Attention: Allan Biaggai

Elaine Blackham [wpncedc2@mwpower.net]

Sent:
Monday, September 28, 2009 10:54 AM
To:
Snake Valley
Attachments:
Nevada.zip (3 MB)

Mr. Biaggai:

Please find attached, the Comments from the White Pine County Commission, Ely, Nevada.

If you should have any questions, please feel free to contact Karen Rajala at 775-289-3065

Elaine Blackham
White Pine County
Community and Economic Development
957 Campton Street
Ely, NV 89301
775-289-3065

Laurie L. Carson, Commissioner
Richard Carney, Commissioner
Gary Lane, Commissioner
RaLeene Makley, Commisssioner
Gary Perea, Commissioner

JoAnn Malone, Ex-Officio Clerk of the Board

White Pine County
Board of County Commissioners

953 Campton Street
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September 23, 2009

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

Attention: Allen Biaggi

Dear Mr. Biaggi:

The White Pine County Commission has reviewed the Utah/Nevada Agreement on the Use of Snake Valley Water. The County Commission continues to oppose the Groundwater Development Project because of the likelihood that it will result in negative environmental and economic impacts on our area. However, the White Pine County Commission believes that Snake Valley, its environment, and its residents are better protected by the presence of an agreement than they are without one. Although White Pine County supports the goals and basic concepts in the Draft Agreement, we feel there are critical issues with draft as proposed and it must be revised prior to final acceptance.

White Pine County has the following specific concerns with the Agreement:

Public Processes: There has been a lack of public process in the creation of the Draft Agreement and the Agreement does not ensure public participation in the review of comments, revisions, or implementation.

1) Meetings related to the Agreement, on-going evaluation, and implementation should be conducted according to the guidelines of the Nevada Open Meeting Law and the Utah Open and Public Meetings Act.
2) Any documentation and data used to make the determinations in the Agreement should be available for public review.
3) Future discussions to evaluate existing data and new studies and to modify the Agreement should be open to the public.

4) Critical steps in the process to review, revise, and accept the Final Agreement should be conducted through Public Hearings and should include at least one hearing in Snake Valley.

Determination of Available Ground Water Supply: In the Draft Agreement, the division of water is based on the determination that there is 132,000 af/y in Available Ground Water Supply. This appears to be based on the theoretical findings in the BARCASS Study. This estimate is much higher than previous studies including the 1965 Hood and Rush analysis used by the Nevada Division of Water Resources. The Final Agreement either needs to consider other estimates of Available Ground Water Supply or a BARCASS 2 is required to provide the studies to support the assumption that there is 132,000 af/y available in Snake Valley.

Need and Procedure for Accepting Additional Data: The Draft Agreement identifies the concern that the data are insufficient. The County agrees with this determination and supports the segments of the Draft Agreement designed to allow additional data to be considered. The County has a concern about the process for identifying appropriate additional information to be considered. The Agreement refers to "Evolving Trends in Data Collection" and "On-going and Future Studies and Other Information." The County recommends that the Final Agreement be revised to define what is meant by "evolving trends in data collection" and to identify what "on-going studies" and what type of "other information" will be included. The Final Agreement should also detail the processes to be used in reviewing and accepting additional studies and other information to ensure its scientific basis and reliability. The County recommends reliance on USGS studies that are in progress or that may be commissioned to answer specific questions regarding the water resources available in Snake Valley. USGS has a well recognized peer review process and has demonstrated its credibility in conducting unbiased and independent scientific research. All additional information should be made available for public review and comment.

Need to Define Terms: The Draft Agreement uses terms that need additional definition including "Maximum Sustainable Beneficial Use," "Adverse Impacts," and "Adverse Impacts to an Existing Permitted Use." The County sympathizes with the difficulty in developing an agreement based on water law in two different states and the need to find terminology that will bridge the differences between the two. However, in using terminology that may not have legal definition in either state, the Final Agreement needs to be very careful to provide specific definitions and should specify thresholds, who will determine when those thresholds are exceeded, and the processes for making those determinations.

Need to Define Authority and Responsibilities Under Nevada and Utah Water Law: The Final Agreement needs to provide more detailed explanations of how the Agreement will work in conjunction with existing Nevada and Utah state statutes.

Include All Water Sources: The Final Agreement should include any and all water sources that may contribute to the 132,000 af/y. The BARCASS study indicates that water flows from south Steptoe Valley into Spring Valley and then into Snake Valley. It estimates that as much as 49,000 af/y may flow from Spring to Snake Valley. USGS is currently studying the flow of water from Spring Valley into Hamlin and then Snake Valley. The Draft Agreement includes Pleasant and Hamlin Valleys but does not reference Spring Valley. The Final Agreement should include analysis of the sources of water that may comprise the 132,000 af/y determined to be available in Snake Valley. It should include a discussion of the impacts of the Groundwater Development Project pumping and exportation of water from Spring Valley on the availability of water in Snake Valley as well as any impact it might have on Steptoe Valley.

Special Nature of Interbasin Transfers and Negative Impacts Caused by Water Exportation Through the Ground Water Development Project: The Final Agreement should acknowledge that Nevada law requires the State Engineer to take environmental conditions and potential for economic development of the host basin into account in decisions related to interbasin transfers. The Final Agreement should hold Southern Nevada Water Authority (SNWA) responsible for negative impacts on the environment, economic potential, or senior water rights holders in Snake Valley and in any other basin that might be contributing to the water available in Snake Valley.

Approval Process and Requirements on Parties to the Agreement: The Final Agreement should be signed by the Governors of Utah and Nevada rather than their designated department heads. The Final Agreement should identify the funding source for implementation of the agreement and require the two states to make commitments for any funding determined as their responsibility. White Pine County believes that SNWA should be held responsible for funding implementation of the provisions in the Draft Agreement. The Final Agreement should include a statement identifying the responsibilities of SNWA under the primary agreement and it should state that the agreement is binding on SNWA and its successors. The provisions of the Monitoring and Mitigation Agreement should be incorporated within the Final Agreement and should include a requirement that any owners or purveyors of water entering the pipeline are held responsible to the same terms and conditions as SNWA. If water rights in Snake Valley are awarded to SNWA, it should not be allowed to lease its water to any other entity unless that entity is required to adhere to the provisions of the Final Agreement and the Monitoring and Mitigation Agreement.

Ten Year Delay: The Agreement provides a ten year delay for action on the Southern Nevada Water Authority applications in Snake Valley. The County is concerned that this delay has a negative impact on the citizens of Snake Valley. The applications were filed by Las Vegas Valley Water District in 1989. The citizens of the Nevada portion of Snake Valley have been unable to secure water rights from the State Engineer for development of the municipal water system at Baker, expansion of existing operations, and new development for the past 20 years. If they are asked to wait another 10 years, the Agreement needs specific provisions for the State Engineer in Nevada to accept and consider requests for new water rights for legitimate uses.

Please take the comments of White Pine County and its Snake Valley residents into consideration in your process to revise the Draft Agreement, approve the Final Agreement, and implement the terms of the Agreement. The White Pine County Commission appreciates the opportunity to respond to the Draft Agreement and would be happy to work with you in an effort to revise the Draft to address the concerns of our citizens.

Thank you.

Sincerely,

Laurie L. Carson,
Chairman

cc: Governor Jim Gibbons
Governor Gary Herbert