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October 29, 2012

Hand Delivered

Governor Gary Herbert
350 State Capitol Building, Suite 200
Salt Lake City Utah 84114

Re: Opposition to Current Draft of Proposed Snake Valley Agreement

Dear Governor Herbert:

Introduction and Summary of Millard County's Position

As we have repeatedly and consistently stated since 2009, Millard County remains strongly opposed to the draft proposed Snake Valley agreement (hereafter "draft") and Millard County respectfully urges you not to sign it.

Under Federal law, the groundwater resources of the entire Great Salt Lake Desert Flow System, not just Snake Valley, must be addressed by the two States. The draft fails to do this; therefore, the draft cannot legally support a BLM pipeline right-of-way to convey water out of Snake Valley.

No amount of monitoring and mitigation plans, inter-state committees, and other so-called "safeguards" written into the draft can overcome the grossly unfair split of groundwater between the two States. Once that split takes effect, the groundwater that is rightfully and fairly Utah's property and birthright is forever forfeited, and the residents of Millard County will forever bear the brunt of that injustice. Please do not let this be Utah's legacy. The draft agreement splits unallocated Snake Valley groundwater between Nevada and Utah in a manner that is grossly unfair to Utah and ignores the inter-state geography and patterns of usage and consumption in Snake Valley.

Some say the draft is not unfair because it achieves an overall 50/50 split of total groundwater. First of all, that 50/50 split is an illusion for the reasons shown below. But more importantly, a 50/50 overall split is non-sensical because it contradicts the geographical reality that the vast majority of groundwater consumption and historic usage, have occurred and continue to occur on the Utah side.

The draft penalizes Utah for potential impacts to the next basin down-gradient (Fish Springs), but turns a blind eye to potential impacts to Snake Valley from pumping in the next basin up-gradient (Spring Valley).

The draft is pointless, because its limited scope (Snake Valley basin as opposed to the entire Great Salt Lake Desert Regional Flow System) cannot legally support the BLM's permitting of a right-of-way to transfer of groundwater out of Snake Valley.

The Draft's Groundwater Split is Grossly Unfair to Utah;
The U.S. Supreme Court Would Not Likely Impose Such a Split

The following explains why the draft is grossly unfair to Utah:

1. The draft inexplicably skews unallocated groundwater *7 to 1* and reserve groundwater to *3 to 1* in Nevada's favor. *(Ex. A)* In doing so, the draft:

   a. Grossly conflicts with the ratio of groundwater dependent acres in each State's portion of Snake Valley:

Utah:	220,779 acres	***84%***
Nevada	41,364 acres	***16%***

   (Ex. B)

   b. Grossly conflicts with the ratio of groundwater acre feet discharged through evapotranspiration (ET) in each state's portion of Snake Valley:

Utah:	108,085 af/y	***82%***
Nevada	24,162 af/y	***18%***

   (Ex. C)

c. Grossly conflicts with the ratio of historic groundwater beneficial usage in each state's portion of Snake Valley, as reflected in the amount Snake Valley groundwater allocated by each State's Engineer as of 1989:

Utah:	35,000 af/y	**76%**
Nevada:	12,000 af/y	**24%**

(Source: Utah and Nevada Divs. of Water Rights/Water Resources)

2. The draft's suggested overall 50/50 split of groundwater is an illusion.

This is the proposed allocation of groundwater between the two States:

Table 1 – Allowed Amounts of Consumptive Use of Groundwater

Allocated	Utah:	55,000 af/y
	Nevada:	12,000 af/y
Unallocated	Utah:	5,000 af/y
	Nevada:	36,000 af/y
Reserved	Utah:	6,000 af/y
	Nevada:	18,000 af/y

(Exhibit A)

On its face this table suggests the overall Snake Valley groundwater totals are 66,000 af/y for each State. But the "allocated" 55,000 af/y figure to Utah is misleading. 20,000 af/y of that 55,000 af/y are not allocated Utah groundwater rights for use in Shake Valley. Those 20,000 af/y were carved out Utah's supposed 50/50 share to make sure that groundwater flowed down-gradient to the Fish Springs complex in the next basin. Utah officials have been candid about this 20,000 af/y offset from the time the draft was introduced to the public. There is nothing wrong with trying to account for down-gradient impacts to Fish Springs. (In fact doing so shows an unspoken realization that the scope of the agreement should really be the entire Great Salt Lake Flow System instead of just the Snake Valley basin, as the 2004 Lincoln County Land Act mandates, and more on that topic below.) But the 20,000 af/y should have never been counted to produce the impression that Nevada needed more in order that both states could have an equal amount of groundwater at their

disposal for use in Snake Valley. The real story behind Table 1 is 46,000 total af/y for Utah and 66,000 af/y for Nevada, for use in Snake Valley.

3. A 50/50 overall split is an unrealistic and potentially harmful measure of fairness in any event, because, again, the geographical reality is that the vast majority of natural, agricultural and municipal groundwater utilization of Snake Valley's groundwater budget has long since been established on the Utah side of Snake Valley.

Even if one could get past the 20,000 af/y Fish Springs discrepancy to the Table 1 impression of an overall 50/50 split, the point remains: 50/50 is not the proper benchmark in light of the following facts that:

a. Groundwater dependent acres in each State's portion of Snake Valley:

Utah:	220,779 acres	***84%***
Nevada	41,364 acres	***16%***
(Ex. B)		

b. Volume of groundwater ET dischargedin each state's portion of Snake Valley:

Utah:	108,085 af/y	***82%***
Nevada	24,162 af/y	***18%***
(Ex. C)		

c. Historic groundwater beneficial usage in each state's portion of Snake Valley, as reflected the amount Snake Valley groundwater allocated by each State's Engineer as of 1989:

Utah:	35,000 af/y	**76%**
Nevada:	12,000 af/y	**24%**

(Source: Utah and Nevada Divs. of Water Rights/Water Resources)

These ratios, ranging from 76% to 84%, manifest that far more than 50% of Snake Valley's total groundwater water budget historically and currently go to support irrigation utilization and natural groundwater-dependent vegetation utilization (ET) on the Utah side, including crop lands, pastures, municipal water systems, domestic groundwater systems, grazing forage for private ad public lands grazers and non-grazed vegetation so vital to hold down the desert playa and prevent dust storms such as were experienced in 2007-2010 following the

Milford Flat Fire . All of those uses on the Utah side are and have been claiming 76% to 84% of the total Snake Valley groundwater budget, for years and decades. It is frightening for the Utah residents of Snake Valley to think of how a 50/50 split, so seemingly fair and innocuous at first glance, would cut so deeply into the above-stated long established uses on the Utah side. Again, something would have to give on the Utah side.

It is time to set aside the artificial 50/50 benchmark and seriously re-think and re-calibrate the proper principles and framework for allocating Snake Valley groundwater between the two States. If there is wet, provable, unallocated Snake Valley groundwater to be had, let it be divided between the States in such a way as to preserve the above-stated, long established overall interstate ratios of utilization. That is a sound and defensible position Utah should not have to apologize for before the U.S. Supreme Court if litigation becomes necessary, and certainly not apologize for in making a counter-offer to Nevada. See more on a suggested counter-offer in the accompanying materials.

4. <u>The draft penalizes Utah for potential impacts to the next basin down-gradient (Fish Springs), but turns a blind eye to potential impacts to Snake Valley from pumping in the next basin up-gradient (Spring Valley).</u>

If Utah has to absorb a 20,000 af/y adjustment to its share of the interstate Snake Valley groundwater division, to account for potential down-gradient impacts to groundwater resources in Fish Springs, then it is only fair that Nevada make an appropriate adjustment to its share of Snake Valley water, to account for potential impacts to Snake Valley's groundwater budget caused by up-gradient pumping in Spring Valley.

In the March 2012 ruling on SNWA's application to pump and export groundwater to Las Vegas from Spring Valley ("the Spring Valley 2012 ruling), the Nevada State Engineer ("NSE") expressly found that interbasin flow from Spring Valley into Hamlin Valley (which comprises the southern portion of the Snake Valley hydrographic basin) ranges from 4,000 to 12,000 af/y. *(See pp. 76-85 of NSE's Spring Valley Ruling 6164, dated March 22, 2012.)* In that same ruling, the NSE approved over 61,000 af/y to SNWA for pumping and conveyance out of Spring Valley, to be done in stages eventually moving up to the total allocated amount barring any impacts to resources in Spring Valley and other basins.

Utah Geological Survey's Hugh Hurlow, Ph.D. testified as an expert witness for Millard County at the Spring Valley hearing in the Fall of 2011. Dr. Hurlow testified to the 4,000 – 12,000 af/y inter-basin flow connection, and the

NSE agreed with him. Dr. Hurlow further testified that based on this inter-basin flow connection, it is his opinion that SNWA's pumping and export of groundwater from Spring Valley could potentially reduce groundwater that would otherwise be available for flow into Hamlin and on into Snake Valley's available groundwater supply, although Dr. Hurlow did not predict the extent of such an impact.

The draft is unfair to Utah, because it makes no account for this potential impact to the Snake Valley groundwater budget. In other words, Utah's share of the supposed 66,000/66,000 split is further eroded not only by the 20,000 af/y offset for Fish Springs, but also by the potential 12,000 af/y impact from Spring Valley pumping, thus exacerbating an already unfair situation. The draft should be modified to account for up to 12,000 af/y annually until a sufficient number of years of pumping and conveyance of Spring Valley groundwater have passed and potential impacts to Snake Valley's groundwater budget are adequately determined.

5. The draft gives an insufficient legal basis for the BLM to permit SNWA to divert groundwater from Snake Valley, because the draft fails to divide the groundwater resources of the several basins that comprise the Great Salt Lake Desert Regional Flow System of which the Snake Valley basin is only one part, as required by the 2004 Lincoln County Conservation, Recreation and Development Act (LCCRDA).

Section 301(e)(3) of LCCRDA, Public Law 108-424 states:

> (3) AGREEMENT.—Prior to any transbasin diversion from ground-water basins located within both the State of Nevada and the State of Utah, the State of Nevada and the State of Utah shall reach an agreement regarding the division of water resources of those interstate ground-water flow system(s) from which water will be diverted and used by the project. The agreement shall allow for the maximum sustainable beneficial use of the water resources and protect existing water rights.

This provision may be summarized as follows: Before the BLM may grant a right of way for the **diversion** of groundwater from an interstate **basin**, the two States sharing the basin must **divide** the ground water resources of the **interstate flow system** of which the basin is a part.

Snake Valley is one of several basins that comprise the interstate basin

known as the Great Salt Lake Desert Flow System. This flow system is clearly interstate in nature. *(Ex. D)* The draft does not constitute a division by the two States of the Great Salt Lake interstate ground-water flow system, for purposes of LCCRDA Section 301(e)(3). Thus the draft, even if were signed the two States, would not justify the BLM's granting a right of way to SNWA to divert groundwater out of Snake Valley.

All of which bear on two points:

(a) Why would Utah give away its rightful share of Snake Valley water in the cause of facilitating SNWA's groundwater project (which everyone knows is the driving force behind the interstate negotiations), when the draft could not legally support the SNWA transport of groundwater out of Snake Valley project due to the draft's insufficient scope when measured against Section 301(e)(3) of LCCRDA.

(b) This is more than just legalistic wrangling. It goes to the very mischief caused by the draft's failure to completely and equitably account for impacts from up-gradient pumping in Spring Valley. Little coincidence, then, that the Spring Valley basin, as well as the basin where Fish Springs is located, are both part of the Great Salt Lake Desert Flow system. *(Ex. D)*

It was wisdom in Congress to require that the entire flow system, not just one basin, be divided. Why? Because the basins in the flow system are all connected. They are what make a flow system a "flow system." The groundwater flows from one basin to the other. A single interstate basin cannot be properly divided in a vacuum. The inter-connectivity and domino effect of pumping, both up-gradient and down-gradient must be accounted for and addressed in the division and negotiations leading to the division. Hence the wisdom of Congress in including the above-quoted Section 301(e)(3) of LCCRDA. And hence the mischief due to failure to account for Spring Valley pumping impacts to Snake Valley, especially given the one-sided call for Utah to account for Fish Springs.

Why the draft ignores this mandate of Congress is unknown to Millard County. Millard County along with Juab and Tooele Counties as cooperating agencies in the BLM EIS process, have served notice that they will take legal action against the BLM for violation of LCCRDA Section 301(e)(3) if BLM grants a right of way out of Snake Valley based on the draft if signed.

Conclusion

For these reasons, Millard County is steadfastly opposed to the draft and urges that it not be signed. The Juab and Tooele County Commissioners stand solidly with Millard County in opposing the draft, and collectively join with Millard County in asking that you not sign it. Thank you Governor Herbert for giving Millard County a chance to explain its concerns with the existing draft and to proposed a constructive and fair counter-proposal.

Sincerely,

MILLARD COUNTY BOARD OF COMMISSIONERS

Jim Withers, Commission Chair

Daron Smith, Commissioner

Bart Whatcott, Commissioner

cc. Warren Peterson, Esq. Steve Clyde, Esq., and Dallin Jensen, Esq.
Boards of Commissioners of Juab and Tooele Counties
Lt. Governor Greg Bell, c/o Cody Stewart
Utah Association of Counties

Exhibit A

To Millard County's October 29, 2012 Letter to Governor Herbert

Draft Agreement – On its Face

	Utah	Nevada	
Allocated	55,000	12,000	
Unallocated	5,000	36,000	
Reserve, Dry	6,000	18,000	
Total	66,000	66,000	132,000

Draft Agreement – Closer Look

	Utah	Nevada	
Allocated	55,000	12,000	
(20,000 af/y Allowance to Prevent Fish Springs Impacts)			
(No Account Made for Spring Valley Pumping Impacts)			
Unallocated	5,000	36,000	***7 to 1 Nev***
Reserve, Dry	6,000	18,000	***3 to 1 Nev***
Total	66,000	66,000	132,000

Exhibit B

To Millard County's October 29, 2012 Letter to Governor Herbert

114°

113°15'

39°45'

39°

38°15'

Nevada

Utah

Tooele Co.

Juab Co.

Millard Co.

White Pine Co.

Lincoln Co.

Beaver Co.

Iron Co.

Callao

Trout Creek

Gandy

Eskdale

Baker

Garrison

Location of detail

Landcover/ET unit	State	Area (acres)
Dense Desert Shrubland	Utah	15,057
Grassland		2,381
Marshland		1,479
Meadowland		4,027
Moderately Dense Desert Shrubland		66,075
Moist Bare Soil		577
Open Water		413
Recently Irrigated Cropland		6,667
Sparse Desert Shrubland		124,103
Sum*	Utah	220,779
Dense Desert Shrubland	Nevada	6,445
Grassland		1,058
Marshland		360
Meadowland		1,914
Moderately Dense Desert Shrubland		19,340
Moist Bare Soil		0
Open Water		14
Recently Irrigated Cropland		3,243
Sparse Desert Shrubland		8,990
Sum*	Nevada	41,364

*Tabulated areas do not include "Other" landcover units (Dry Playa and Xerophyte - which may not contribute to groundwater discharge by evapotranspiration). See USGS Scientific Investigations Report 2007-5087 (http://pubs.usgs.gov/sir/2007/5087/) for descriptions of landcover units

Explanation

Snake Valley boundary

Approximate extent of groundwater discharge by Evapotranspiration (ET)

Landcover/ET units

- Moist Bare Soil
- Marshland
- Meadowland
- Grassland
- Dense Desert Shrubland
- Moderately Dense Desert Shrubland
- Sparse Desert Shrubland
- Open Water
- Recently Irrigated Cropland
- Other (landcover units that may not contribute to groundwater discharge by ET)

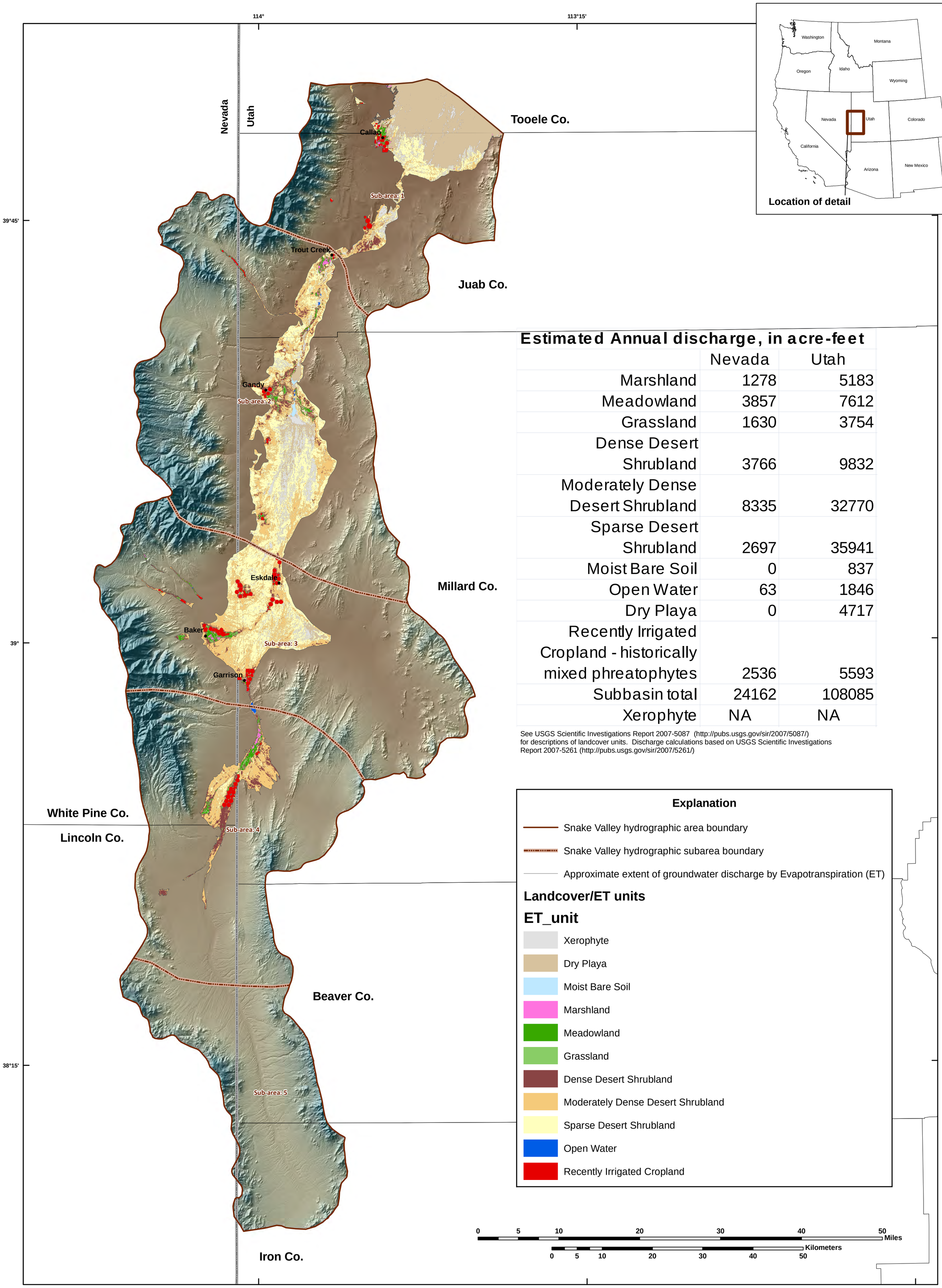
0 5 10 20 30 40 50 Miles

0 5 10 20 30 40 50 Kilometers

Base from U.S. Census Bureau 1:500,000-scale digital data, 2000. ET units from 28.5-meter USGS digital data, 2007.
Groundwater discharge boundary from 1:500,000-scale USGS digital data, 2007. Hydrographic area boundary from 1:1,000,000-scale USGS digital data, 2009. Hillshade from 30-meter National Elevation dataset.
Albers Equal Area Conic Projection, Central Meridian at -114°, Standard Parallels at 29.5° and 45.5°, Latitude of origin at 23°

Exhibit C

To Millard County's October 29, 2012 Letter to Governor Herbert



Estimated Annual discharge, in acre-feet

	Nevada	Utah
Marshland	1278	5183
Meadowland	3857	7612
Grassland	1630	3754
Dense Desert Shrubland	3766	9832
Moderately Dense Desert Shrubland	8335	32770
Sparse Desert Shrubland	2697	35941
Moist Bare Soil	0	837
Open Water	63	1846
Dry Playa	0	4717
Recently Irrigated Cropland - historically mixed phreatophytes	2536	5593
Subbasin total	24162	108085
Xerophyte	NA	NA

See USGS Scientific Investigations Report 2007-5087 (http://pubs.usgs.gov/sir/2007/5087/) for descriptions of landcover units. Discharge calculations based on USGS Scientific Investigations Report 2007-5261 (http://pubs.usgs.gov/sir/2007/5261/)

Base from U.S. Census Bureau 1:500,000-scale digital data, 2000. ET units from 28.5-meter USGS digital data, 2007.
Groundwater discharge boundary from 1:500,000-scale USGS digital data, 2007. Hydrographic area boundary from 1:1,000,000-scale USGS digital data, 2009. Hillshade from 30-meter National Elevation dataset.
Albers Equal Area Conic Projection, Central Meridian at -114°, Standard Parallels at 29.5° and 45.5°, Latitude of origin at 23°

Exhibit D

To Millard County's October 29, 2012 Letter to Governor Herbert

Hydrologic Basins and Flow Systems

U. S. Department of the Interior
Bureau of Land Management

15 February 2006

No Warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data.

LCWD Corridor (LCCRDA)
SNWACcorridor (LCCRDA)

Proposed Corridors
- Lincoln County Water District
- Southern NV Water Authority
- Southern NV Water Authority Alternative

Flow Systems
- Death Valley
- Meadow Valley Wash
- Salt Lake Desert
- Virgin River Valley
- White River

- Cities & Towns
- County Boundary
- Hydro Basins

0 25 50 75 100 Miles