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STATE ENGINEER'S OFFICE

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IN THE OFFICE OF THE STATE ENGINEER
STATE OF NEVADA

IN THE MATTER OF APPLICATION 79268 FILED TO APPROPRIATE THE UNDERGROUND WATERS OF THE SNAKE VALLEY HYDROGRAPHIC BASIN (195), WHITE PINE COUNTY, NEVADA	**STATEMENT OF CONCERN OF THE STATE OF UTAH**

The State of Utah ("Utah"), by and through its Department of Natural Resources, provides this Statement of Concern regarding Applications 79267 through 79275 ("Applications") filed by the Southern Nevada Water Authority ("SNWA") in January 2010. Said Applications seek to appropriate large amounts of groundwater from the portion of the Snake Valley Hydrographic Basin (195) within the State of Nevada and to export the water from the basin to Clark County, Nevada.

I. Introduction.

SNWA filed the Applications in response to the Nevada Supreme Court's recent ruling in *Great Basin Water Network, et, al. v. Tracy Taylor, et al.*, 126 Nev. Advance Opinion 2 (Jan. 28, 2010). The final version of that decision, which is currently under reconsideration, or the subsequent remand to the trial court, has potential to negate SNWA's 1989 applications to appropriate Snake Valley groundwater.

The State of Utah is not concerned about the process by which the State of Nevada may choose to allocate its water resources pursuant to Nevada statutory and

administrative provisions. However, because the Snake Valley Hydrographic Basin underlies both Nevada and Utah, because many Utah water users pump Snake Valley groundwater, and because state agencies own water rights in the Basin, the State of Utah is concerned that the decisions made in this matter, particularly if they allow the export of groundwater out of the Basin, could affect the groundwater users of the Utah portion of Snake Valley.

Utah is also concerned that the decisions made in the matter have potential to affect the biological and air resources of Snake Valley, particularly on species that require special management attention in order to avoid consideration for listing under the federal Endangered Species Act.

II. Concerns.

A. Utah - Nevada Snake Valley Agreement

The States of Utah and Nevada recently concluded several years of negotiations regarding the joint allocation and management of Snake Valley Hydrographic Basin groundwater resources. The result was a draft document dated January 2010 and entitled "Agreement for Management of the Snake Valley Groundwater System" ("Draft Agreement").

The need for the Draft Agreement was driven by Section 301(e)(3) of Public Law 108-424 (2004), by which Congress required Utah and Nevada to reach an agreement regarding the division of the Snake Valley Hydrographic Basin groundwater resources,

protection of existing water rights, and allowance for the maximum sustainable use of the Snake Valley groundwater prior to any inter-basin transfer of water from groundwater basins located within both States. The State of Utah believes that the Draft Agreement satisfied the requirements of the federal law.

B. Effect of Nevada Supreme Court Decision

The groundwater management schemes used in Utah and Nevada, and referred to in the Draft Agreement, are based in part on water right priority dates established pursuant to water right statutes enacted by each state. The allocation of water as provided in sections 4 and 5 of the Draft Agreement is based, in large part, on the 1989 priority of the SNWA water applications in this matter. The Nevada Supreme Court decision, however, raised questions relating to the validity of the 1989 SNWA applications, which prompted the filing of the Applications that are the subject of this communication and which the Nevada State Engineer's Office is currently processing. These developments caused Utah to place further consideration of the Draft Agreement on hold.

C. Discussion

Because the Nevada Supreme Court ruling has the potential to negate the 1989 SNWA applications, thereby placing consideration of the Draft Agreement on hold, the State of Utah does not know how its concerns will be resolved. Procedurally, the State of Utah expects that the Nevada Engineer will hold a hearing on whichever of the various

applications is determined to be appropriate. Utah still believes that an agreement for the joint allocation, administration, and study of the Snake Valley Hydrographic Basin groundwater system that complies with the requirements of Public Law 108-424 is in the best interest of both Utah and Nevada. The State of Utah suggests that further negotiations between Utah and Nevada occur in order to draft an agreement which reflects the final determination of the priority situation. Utah strongly suggests these negotiations take place prior to any hearings on SNWA's applications. Upon execution of such an agreement, Utah will withdraw this statement of concern.

If an agreement is not reached by the time of any hearing on either the 1989 or 2010 applications, Utah respectfully requests the Nevada State Engineer to consider the issues as set forth in the Draft Agreement as part of the decision-making, including effects on existing Utah water rights, the sustainable yield of the groundwater basin, and impacts to sensitive species and air quality in Utah.

DATED this 15 day of April, 2010.

STATE OF UTAH

Michael R. Styler
Executive Director
Utah Department of Natural Resources
1594 West North Temple
Salt Lake City, UT 84116

CERTIFICATION

State of Utah)
: ss
County of Salt Lake)

On this 15 day of April, in the year 2010, before me Michael R. Styler, a notary public, personally appeared Michael R. Styler, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. Witness my hand and official seal.

Notary Public

TERI J. AKIYAMA
NOTARY PUBLIC - STATE OF UTAH
My Comm. Exp. 10/01/2013
Commission # 580285

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