined protection for the environment dependent on the existing groundwater equilibrium nor is there any specific threshold which defines “reasonable” drawdown and decline in environmental resources.

The agreement fails to recognize and seek to protect the economic benefits of a healthy environment supported by the existing groundwater equilibrium. Rather, it treats the environment and the plants and animals (and the local users of water as well) as a problem deserving only of “mitigation”. Mitigation must be decided upon with the agreement of SNWA. If SNWA doesn't agree to the mitigation, after an unspecified period of time has passed, and only for resources in the Utah portion of Snake Valley, would Utah be able to seek relief from the State Engineer or the court? The agreement itself does not provide the necessary structure to solve an environmental problem through a requirement to reduce pumping by SNWA.

While there is recognition in the “definitions” that there will be “changes” in the hydrology from groundwater development, there is no accompanying definition which limits the changes in any significant and specific way as already mentioned. For example, what is an “unreasonable” lowering of the groundwater or impact to springs and seeps and wetlands and groundwater dependent streams. I would submit that it is unreasonable for springs, seeps and wetlands to suffer loss which exceeds a well defined threshold such as 5 percent of its historic flow or extent. Leaving the subject of environmental degradation to guess work is not acceptable as a framework. Mitigation, also, can be selected from a list of possible actions but does not assure that the springs, seeps, wetlands, and/or groundwater dependent streams will be protected at all and may, in fact, be subject to complete loss.

The environmental impacts from pumping of groundwater will undoubtedly be felt first in Nevada. Yet, there are no protections built into the agreement which limit negative impacts in Nevada. At the very least, the environmental protections provided for resources in the Utah portion of Snake Valley should be extended to all water dependent environmental resources in Nevada. To do nothing for the Nevada water dependent environmental resources in the agreement is to seemingly sacrifice Nevada's environment to unreasonable loss.

Here is a list of other issues which need to be addressed before the agreement should be adopted by either Nevada or Utah.

- All water users in Snake Valley should be represented by a board or commission which is funded to look out for the economic and environmental interests of Snake Valley as an environmental and economic entity and not be subdivided arbitrarily or left as individuals to fight a huge, external agency.
- 132,000 AFA is not the perennial yield or available water supply but instead it is a calculation, from a single year study, of evapotranspiration rates measured in a few specific locales and extrapolated over the entire region. The basis for establishing the perennial yield should be exclusive of flow coming from up-gradient basins for which SNWA already has been granted rights.

- All existing uses and environmental uses of water within Snake Valley (and the other valleys to which the agreement refers) must be included in the already appropriated category.
- Terms such as “reasonable” must be defined. “Mitigation” must be defined in detail in the primary agreement and “mitigation actions” must be defined and a specific ordered list of those actions should also appear in the primary agreement and not left to a side agreement. The agreement between the states should define all the critical actions which the States agree are needed to protect the environment and people of Snake Valley as a whole.
- The agreement must recognize the environment as an important component of the Valley's healthy environment and existing economy and deserving of protection. The agreement's current statement that the states agree to “minimize environmental impacts and prevent the need for listing additional species under the Endangered Species Act,” is inadequate and offers no protection to the environment even in Utah. A complete inventory of water dependent environmental resources must appear in the agreement and specific protection spelling out what will be preserved must be included in the document. The document must cover all water dependent resources in both Nevada and Utah.
- All resource protections and inventories which are presently provided for only in Utah should be extended to include the entire region covered by the agreement.
- The studies to be carried out in the 10 year period should be specified and both states should agree that all studies which are to be used in decision making are to be done by an independent agency and be peer reviewed and pass quality assurance for all data collection.
- Baseline studies must be conducted during the 10 year period and should be conducted by an independent agency and be peer reviewed and pass quality assurance for all data collection. Baseline studies should be over a 5 year minimum period and completed at least 1 year prior to the 2019 NV State Engineer hearing on the SNWA Snake Valley applications.

Finally, I am deeply concerned about the side agreement exclusively between SNWA and the State of Utah. I believe that for the purposes of the agreement that the side agreement must be incorporated into the body of the main agreement between the States of Nevada and Utah and define specific actions and procedures to resolve groundwater pumping adverse impacts on the environment and the economic activity of the entire region for which the states are themselves responsible. Ultimately, the States cannot relinquish their responsibility to assure the agreement contains the protections for the environment which are meaningful and responsive to observed problems. Ultimately, only the States can assure that actions will be taken to protect its citizens and the environment which supports them.

Thank you for the opportunity to comment.

Sincerely,

/s/

Dennis Ghiglieri