



**Toiyabe Chapter, PO Box 8096, Reno, NV 89507**

October 31, 2006

Tracy Taylor, State Engineer  
Nevada Division of Water Resources  
901 So. Stewart St. #2002  
Carson City, NV 89701

Attention: Susan Joseph-Taylor  
Chief Hearing Officer

Dear State Engineer Taylor,

On behalf of the 5,600+ members of the Toiyabe Chapter of the Sierra Club in Nevada and the eastern Sierra, we are submitting comments on the Spring Valley water rights hearing held September 11-25, 2006. The proposed massive interbasin transfer of rural groundwater to southern Nevada urban areas was extremely controversial 16 years ago when the applications and thousands of protests were initially filed and remains controversial today.

The Sierra Club greatly appreciates the efforts made by the Division of Water Resources (DWR) to make the recent hearings process open to the public, including the arrangements for live broadcasts of the hearings, videoconferencing from remote sites for the public comment periods, making hearing documents available on the DWR website before and during the hearing, and for leaving the hearing record open for another month for public comments.

Much information was submitted and arguments made by the applicant and protesters during the Spring Valley hearing on how much groundwater is potentially available, what groundwater has already been appropriated, and whether additional appropriations would not prove to be detrimental to the public interest. In addition, the State Engineer heard more information and arguments presented on whether the interbasin water transfer requirements criteria were met or not met.

The Sierra Club remains concerned that the SNWA water rights applications do not meet the requirements for approval in Nevada State water law, especially in regards to interbasin water transfers. Our members in the eastern Sierra have daily reminders of the continuing impacts of massive interbasin water transfers and the ineffectiveness of mitigation promises. The Toiyabe

Chapter is still expending enormous volunteer, legal, and financial resources to secure environmental restoration by forcing the water purveyor, the Los Angeles Department of Water and Power (LADWP) to implement its “agreements” and legal orders on mitigation for the significant air degradation at Owens Lake and ecological catastrophes in Owens Valley due to continued surface and groundwater exportation. Our comments will address these concerns and provide recommendations for the State Engineer to consider in making findings and decisions on the SNWA applications.

First, we would like to submit two reports for the State Engineer’s use, in considering water availability and potential impacts of proposed groundwater pumping in Spring Valley, since we are uncertain that the documents were made part of the hearing record:

*Cuttilo, Paula, USDOJ, NPS/Water Resources Division, Ft. Collins, CO, August 4, 2006. Expert Witness Statement prepared for An Administrative Hearing before the State Engineer, State of Nevada, Division of Water Resources, Carson City, Nevada, September 11-29, 2006 In the Matter of Water-Rights Applications No. 53987-53992 and 54003-54030 Filed by the Southern Nevada Water Authority in Spring Valley Hydrographic Area #184. (Attachment A - 7 pp).*

*Elliot, P.E., D.A. Beck, and D. Prudic, 2006. Characterization of Surface-Water Resources in the Great Basin National Park Area and Their Susceptibility to Ground-Water Withdrawals in Adjacent Valleys, White Pine County, Nevada. U.S. Geological Survey Scientific Investigations Report 2006-5099. Carson City NV. (Attachment B - 54 pp).*

Second, we would like to discuss additional issues and recommendations which may be helpful in the State Engineer’s deliberations:

### **Environmental Protection**

The Sierra Club remains concerned that the agreement entitled “Stipulation for Withdrawal of Protests,” signed by the applicant and four federal agencies, the Bureau of Land Management, the National Park Service, the Bureau of Indian Affairs, and the U.S. Fish & Wildlife Service on September 8, 2006 does not provide environmental protection for federal resources or the environment potentially affected by proposed groundwater pumping in Spring Valley. As we read this document, it appears to provide for talking about possible impacts, the cause of those impacts, and whether and what mitigation might be taken. There are provisions for consensus decision-making which can take much time and not be successful in resolving conflicts. The parties agreed to monitor pumping effects, not to prevent them. There is no mention of protecting the interests of the states of Nevada and Utah, White Pine County, the local residents of Spring Valley, tribes nor of the American public. Local residents, both state agencies, tribes and the public were not allowed to participate in the development of the stipulation, nor in implementing the stipulation. There is no definition of “unreasonable adverse impacts” in the document or “no effects” on the Great Basin National Park. There are no “triggers” such as reductions

in spring flows or drops in groundwater table levels which would automatically lead to any corrective actions, such as reducing or stopping pumping. There are no enforcement mechanisms for compliance. There is no mention of protecting phreatophytes, big game or upland bird habitat, fisheries, or recreational values. There is no termination date nor provision for canceling the agreement or for continuing the agreement in perpetuity.

**Recommendations:** If any water rights applications are approved in Spring Valley, the State Engineer should require adequate baseline data be collected before pumping can start, as well as a monitoring, management, and mitigation (MMM) plan be developed which involves all the interested parties, hold public hearings on what should be in the MMM plan, and ensure that the MMM plan, subsequent data and all implementing actions are fully accessible to the public.

### **Prevention of Another Owens Valley Scenario in Eastern Nevada**

The Sierra Club works with a local conservation group, the Owens Valley Committee (OVC), on the protection, restoration and sustainable management of water and land resources affecting the Owens Valley. The Committee oversees compliance with and implementation of appropriate water management policy, educates the public, encourages participation in local government, and advocates an inclusive and open decision-making process. In **Attachment C ( pp)**, we are providing OVC information ([www.ovcweb.org](http://www.ovcweb.org)) on the history of the citizen struggles with LADWP and on the flora of Owens Valley, especially the groundwater-dependent vegetation and pumping impacts. In addition, the Sierra Club and the OVC have been in litigation in attempts to enforce mitigation agreements. We are providing copies of two recent court decisions about LADWP violations of stipulated court orders on required mitigation for adverse environmental impacts of continued groundwater pumping.

**Recommendations:** If any water rights applications are approved in Spring Valley, the State Engineer should require a bond in the amount of \$100,000,000 from SNWA to be jointly held by the Nevada State Engineer and White Pine County and administered by the Nevada and Utah State Engineers, White Pine County and affected Utah counties, affected tribes, the four federal agencies, and SNWA to cover mitigation and compliance enforcement costs in Spring Valley.

### **Need for Spring Valley Groundwater**

The applicant stated at the hearing that it seeks Spring Valley groundwater for several purposes: diversifying its water portfolio, providing water for new growth and development in order to avoid any interruptions to the southern Nevada “growth engine”, drought protection for existing and new residents and as a temporary bridge to other Colorado River water supply options. These various purposes conflict with each other: Water committed to new and old customers cannot be used for drought. Water committed for drought protection cannot be committed to customers. Droughts in the West are

forecast to last longer and be more severe, due to climate change. Severe and longer droughts on the Colorado River most likely would also be occurring in eastern and southern Nevada. (**Attachment D - pp**). The applicant's witnesses testified that its long-term water plans (25 years) have rarely lasted even 2-3 years lately, as population growth has been seriously underestimated and water supplies have been overestimated.

**Recommendations:** If any of SNWA's applications are approved in Spring Valley, the State Engineer should limit the use of the water for a drought supply for southern Nevada in order to meet the most critical need of public health and safety in a future of longer and more severe droughts.

### **Project Cost/financing Capability of Applicant**

The applicant has presented a series of differing cost estimates for its pumping and exportation project. In 1989, the cost estimate was \$2,000,000,000. In 2006, the cost estimate ranged from \$2,000,000,000 to \$4,000,000,000+. It is unclear whether the cost estimates include all costs, including financing and mitigation costs.

**Recommendation:** See recommendation on bond requirement above.

### **Public Interest**

In the Spring Valley hearing, Public Interest was defined in two ways: #1 - "not prove detrimental to the Public Interest"; and #2 - "in the Public Interest". We would like to expand upon the discussion which occurred at the hearing. There are a lot of examples of both for Spring Valley. The first meaning would result in not approving SNWA's applications if they would result in an increase in cheatgrass-fire cycle due to the dieoff of phreatophytes from falling water tables; the creation of a dust bowl from the loss of phreatophytes; the loss of wildlife habitat at wetlands, seeps and springs dried up by groundwater pumping; the loss of threatened, endangered and sensitive species which are water-dependent and adversely affected by pumping; the spread of desertification in Spring Valley due to loss of vegetation; hooking SNWA customers up to a new, but unreliable water supply for municipal and industrial uses in southern Nevada; inability to stop pumping SNWA wells in order to address significant adverse impacts on existing water rights owners or the environment in Spring Valley because of customer reliance on exported water. The second meaning would require the State Engineer to make a finding that any approved applications in addition to meeting SNWA's needs would also sustain healthy ecosystems in Spring Valley, including the currently high groundwater tables supporting water dependent vegetation such as phreatophytes and the swamp cedars as well as springs and wetlands and fish and wildlife habitat; result in not increasing growth impacts on the quality of life in Las Vegas - this would include: cleaner air, less traffic congestion, lower taxes, lower infrastructure costs, safer and healthier community, more sustainable growth rate, less speculation in land and development, fewer sprawl developments, more affordable housing.

**Recommendations:** If any water rights applications are approved in Spring Valley, the State Engineer should balance the public interest in sustaining a healthy environment water-dependent in Spring Valley and protecting the current quality of life in southern Nevada v. approving water applications to continue the growth engine in southern Nevada, or diversifying SNWA’s water portfolio, or bridging to obtaining more Colorado River water or providing a drought supply for southern Nevada.

### **Environmentally Sound**

The Sierra Club believes that Nevada water law requires a higher standard of environmental protection for basins of origin from the effects of proposed interbasin water transfers than that traditionally required for finding in-basin water applications to be in the public interest. Meeting this standard would mean groundwater pumping and exportation would not impair intact and functioning ecosystems in Spring Valley, including extensive phreatophytes and grasslands, the swamp cedars, as well as the numerous springs and seeps. Providing “guzzlers” to replace natural water sources for wildlife would not meet this standard. Moving the Shoshone Ponds refugia for T&E fish, using other SNWA owned surface or groundwater to artificially irrigate phreatophytes or swamp cedars or natural grasslands, or piping water to springs or wells with declining flow rates would not meet this higher standard. Any interbasin transfer applications must meet higher standards of sustainability because of groundwater pumping’s adverse effects on water-dependent surface resources - springs, seeps, wetlands, as well as plants, wildlife, T&E species, scenic and recreational values.

**Recommendation:** The State Engineer should deny SNWA’s applications unless there are no adverse environmental impacts on Spring Valley ecosystems.

### **Re-Interpretation of Nevada Water Law**

At the Spring Valley hearing, the applicant argued that the State Engineer could approve its water rights applications even if they did not meet many of the basic requirements of Nevada water law. We understood the applicant to argue, for instance, that:

1. is it acceptable for junior water rights development to interfere with existing water rights and domestic wells, if the applicant offers mitigation? If mitigation offers are not acceptable to senior water rights owners, would the State Engineer be under obligation to cancel senior water rights to force acceptance of SNWA mitigation?
2. it is acceptable to cancel or discount supplemental water rights to match approved water rights to actual use (over some amount of time)? Would this constitute a takings of private property rights either directly or indirectly through liability for crop failures due to inadequate water or farm/ranch failures? Who would bear the liability: the junior water rights holder or the State Engineer? Are supplemental

water rights even more important in the future of longer and more severe droughts to meet approved water duties?

3. it is acceptable to reduce approved water duties to accommodate junior water rights? Would this action by the State Engineer also trigger the takings liability issues discussed above?
4. would these re-interpretations of State water law requirements apply only to Spring Valley or all over the state?

**Recommendation:** given the complexities of water rights approved in Spring Valley over the last century, from both surface waters and groundwater as well as the large amount of vested water rights in the area, the State Engineer should initiate a full adjudication of water rights in Spring Valley before ruling on any water applications.

### **Reservation of Sufficient Water for Future Growth in Spring Valley**

SNWA, through the water rights applications originally filed by the Las Vegas Valley Water District, has created over a 16 year monopoly on groundwater water resources in Spring Valley which has made water-dependent economic development difficult or totally impossible in Spring Valley. The applicant has provided no evidence to the State Engineer on how its applications would meet the interbasin transfer requirement that its proposed action is an appropriate long-term use that will not unduly limit the growth and development of Spring Valley.

**Recommendation:** The State Engineer should reserve the 80% of available groundwater and surface water for future development in Spring Valley before approving any interbasin water transfer applications in Spring Valley.

Thank you for considering our comments.

Sincerely,

Rose Strickland  
Water Campaign Coordinator  
Toiyabe Chapter of the Sierra Club

Dennis Ghiglieri  
Conservation Comm. Chair  
Toiyabe Chapter of the Sierra Club

ATTACHMENT A  
ATTACHMENT B  
ATTACHMENT C  
ATTACHMENT D