

BLM_NV_NVSO_GWProjects

From: J. Mark Ward <mark@uacnet.org>
Sent: Tuesday, October 11, 2011 4:35 PM
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Subject: Comments of Millard, Juab and Tooele Counties on June 2011 BLM Clark, Lincoln & White Pine Counties Groundwater Development Draft EIS
Attachments: 10-11-11 Comments of Millard, Juab and Tooele Counties on Nov 2010 Groundwater DEIS.doc; 4-11-2007 Comments of Counties in Utah on Proposed Purpose and Need Statement.pdf; Millard, Tooele, and Juab Counties' March 17, 2008 Comments on Chapters 1-3 of DEIS.pdf; Counties May 16, 2008 Comment Form for Water Model Report.pdf; Counties' 1-29-10 Comments to APDEIS - modified and submitted 2-1-10 to reflect 1-28-10 Nevada Sup Ct Ruling.pdf; 1-21-11 Comments of Millard, Juab and Tooele Counties on Nov 2010 Groundwater PDEIS.pdf

Penny Woods
Nevada BLM EIS Project Manager

Juan Palma
Utah BLM State Director

AND TO WHOM ELSE THIS MAY CONCERN:

Please see the attached comments (in WORD format) of the Utah Counties of Millard, Juab and Tooele on the June 2011 Draft EIS for the Clark, Lincoln and White Pine County Groundwater Development Project.

Prior comments over the past five years are also incorporated by reference into these latest comments, are also attached (in PDF format), and should be made part of the administrative record.

Thank you.

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**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project
Draft EIS – June 2011**

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General Comments

- 1. Alternatives D and E are the only legally feasible alternatives absent a fully executed Utah-Nevada interstate agreement to divide groundwater resources for the entire Great Salt Lake Desert regional groundwater flow system. An interstate agreement to divide the groundwater of Snake Valley Basin only, as opposed to the entire Flow System of which Snake Valley is a part, is legally insufficient and would give the BLM no authority to grant a right of way to conduct groundwater from Snake Valley to another basin. See the relevant provisions of the 2004 LCCRDA. Therefore, given the lack of any agreement in place which meets the LCCRDA requirement (divide the entire Flow System), much less any signed agreement to divide even the Snake Valley basin, the proposed action and alternatives A-C are not legally feasible.**
- 2. Any interstate groundwater division should be tied to groundwater discharge, historic use and recharge, and it should make allowance for impacts in one groundwater basin (e.g. Snake Valley) caused by pumping in an up-flow groundwater basin (e.g., Spring Valley), until such impacts can be ruled out with sufficient years of pumping, spring flow and water table data.**
- 3. Any interstate ground water agreement must guarantee that Utah water rights which have already been allocated post 1989 will be given a higher priority than future allocations which the Utah or Nevada State Engineers may allocate.**
- 4. Any estimates of safe annual yields of groundwater in this DEIS should be based not on estimates, but on solid evidence established after many years of low level pumping sufficient to establish that un-appropriated ground water exists to fulfill SNWA's applications or such other levels contemplated in the various alternatives.**
- 5. USGS studies confirm that 84% of the groundwater dependent acres in Snake Valley are situated in Utah (220,779 acres), and only 16% or 41,364 acres of groundwater dependent acres in Snake Valley are in Nevada. Similar studies show that 82% (108,085 acre feet) of the groundwater discharged annually in the Snake Valley basin is discharged in Utah, and only 18% (25,162 acre feet) is discharged in Nevada. Historic human consumption of groundwater in Snake Valley associated with historic pre-1989 water rights is 74% (35,00 acre feet) in Utah and only 26% (12,000 acre feet) in Nevada. Therefore, Millard, Juab and Tooele Counties will oppose any interstate agreement that purports to divide up groundwater in Snake Valley unless the division is congruent with the foregoing percentages, which show that the**

large lion share of groundwater in Snake Valley should go to Utah. Any notion that groundwater should be subject to an overall 50/50 split is untenable because it ignores the foregoing percentages which are overwhelmingly in Utah's favor in Snake Valley.

6. Spring to Snake Valley inter-basin flow of groundwater is estimated with 95% confidence to be around 49,000 acre feet per year, with 33,000 af/y coming around the southern flank of the Snake Range, and another 33,000 af/y coming across further north of US Highway 50. Proper divisions of groundwater between the States and proper monitoring of impacts must take this dynamic into effect, because Spring Valley pumping will interfere with this groundwater flow and impact recharge in Snake Valley.

7. In addition to being legally insufficient to meet the demand of 2004 LCCRDA because it fails to address the entire Great Salt Lake Desert Regional Groundwater Flow System, the draft Utah-Nevada agreement is an unfair split that fails to recognize the reality of groundwater discharge, groundwater dependent acres and relative historic use as between the two states in Snake Valley. The draft agreement awards unallocated groundwater to Nevada over Utah nearly 6 to 1 (35,000 af/y to Nevada and 6,000 af/y to Utah). After assessing the impact of Spring Valley pumping on available groundwater for Utah, it is clear that Utah ends up with less than even half of all available groundwater in Snake Valley Basin, while the vast majority of groundwater dependent acres, groundwater discharge and historic use is in Utah. This is why the draft agreement, in addition to being legally deficient in scope under the 2004 LCCRDA, is inequitable and cannot serve as the legal basis for BLM allowing an inter-basin transfer of groundwater out of Snake Valley.

8. Millard County has proposed an interstate agreement that includes the following: 1) Split the 108,000 af/y of available wet water according to the Snake Valley basin's natural discharge, historic use and recharge interstate ratios (65% Utah – 35% Nevada). 2) Divide the Regional Groundwater Flow System as required by the Congressional Statute. 3) Suspend part of Nevada's share due to anticipated Spring Valley Pumping Impacts by 16,000 af/y to be adjusted down or up based on eventual proven impacts on inter-basin flow.

9. Pump first and monitor and mitigate later, with no empirical evidence that a valley can withstand that much pumping and whether such pumping will impact valleys down –gradient, is unlawful according to the Nevada court decision in the Cave, Dry Lake and Delamar Valley case. This EIS should not allow such a practice, regardless of the alternative chosen, because it is not legal or feasible.

10. Throughout the DEIS, the groundwater study area is not large enough. In Utah that area should have extended as far as the "Area of Interest" that DOI through its Nat'l Park Service stipulated to with SNWA in the Spring Valley Stipulated Agreement and Ruling. See Figure 1 of the Spring Valley Stipulated Agreement and Ruling Showing the Area of Interest in the Upper Great Salt Lake Desert Flow System and vicinity extending well over into Tule Valley, Fish Springs Flat, Dugway-Govt Creek Valley and other portions of Tooele County on the north, and extending into Pine Valley and Wah Wah Valley in parts of Beaver and Iron Counties to the south. It is arbitrary and capricious for a bureau in the DOI to negotiate and agree upon extensive protections such a broad Area of Interest, for purposes of resolving the NPS's objections to the Spring Valley applications, and then for DOI's BLM to not provide that same geographic extent hydro studies, groundwater modeling and other analyses in the DEIS

11. It would be grievous indeed if the BLM were to ignore the plain language of 2004 LCCRDA at Section 301(e)(3), which states: "Prior to any transbasin diversion from groundwater 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." This statutory language is unmistakably clear: An interstate agreement's scope required under LCCRDA sufficient to authorize BLM to allow conveyance of groundwater from Snake Valley, is not just the Snake Valley, but rather the entire Great Salt Lake Groundwater Flow System of which Snake Valley is a part. The statutorily required scope of the agreement is those "interstate ground-water FLOW SYSTEM(s) from which water will be diverted and used by the project." The current draft Utah-Nevada agreement fails in this regard. Moreover, it is a draft, not even final. But even if it were final, it does not provide the legal foundation necessary for BLM to approve a transbasin diversion from a groundwater basin located within both Nevada and Utah,

namely Snake Valley. Therefore, the only 2 legally viable and feasible alternatives in the DEIS are Alternatives D and E. All the rest would fail the “legality and feasibility” test of NEPA.

12. The Utah statutorily created Governor’s Snake Valley Advisory Committee recently passed a formal motion urging the Governor of Utah to adopt a position in favor of Alternative E of this Draft EIS, which would deny a right-of-way for any and all pipeline and groundwater pumping wells in the Snake Valley portion of White Pine County, such that all SNWA requested pipeline and pumping wells would stay completely out of Snake Valley.

13. The DEIS is deficient because it does not adequately illustrate and alert the public to the impact to interbasin flow for a down-gradient valley caused by pumping in the up-gradient valley.

14. The DEIS should inform the reader that 100% of surveyed citizens at a Millard County public hearing held in Delta, Utah September 8, 2009 did not support the Utah-Nev draft agreement that was circulating at that time.

15. Millard County’s opposition to the draft Utah-Nevada agreement received broad substantial support in Utah. Reference: September 18, 2009 Resolution by the Utah Legislature Interim Natural Resources Agriculture and Environmental Committee (urging the Utah Negotiating Team to “seriously consider” Millard County’s position; September 8, 9 public hearings in Delta and Salt Lake City – persons commenting expressed near unanimous opposition to the draft agreement and support for Millard County’s position; September 15, 2009 bi-partisan unanimous resolution by the Salt Lake County Council, supporting Millard County’s position; Support for Millard County’s position from the Salt Lake County Mayor and the County Commissions of Juab, Tooele and Utah Counties; Deseret News September 20, 2009 editorial; Salt Lake Tribune September 18k 2009 editorial (switching its earlier position); Support for Millard County’s position from the Utah Farm Bureau; and Past Resolutions from the Utah Legislature and the Utah Association of Counties consistent with Millard County’s position.

16. The draft Utah-Nev agreement as it currently stands gives away far too much of Utah’s rightful water; it makes Utah alone absorb the inter-basin impacts of SNWA’s pumping – both up-gradient and down-gradient from Snake Valley; and it fails the Congressional standard, because it fails to divide the resources of the Great Salt Lake Desert Regional Groundwater Flow System. Under such an agreement, the BLM will not have the statutory authority to allow the transport of Snake Valley water out of that basin. So alternatives A-C are not legally feasible.

17. The NSE has indefinitely postponed the Snake Valley groundwater hearing. The idea, that a 2011-2012 dated EIS and ROD can reasonably fulfill the NEPA requirements of Snake Valley when water rights rulings in that valley have not even been issued, much less hearings held or even scheduled, strains NEPA's feasibility requirements to the breaking point. Compound this with the fact that there is no Utah-Nevada groundwater agreement in place – nor even a tentative draft (which, incidentally, the Governor of Utah took a step back from in January 2010 and which is still vigorously opposed by many stakeholders in Utah) that satisfies the regional groundwater flow system scope requirement of LCCRDA, and all of these factors strongly indicate that the current EIS process risks going down a non-feasible path were it to adopt alternatives A, B or C.

18. The April 11, 2007 comments of Millard County, et al., on the Purpose and Need Statement are incorporated herein by reference. A pdf version of those April 11th comments area submitted herewith.

19. The May 16, 2008 comments of Millard, Juab and Tooele Counties on the Preliminary Draft Groundwater Model Report are incorporated herein by reference. A pdf version of those May 16, 2008 comments is submitted herewith.

20. The March 17, 2008 comments of Millard, Juab and Tooele Counties on Chapters 1, 2 and 3 of the Preliminary Draft EIS are

incorporated herein by reference. A pdf version of those March 17, 2008 comments is submitted herewith.

21. The January 29, 2010 comments of Millard, Juab and Tooele Counties, modified and submitted February 1, 2010 to reflect January 28, 2010 Nevada Supreme Court Ruling, are incorporated herein by reference. A pdf version of those comments is submitted herewith.

22. The January 21, 2011 comments of Millard, Juab and Tooele Counties, are incorporated herein by reference. A pdf version of those comments is submitted herewith.

23. The DEIS fails to adequately inform the public that the Nevada Engineer's Snake Valley groundwater adjudication process has come to a virtual stand-still, with no hearing dates, re-application deadlines or protest deadlines in sight.

24. This DEIS glosses over and significantly understates the ongoing sharp economic downturn and housing slump in the Las Vegas area that are ongoing year after year lately. Thus the public is not adequately informed of the relevant information necessary to determine whether and to what extent this groundwater project is even necessary.

25. The DEIS does not adequately inform the public of the interstate competing claims to groundwater in the shared basin portion of the project area, which competing interstate claims have permeated this EIS process. By failing to address the interstate water rights controversy and how the project threatens Utah water rights, the DEIS keeps the public in the dark about the potential consequences if the project is allowed to go into a groundwater flow system (Spring and/or Snake Valley) that is shared by Utah and Nevada, namely the Great Salt Lake Groundwater Flow System.

26. In making passing reference to the draft interstate groundwater agreement, the DEIS keeps the public in the dark about the legal inability of BLM, per the 2004 LCCRDA, to permit a groundwater transfer out of the Snake Valley portion of White Pine County for lack of a signed Utah-Nevada interstate groundwater agreement that is not only final and signed (which is not the case presently or in the foreseeable future), but which also meets the statutorily mandated scope of addressing the entire Great Salt Lake Groundwater Flow System (which the current draft does not) as clearly mandated per the requirement of the 2004 LCCRDA.

27. The DEIS should plainly inform the public that (a) Currently there is no interstate agreement to divide the groundwater of Snake Valley, (b) no action has been taken by the Nevada State Engineer to adjudicate SNWA's Snake Valley groundwater applications, (c) no deadline is in sight for re-submitting Snake Valley groundwater applications and protests, and (d) not even a draft interstate agreement exists that scopes a division of the entire Great Salt Lake Groundwater Flow System as explicitly required by the 2004 LCCRDA. Such information is vital; the public has a right to know it in order to be fully informed about the legal infeasibility of the proposed alternative and alternatives A-C.

**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project
Preliminary Draft EIS – November 2010**

Specific Comments

Page	Section	Paragraph	Line	
	1.2.1.1			
	Table 1.4.1			This should include the biggest permit condition of all: The project out of Snake Valley cannot go forward without a signed Utah-Nevada agreement on the entire Great Salt Lake Groundwater flow system, as required by LCCRDA.
	1.5.1			
	1.6			
	1.6.1			It is missing the requirement for an interstate water agreement as required by 2004 LCCRDA, to address not just the Snake Valley basin but the entire Great Salt Lake Groundwater flow system, as required expressly in the relevant language of 2004 LCCRDA
	1.6.2			
	2.1.1 Alternatives Overview		The bullet point for Alternative D at lines 75-81	
	2.1.1 Alternatives Overview		The bullet point for Alternative E at lines 82-87	Reference should also be made to the legal inability of BLM to permit a groundwater transfer out of White Pine County for lack of a signed Utah-Nevada interstate groundwater agreement that is not only final and signed (which is not the case presently or in the foreseeable future), but which also meets the statutorily mandated scope of addressing the entire Great Salt Lake Groundwater Flow System (which the current draft does not) as clearly mandated per the requirement of the 2004 LCCRDA.
2-13	Section 2.3.2.3		259-261	Language starting at line 261 should be rewritten as follows:
2-27 – 2-29	Table 2.5-5			The future schedule for Snake Valley is inconsistent with statements by SNWA that they don't even plan to develop groundwater in Snake Valley for decades, until mid 21st century.
2-50	2.6.4		Right margin red	The “Main Points” bullet points should add a bullet point that states: <ul style="list-style-type: none"> • For Alternative D, it would not be necessary to have in place an interstate

SNWA Groundwater Development Project - Clark, Lincoln and White Pine Counties EIS
Comments regarding the proposed Purpose and Need Statement
Submitted to the BLM Nevada State Office April 11, 2007
Reference: NV-040-04-5101-ER-F345; N78803

Although the Lincoln County Land Act authorized the Las Vegas pipeline project, it did so on the condition that BLM first subject the project to all relevant NEPA requirements. Nothing about the Lincoln County Land Act relieves BLM from full compliance with the requirements of NEPA before the project goes forward.

I.

It is an arbitrary and capricious NEPA-violating posture that Nevada State BLM now finds itself in, hastening along an EIS for a groundwater project that still rests on no approved and legally recognized ground water rights. This EIS hurdles down an expedited path on the assumption of theoretical water right applications for which a single acre foot of water has still yet to be approved (let alone fully processed), drilled from numerous multi-valley wells the location of which still nobody knows, to tap virgin ice-age water from deep carbonate *interstate* flow systems the geo-hydrology of which still nobody understands, all portending incalculable and likely irreversible ecological damage to the passive, defenseless and fragile human civilization, springs and eco-system of the Great Salt Lake desert, hundreds of miles away from the lights, golf courses, fountains and swimming pool-adorned neighborhoods of ever-expanding 282 gallons per capita per day consuming Las Vegas.

II.

It is arbitrary and capricious to require Millard and Juab Counties to try to analyze the purpose and need of the pipeline when nobody yet knows how many acre feet, if any, of SNWA's water applications the Nevada Water Engineer will end up approving, and in which valley. The draft purpose and need statement is totally silent on the need for the project to go into Spring Valley, much less Snake Valley. Instead the statement rests on the conclusion that sometime in the future SNWA will find itself with a 400,000 acre post-conservation gap between *estimated* far-off-in-the-future demand and *estimated* far-off-in-the-future supply. Yet in fairness, projecting the Las Vegas 2035 population is probably a safer bet than predicting the number of acre feet per year, if any, the Nevada State Engineer will end up approving in Spring and Snake Valleys. That is an even greater mystery. Yet the EIS hurdles forward pell-mell as if all 167,000 acy will be approved. The nagging fact which turns the legitimacy of this whole EIS process on its head, is the fact that the Nevada State Engineer has yet to adjudicate a single acre foot of SNWA applications in Spring Valley, and the Water Engineer hearings on Snake Valley are still off in the indefinite future. This project rests on a veritable house of cards, yet we're supposed to engage in purpose and need analysis??

III.

It is also arbitrary and capricious to require Millard and Juab Counties to try to analyze the purpose and need of the pipeline when they do not know the location of the proposed well sites, i.e., the number and location in each valley, and the planned afy production of each well. SNWA admitted in the last meeting in Henderson that even it does not yet know these answers. One cannot begin to opine on the purpose and need of a project until the project is defined. It is not enough to say SNWA faces a future need for another 400,000 afy. Rather, the statement must state why it is necessary to come all the way to Spring Valley and all the way to Snake Valley on Utah's border, to make up that deficit. The purpose and need statement is seriously lacking in this regard. The purpose and need of a proposed action can only be meaningfully analyzed if the proposed action is known, i.e, the number of wells, the location of the wells, and the actual planned afy volume is known.

Purpose and need is not analyzed in a vacuum. The purpose and need of a project has meaning only when analyzed against the likely ecological and hydrological harm the project may cause. Of course, the proposed purpose and need statement cannot begin to comment on incremental needs in this valley or that valley, because, again, the State Engineer has yet to adjudicate SNWA's groundwater applications in Spring or Snake Valleys. But again, that just underscores the arbitrariness of going ahead at present with the EIS and the present purpose and need analysis.

IV.

To explain why SNWA needs another 200,000 afy is one thing. It is quite another thing, however, to explain why SNWA has to come all the way to Utah's borders and threaten the water rights and stability of Utah's west desert to pick up a 27,500 afy fraction of that total, when an incremental 7 gallon GPCD belt tightening by 3.5 million people (projected population that fuels SNWA's purpose and need argument) could save more than 27,000 afy easily.¹ The proposed purpose and need failed to acknowledge the fact that the more the Las Vegas population swells, the greater the multiplier effect of a slight GPCD reduction on the overall aggregate afy usage.

¹ One acre foot equals 325,851 gallons. 3.5 million people multiplied by 7 gallons per day, multiplied by 365 days in a year, divided by the number of gallons in an acre foot (325,851) equals a savings of 27,443 acre feet per year. Does SNWA really need to come to Snake Valley?

V.

SNWA's purpose and need argument is staked largely on the apparent unquestioned assumption of rapid, staggering growth up to the 3.5 million mark by 2035. If we take that argument at face value, are we supposed to assume growth comes to a screeching halt after 2035? Of course not, if we assume the argument. In other words, the force of the population explosion argument eventually undermines the cogency of the proposed purpose and need statement. Why? Because the proposed purpose and need statement fails to address the one and only solution left to Las Vegas beyond 2035 after its burgeoning population races well past 3.5 million to the point where not even all of Utah's rightful west desert water could possibly satisfy the demand. What then? There is only one answer. Go to the ocean for desalination. If going to the ocean is the inevitable solution that awaits the current generation of children presently playing on the lawns and swimming in the public pools of Las Vegas, then the purpose and need statement inexcusably fails to state why Las Vegas cannot just start going to the ocean sooner rather than later.

In short, the purpose and need statement fails to say why Las Vegas must now bump up against Utah's rightful share of the as-yet unchartered deep carbonate water systems beneath Snake Valley, when in a few more short decades Las Vegas will end up having to go to the ocean anyway. Why does Las Vegas have to threaten Utah's fragile static desert civilization just to forestall the inevitable, if we accept SNWA's premise of unchecked growth in Las Vegas valley? Instead of placing Utah's west desert at risk en route, why can't Las Vegas just cut to the chase and get to where everyone knows it must go eventually, the ocean, without hurting Utah. These important questions are completely neglected in the proposed purpose and need statement.

CONCLUSION

For these and other reasons, Millard and Juab Counties submit that the EIS must be put on hold until the purpose and need statement is revamped to address these deficiencies. The EIS must be put on hold further until we know how many afy's, if any, Nevada Engineer will approve in Spring and Snake valleys.

**Comments By Juab, Milard and Tooele Counties on Clark, Lincoln, and White Pine Counties Groundwater Development Project EIS
Preliminary Draft Chapters 1, 2, and 3**

Date (mm/dd/yy)	03/17/2008
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**Overall Main Comments on Chapters 1.0, 2.0, and 3.0 (please limit to 5)
(Specific comments on chapters can be provided on Page 2 of this form).**

Chapter 1.0

THE FOLLOWING IS A SUMMARY OF SOME OF COMMENTS. SEE THE SPECIFIC COMMENTS BELOW.

1. Statements expressing or implying that Congress mandated the granting of an ROW in White Pine County are incorrect.
2. Lack of necessary information about production wells.
3. Lack of necessary information about permitted water rights
4. Improper rushing of EIS – should wait for State Water Engineer Rulings and Utah-Nevada Interstate Water Agreement
5. Inadequate statement of purpose and need
6. Improper usurpation by BLM of State Engineer’s Role

Chapter 2.0

THE FOLLOWING IS A SUMMARY OF SOME OF THE COMMENTS. SEE THE SPECIFIC COMMENTS BELOW.

1. Statements expressing or implying that Congress mandated the granting of an ROW in White Pine County are incorrect.
2. Not proper to tier.
3. Chapter 2 maps are missing information regarding the number, location and other features of the production wells.
4. Alternatives A, B and C cannot be properly understood until the State Water Engineer determines the permitted water rights, the location of each production well, and other details - including monitoring, mitigation, etc., with respect to each production well; and division of water between Utah and Nevada is concluded either through agreement or litigation.
5. Inadequate and incomplete description of Alternatives A, B, C and the no action alternative.
6. Arbitrary omitting of the no-Snake Valley alternative.

Chapter 3.0

THE FOLLOWING IS A SUMMARY OF THE COMMENTS. SEE THE SPECIFIC COMMENTS BELOW.

1. Statements expressing or implying that Congress mandated the granting of an ROW in White Pine County are incorrect.
2. The water related maps in Chapter 3 denote a different area of study or interest than the other maps in Chapter 3. The extent water related maps The extent of the Water related Extent of environment to be studied is inconsistent with the extent of the Area of Interest in the DOI-SNWA Stipulated Agreement
3. Socio-economic study should not have omitted Tooele County.
4. Socio economic study should differentiate between western portions and eastern portions of Tooele, Juab and Millard Counties.
5. Generally, a meaningful review of Ch. 3 at this time is difficult, given the delay on the hydro baseline report and the natural resources baseline report. BLM should wait for those baseline reports, and then have the cooperators re-review Chapter 3.

**Comments by Juab, Millard and Tooele Counties on Clark, Lincoln, and White Pine Counties Groundwater Development Project EIS
Preliminary Draft Chapters 1, 2, and 3**

Specific Comments

Page	Section	Paragraph	Line	
	1.1.1			The environmental impacts of granting the ROW cannot reasonably be studied until (1) the amount of water permitted to SNWA by the State Engineer and the terms and conditions of those permits are known, and (2) the Congressionally required interstate water agreement between Utah and Nevada is complete and the terms and conditions of that agreement are known. It is not enough to simply say that total production is expected to equal 200,000 afy. The environmental impacts of such aggregate production cannot reasonably be understood and modeled without information regarding the number and location of production wells, the depth, pattern of production and volume of production from each well, and planned monitoring and mitigation measures for each well. Until that information is known, a study of the environmental impacts of granting the ROW is arbitrary at best.
	1.1.1			The phrase “develop and convey groundwater resources” unduly obscures to the average reader what is really happening. A plain description of the project is needed, to ensure the reader knows what is about to happen in terms of the artificial removal of groundwater from its natural closed hydrographic basin and (for Spring and Snake Valleys) desert carbonate rock flow system that terminates at the Great Salt Lake in Utah.
	1.1.2			Again the term “groundwater development and conveyance system,” unduly obscures a plain understanding of the project to the average reader. The average reader needs to plainly understand that there will be an artificial diversion of groundwater from naturally closed hydrographic systems and (for Spring and Snake Valleys) regional groundwater flow systems destined for the Great Salt Lake desert in Utah. Thus the purpose portion of the purpose and need statement should state more plainly the purpose of the ROW, pumping stations, etc.: to artificially extract hundreds of thousands of acre feet annually from the hydrographic basins and underground flow systems which, in the case of Spring and Snake valleys, are otherwise destined for the Great Salt Lake desert in Utah, and divert that natural flow hundreds of miles away to Las Vegas. That is the true purpose of the pipeline. The current sterile and sparse description of the project’s purpose leaves the public uninformed as to what is really happening, thus undercutting NEPA’s true mission of facilitating an informed public decision-making process.
	1.1.2			The need portion of the purpose and need statement fails to explain why the 200,000 afy of groundwater in an entirely different basin must be diverted by SNWA. It is inadequate to state that federal action is needed because SNWA made an application.
	1.1.2 (this comment			It is inadequate, circular and actually misleading to state that the need exists because of Congressional direction. First of all, Congress mandated the Right of Way only in Clark and Lincoln Counties, not White Pine County. Here is Section 301 LCCRDA; note the bolded and

	<p>also applies to chapters 2 and 3)</p>		<p>underlined portions:</p> <p>SEC. 301. UTILITY CORRIDOR AND RIGHTS-OF-WAY. (a) UTILITY CORRIDOR.— Applicability.</p> <p>PUBLIC LAW 108–424—NOV. 30, 2004 118 STAT. 2413 (1) IN GENERAL.—Consistent with title II and notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), the Secretary of the Interior (referred to in this section as the “Secretary”) shall establish on public land a 2,640-foot wide corridor for utilities in <u>Lincoln County and Clark County, Nevada</u>, as generally depicted on the map entitled “Lincoln County Conservation, Recreation, and Development Act”, and dated October 1, 2004.</p> <p>(2) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)— (A) the Office of the Director of the Bureau of Land Management; (B) the Office of the Nevada State Director of the Bureau of Land Management; (C) the Ely Field Office of the Bureau of Land Management; and (D) the Caliente Field Station of the Bureau of Land Management.</p> <p>(b) RIGHTS-OF-WAY.— (1) IN GENERAL.—Notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), and subject to valid and existing rights, the Secretary shall grant to the Southern Nevada Water Authority and the Lincoln County Water District nonexclusive rights-of-way to <u>Federal land in Lincoln County and Clark County, Nevada</u>, for any roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system, as depicted on the map.</p> <p>(2) APPLICABLE LAW.—A right-of-way granted under paragraph (1) shall be granted in perpetuity and shall not require the payment of rental.</p> <p><u>(3) COMPLIANCE WITH NEPA.—Before granting a right-of way under paragraph (1), the Secretary shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the identification and consideration of potential impacts to fish and wildlife resources and habitat.</u></p> <p>(c) WITHDRAWAL.—Subject to valid existing rights, the utility</p>
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				<p>corridors designated by subsection (a) are withdrawn from—</p> <p>(1) all forms of entry, appropriation, and disposal under the public land laws;</p> <p>(2) location, entry, and patent under the mining laws; and</p> <p>(3) operation of the mineral leasing and geothermal leasing laws.</p> <p>(d) STATE WATER LAW.—Nothing in this title shall—</p> <p>(1) prejudice the decisions or abrogate the jurisdiction of the Nevada or Utah State Engineers with respect to the appropriation, permitting, certification, or adjudication of water rights;</p> <p>(2) preempt Nevada or Utah State water law; or</p> <p>(3) limit or supersede existing water rights or interest in water rights under Nevada or Utah State law.</p> <p>(e) WATER RESOURCES STUDY.—</p> <p>(1) IN GENERAL.—The Secretary, acting through the United States Geological Survey, the Desert Research Institute, and a designee from the State of Utah shall conduct a study to investigate ground water quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, Nevada, and any groundwater basins that are located in White Pine County, Nevada, or Lincoln County, Nevada, and adjacent areas in Utah. The study shall—</p> <p>(A) focus on a review of existing data and may include new data;</p> <p>(B) determine the approximate volume of water stored in aquifers in those areas;</p> <p>(C) determine the discharge and recharge characteristics of each aquifer system;</p> <p>(D) determine the hydrogeologic and other controls that govern the discharge and recharge of each aquifer system; and</p> <p>(E) develop maps at a consistent scale depicting aquifer systems and the recharge and discharge areas of such systems.</p> <p>(2) TIMING; AVAILABILITY.—The Secretary shall complete a draft of the water resources report required under paragraph (1) not later than 30 months after the date of the enactment of this Act. The Secretary shall then make the draft report available for public comment for a period of not less than 60 days. The final report shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate and made available to the public not later than 36 months after</p>
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			<p>the date of the enactment of this Act.</p> <p>(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.</p> <p>(4) FUNDING.—Section 4(e)(3)(A) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317) is amended—</p> <p>(A) in clauses (ii), (iv), and (v), by striking “County” each place it appears and inserting “and Lincoln Counties”;</p> <p>(B) in clause (vi), by striking “and” at the end;</p> <p>(C) by redesignating clause (vii) as clause (viii); and</p> <p>(D) by inserting after clause (vi) the following: “(vii) for development of a water study for Lincoln and White Pine Counties, Nevada, in an amount not to exceed \$6,000,000; and”.</p> <p>No ROW is Congressionally mandated in White Pine County. Therefore the draft EIS – at least the Spring and Snake Valley portions thereof - is fundamentally flawed to the extent it rests on the assumption that the ROW in those valleys is somehow mandated. Whether to grant the ROW in Spring and Snake Valleys is an entirely open question with no Congressional strings attached. Yet the draft EIS leaves the reader thinking otherwise. This is a seriously misleading flaw that must be rectified by starting over from scratch with the EIS, because interwoven throughout the current EIS is the incorrect notion that the ROW is Congressionally mandated in Spring and Snake Valleys.</p> <p>Secondly, even with respect to the ROW mandated in Lincoln and Clark Counties, Congress could have simply made the ROW conveyance and be done with it. Instead, Congress conditioned the conveyance on a number of requirements, not the least of which is a Congressional mandate to the BLM to perform a comprehensive, good-faith NEPA EIS. See the italicized subsection above entitled “Compliance with NEPA.” An important inherent function of a NEPA EIS is to take a critical, unflinching look at why the unnatural transfer of 200,000 afy out of hydrographic basins and regional underground flow systems wholly foreign to Las Vegas, is necessary. The need portion of the purpose and need statement falls short of doing this.</p> <p>The draft EIS should quote Section 301 in full, verbatim, so the reader may decide what its impact and meaning is.</p> <p>In any event, the full weight of NEPA certainly applies in Spring and Snake Valleys, and really throughout the entire project.</p>
	1.1.2 (this		It is also reasonable to conclude from the foregoing section 301 of the LCCRDA that the BARCASS

comment also applies to chapters 2 and 3)			<p>study must be complete before the EIS may go forward. The statute contemplates an interstate water agreement, which in turn contemplates a USGS study that accomplishes several things:</p> <p>(A) focus on a review of existing data and may include new data; (B) determine the approximate volume of water stored in aquifers in those areas; (C) determine the discharge and recharge characteristics of each aquifer system; (D) determine the hydrogeologic and other controls that govern the discharge and recharge of each aquifer system; and (E) develop maps at a consistent scale depicting aquifer systems and the recharge and discharge areas of such systems.</p> <p>There is a general feeling that BARCASS I failed to accomplish all of the foregoing, and that a so-called BARCASS II is needed. It is arguable under Section 301 of the LCCRDA that all this must be accomplished in order for a meaningful Utah-Nevada interstate agreement to take place, which in turn is a pre-condition to completing EIS and permitting the actual transfer of water out of White Pine County where the common interstate aquifers exist.</p> <p>Again, the draft EIS should quote Section 301 in full, verbatim, so the reader may decide what its impact and meaning is.</p>
1.1.2			<p>It is not enough to say generically that another source of supply is needed other than Nevada's 1.1 Colorado River entitlement. The question the EIS must analyze is whether there is a need to target and divert groundwater beneath Spring and Snake Valleys that naturally flows through the Great Salt Lake Desert regional groundwater flow system into Utah where it supports an entire eco-system there. What "need" exists to threaten that fragile eco-system? What the EIS seems to swallow as a "need" could really be just a want, a want to grow and a want to take from another eco-system in order to feed such growth, as opposed to a need that is necessary to stay viable. The EIS must critically explore and sort out actual needs vs. wants in order to stay a chosen path of unbridled growth. Why does SNWA "need" to interfere with the natural flow of the Great Salt Lake Regional underground flow system? So it can "choose" the luxury of continued unbridled growth? That is all the reader gets from the draft EIS.</p>
1.1.2			<p>Maps 1.1-1, 1.1-2 and 1.1-3 leave the reader wondering where the production wells will be placed, how much pumping will occur at each well, and how this relates to the relevant geo-hydrology.</p>
1.2.2			<p>The public should know what stake the cooperating agencies hold in this matter. To state the BLM's mission and role, vis-à-vis affected lands, yet not say anything about the cooperating agencies, seems out of place. The EIS should state that the Counties of Utah, Millard County, Juab County and Tooele County, contain eco-systems and human populations which depend on ground water that flows from Spring and Snake Valleys and thus stand to be impacted by SNWA's</p>

			<p>wished for removal of groundwater from Spring and Snake Valleys in White Pine County, Nevada, in order to feed Las Vegas' wished for continued growth. The EIS should state that Millard County duly filed protests with the Nevada State Engineer, concerning SNWA's Snake Valley groundwater applications.</p> <p>The project description does not adequately describe the portion of the project which provides additional water for future expansion, not does it explain how the unserved portion of future demand might be satisfied. This project may address drought protection through portfolio diversity, but still fails to address the future demand issue. This makes the "no Snake Valley" alternative (above) more viable, since the project in any configuration cannot meet the needs for future demand.</p>
	1.2.2		<p>The EIS should also recognize as a distinct cooperating agency the Goshute Tribe of Iapah in Deep Creek Valley. The BARCASS I study shows a direct hydrological connection between the SNWA's hoped for ground water pumping in Spring Valley and impacts to Deep Creek Valley.</p>
	1.3.1		<p>The recitation of relevant authorities is missing references to the Congressional mandate to perform this EIS and the Congressional prohibition to not transfer water out of the Great Salt Lake flow system absent an interstate water agreement between Utah and Nevada.</p>
	1.3.2		<p>The following language from the EIS is at best a critical understatement:</p> <p style="padding-left: 40px;">"One of the important state processes for the GWD Project is the groundwater application process before the Nevada State Engineer, described below. Many of these review processes are concurrent with the EIS process[.]"</p> <p>Therein lies the fundamental problem with the timing of this EIS: It runs "concurrent with" the Nevada State Engineer groundwater adjudication process, thus resulting in an incomplete and defective EIS, defective because it purports to study an impact that is not yet determined and quantified.</p>
	1.3.2.1		<p>It is not enough for the EIS to effectively shrug and say it's the Nevada Engineer's job to determine the groundwater applications, not BLM's. The granting of those groundwater applications is meaningless unless SNWA obtains a ROW over BLM ground to transport the water to Las Vegas. Congress could have easily granted such a ROW with nothing more. Instead, Congress mandated that the matter be made subject to a proper NEPA EIS. Congress did not mandate that BLM rush its EIS to get out ahead of, or run "concurrent with" the Nevada Engineer's adjudication process. Reason and precedent reasonably require BLM to put the EIS on hold until the Nevada Engineer's process has run its course, and the pre-condition of a Utah-Nevada interstate water agreement has run its course. Then and only then will BLM have a reasonable understanding of the "impact" it is mandated under NEPA to "study."</p>

1.4.1			<p>Unreasonably slanted in SNWA's favor for a supposedly objective critical NEPA EIS, this section reduced to its barest essence, seems to say: "How else can Las Vegas continue to burgeon?" Where is the independent critical review by BLM of the unbridled growth assumption? The strong implication – essentially a BLM apology for Las Vegas' growth ambitions, seems to be: "How can Las Vegas keep burgeoning unless it diverts groundwater bound for western Utah?" The EIS is missing a much needed critical review of the unbridled Las Vegas growth assumption, contrasted against the following realities of the impact zone in western Utah: The typical western Utah rancher, the typical western Utah town, the typical western Utah wildlife refuge, antelope herd, plant or animal endangered species, the typical western Utah spring or well, in short, the typical state of things in western Utah, are simply trying to avoid extinction - trying to survive and hold the line on a very razor-thin edge of water resource. The EIS implies that all of these stakeholders and eco-systems in western Utah – who are minding their business and simply trying to survive with no ambitions for growth, acquisition or expansion - are supposed to move over and give way, because how else will Las Vegas continue in its unbridled growth? There is something wrong and out of balance with this picture, a picture of gross disparity between the two scenes: one of chosen unbridled growth, the other of a benign unobtrusive effort to merely survive. The equities cry out for more objective, critical analysis in the EIS, not the SNWA driven "please pardon our burgeoning at your expense" veritable press release that constitutes section 1.4.1.</p> <p>The analysis of the so-called "need" in Las Vegas should examine to what extent that "need" is really the result of voluntary, discretionary policy choices, as opposed to actual unavoidable need.</p> <p>This analysis should also be contrasted to and coupled with an analysis of the corresponding need in Northern Nevada and Western Utah to maintain current water supplies and flow systems in their current state.</p> <p>Economic analysis should be included to justify that the total value to Clark County (economic, quality of life, future infrastructure liability, etc.) exceed the negative impacts to the source areas for the project life cycle, especially considering the possibility that sufficient water will not be available. Risk analysis on this item should be included.</p>
1.4.2			<p>The EIS selectively omits the dynamics that have occurred with Lake Powell and Lake Mead since 2004 to the present. For all that is said in the EIS about the uncertainty of the Colorado River and these two reservoirs, the EIS stops short of stating that the state of these water resources threatens current demand. Instead, all the EIS can talk about is the threat to the chosen path of future unbridled projected population growth, as opposed to a current need.</p>
1.5.1			<p>Regarding the bulleted points under the topic "issues associated with the human and natural resources that may be affected by project construction and operation," climate and air quality issues and soil issues derive not only from project construction and operation, but also from the threat of vegetative deterioration due to groundwater drawdown caused by the SNWA pumping. Also, it would be helpful and informative to the average reader to state that the bulleted list of issues extends to both sides of the Utah-Nevada border.</p>

1.5.3			<p>It is unreasonable for the EIS not to acknowledge the findings of the BARCASS I study, given that BARCASS I was commissioned and directed by the very Congressional Act that conditionally authorized the pipeline (subject to the outcome of NEPA review). The unfortunate appearance implied by omission, is that the EIS wants to avoid the SNWA-unfriendly conclusion of BARCASS I that there are likely hydro-geological connections between the ground water pumping in Spring Valley and the Nevada side of Snake Valley, and the Utah side of Snake Valley, Deep Creek Valley and points beyond extending up to the Great Salt Lake Desert as well as other points throughout Millard, Juab and Tooele Counties. The EIS should critically and forthrightly disclose these BARCASS I findings and conclusions, instead of simply stating that the scientific community is divided on the effects of groundwater pumping. This is one more instance of the EIS effectively “throwing its hands in the air,” when NEPA mandates the modeling and study of impacts from the SNWA proposed groundwater pumping, once they can be anticipated after the Nevada State Engineer determines the extent and terms of groundwater pumping. Why else would Congress commission the BARCASS study in the very act of conditionally authorizing the ROW?</p>
1.5.3.1			<p>It is incorrect to say the BLM must somehow roll over and grant a ROW simply because the water permitting process is in the hands of the State Engineer. But for the BLM’s grant of a ROW, the State Engineer’s permit is meaningless. BLM is still fully responsible to assess the environmental impact that will result from issuance of the ROW, and decide whether such a decision is warranted given whatever environmental impact is identified. This, after all, was the mandate of Congress at least with respect to the White Pine County portion of the groundwater project.</p> <p>The EIS’ reaffirming that it is the State Engineer’s responsibility, not BLM’s, to award or deny water rights applications, once again illustrates how the EIS has improperly jumped out ahead of the State Engineer’s decision-making process. There is no “impact” for BLM to study, because it is the State Engineer’s prerogative, not BLM’s, to decide just how much water will be diverted and under what terms. BLM needs wait for the Nevada Engineer’s process to catch up and pass the BLM, before BLM starts to study hypothetical impacts based on an information vacuum regarding number, location, size, production, etc., of the various production wells.</p>
1.5.3.2			<p>Once again, the statements in this section only serve to illustrate how pre-mature this EIS is turning out to be. The draft EIS acknowledges that disagreements exist concerning the “perennial yield in the hydrographic areas and potential impacts to springs and surface water.” But eventually the State Engineer will resolve those differences and make a determination on how much water, if any, SNWA will be permitted to divert. The EIS should await that process. As difficult as it is “to reliably predict potential impacts of groundwater pumping on surface water resources,” it is even more so when the Nevada Engineer has yet to tackle these issues. By stating that “the data analyzed in this EIS are the best available representation of current and predicted conditions at this time,” the BLM thinks to improperly usurp the vital role of the State Engineer to tackle these issues. The BLM will have a rational foundation from which to proceed to assess environmental impacts, once the State Engineer’s office does its job. It is of concern to many cooperators that the BLM is under such pressure by SNWA to hurry up this EIS, that BLM seems no longer to objectively understanding this critical timing issue. BLM must take a hard look inward to be sure it is not usurping the State Engineer’s role of deciding what amount of groundwater withdrawal will and will not be appropriate.</p>

	1.6			There is illustrated once again in this section, the failing of the EIS to slow down and wait for information on the precise location of the production wells, in order to study impacts to the environment based on a site specific understanding of the placement of each production well, plus the quantity of production for each well. These are important hydro-geological questions, the glossing over which renders the EIS inadequate.
	2.1			<p>A matrix of alternatives should be crystallized to allow contemplation of each reduced pumping alternative matched up with each alignment alternative, to give the reader a clear picture of each possible alternative.</p> <p>The tiered process is not appropriate here. For the northern Nevada and western Utah stakeholders, the fundamental core question of this NEPA EIS goes to the impacts from the groundwater production wells, the location and number of which in relation to the known hydrogeology has not been settled. Notions of a tiered process here conjure up images of the trail wagging the dog. One can only tier so much before that analogy applies. The tiered approach does not justify the timing concerns and lack of groundwater production well location information concerns referenced in the comments to Chapter 1, above.</p>
	2.2			<p>The statements in this section again illustrate how the cart is being placed before the horse. Water rights have yet to even be determined. SNWA and the rest of the world do not even know what it's rights are, if any. Congress did not mandate, let alone permit, the BLM to engage in such a pre-mature NEPA process. IBID with respect to the yet uncompleted Utah-Nevada water agreement. That still has yet to occur, and serious doubts exist over when and whether it will ever happen given the slow progress made thus far.</p> <p>Also, the EIS misstates the meaning of the LCCRDA: The language of that Act is reasonably interpreted to require a Utah-Nevada agreement prior to any diversion from anywhere in the Great Salt Lake Regional flow system (which includes Spring Valley) as opposed to just a diversion from Snake Valley alone.</p> <p>"The source, quantity, and timing of development and conveyance of this water have not yet been identified by LCWD." This statement is yet another illustration of the pre-mature pace and nature of this EIS.</p>
	2.3			No information in maps on location and other relevant features of production wells. A gross deficiency for understanding actions common to all alternatives.
	2.3.1			Ibid., except for Spring Valley.
	2.4.1			Assessing impacts at the currently identified permitted and application points of diversion is of no value if the State Engineer rejects or modifies those applications. The EIS should wait for the State Engineer to make those actual determinations.

	2.4.2			This alternative is not developed sufficiently to be worthy of comment. Too much is unknown. Here the EIS effectively admits as much with the disclaimer: “[A more detailed description of this alternative will be provided following completion of the groundwater modeling analysis.]” This is the proposed action, and yet we’re told that not enough is known or developed yet to fully explain it. Why? Because the EIS is improperly out ahead of the Nevada Engineer’s adjudication and Utah-Nevada agreement, where all of the relevant mitigation and monitoring provisions will be implemented, around which BLM may then perform a rational environmental impact study.
	2.4.3			Same comment.
	2.5			This section should include a plain statement that under the no action alternative, there would be no diversion of groundwater from its natural hydrographic basin and regional flow system; hence the ground water in Spring and Snake valleys could follow its natural course into Utah toward the Great Salt Lake desert.
	2.6			Table 2.6-1 incorrectly oversimplifies and misstates the matter when it indicates that the alternative of removing Snake Valley from the project does not meet the purpose and need. The balance of the project is not affected by omitting Snake Valley. A substantial amount of groundwater is still obtainable by SNWA, only not the Snake Valley portion.
	2.6.2.3			<p>The draft states the no-Snake Valley alternative would not meet SNWA’s purpose and need because SNWA would be able to divert less water. Under that logic, it can be argued that Alternatives B and C also “do not meet SNWA’s purpose and need” because SNWA will be able to divert less under those scenarios as well. Alternatives B and C will likely result in a trimming of quantity of water diverted that could rival if not exceed the trimming from the no-Snake Valley alternative. Therefore, discarding the no-Snake Valley alternative while giving full attention to alternatives B and C, is not reasonable. The asserted distinction is arbitrary, not well reasoned.</p> <p>Moreover, the draft EIS dismisses without comment the unique inter-state difficulties that are patently obvious with the proposed Snake Valley wells. There is an elephant in the kitchen of which the EIS is in apparent denial. There are compelling legal and equitable issues pitting two states against each other, that make the no-Snake valley alternative a viable one worthy of full consideration. BLM’s discarding of that alternative renders the EIS as an improper Nevada-centric endeavor, when the BLM land in question transcends the state boundaries and involves Utah just as much as Nevada. The discarding of this alternative only fuels the speculation that Utah and Utah BLM has been given too little regard in this EIS process, because the overwhelming preference of the Utah stakeholders is that the BLM fully consider the no-Snake Valley alternative. Respectfully, the discarding of that alternative is arbitrary at best.</p> <p>Combined analysis of the project ignores the separation of the White Pine County area from the LCCRDA portion of the ROW.</p>
	CHAPTER 3			General Comment: The area of the affected environment for study in this EIS should be no

	in general, continued			<p>smaller than the geographic Area of Interest defined and mapped in Figure 1 to the so-called Stipulation Agreement between various federal agencies (including BLM's parent agency DOI) and SNWA, in the Spring Valley State Engineer proceedings. Both sides agreed to that Area of Interest voluntarily and at arms length. Both sides agreed that the Area of Interest It is arbitrary to now attempt to crop down the size of that area of interest in the interest of expediting this EIS process. See the 2007 letter to DOI's Dianna Weigmann from Utah Association of Counties on the subject of the Stipulated Agreement's Area of Interest. The statements in that letter are incorporated into these comments by reference.</p> <p>Accordingly, the Counties take issue with all of the maps' depiction of the area of study or interest in Chapter 3, because those maps arbitrarily conflict with the Area of Interest defined in the Stipulated Agreement.</p> <p>For example, Map 3.3-1 is particularly glaring, in that it openly omits the Fish Springs Flat area despite the fact that BLM in earlier cooperating agency meetings committed to include Fish Springs in the area of study. Moreover, Map 3.3-1 clearly illustrates the clash between the EIS and the Area of Interest agreed to in the Stipulated Agreement – by omitting Deep Creek Valley, Tule Valley, Wah Wah Valley and Hamlin Valley from the affected environment to be studied.</p>
	Chapter 3 in general, continued			<p>Generally, a meaningful review of Ch. 3 at this time is not practical, even the delay on the hydro baseline report and the natural resources baseline report. BLM should wait for those baseline reports, plus wait for the Nevada Engineer to perform his adjudication of all water rights applications in all valleys, plus wait for the Utah Nevada water agreement to be completed, then re-write Chapter 3 accordingly, and then have the cooperators re-review Chapter 3.</p> <p>Baseline investigation data has not been developed for the Utah portion of the study area at the same level of detail as for the Nevada portions. This leaves the impression that there are no items of interest or impact in the Utah portion.</p> <p>The uncertainty ranges of the values used in baseline characterization data is not presented, nor the differences in the various investigations performed to date. BARCASS input, if present, is not identified in relation to other sources used. A predominance of SNWA data implies no other data was available, rather than being balanced by prior work.</p>
	3.13			<p>The socioeconomics discussion should not have omitted Tooele County. Tooele county stands in the path of the Great Salt Lake regional flow that will be interrupted by the SNWA hoped for diversion in Spring and Snake Valleys. Tooele County is a cooperating agency.</p>
	3.13.2.2, 3.13.2.3, and 3.13.3, et seq.			<p>The discussion and analysis should include an isolated analysis of the west desert portions of Millard, Juab and Tooele counties, where the impacts from SNWA's pumping will be most acutely felt. Lumping each county's demographics, economy, trends, expected growth, etc., into county-wide figures, clouds an accurate assessment of the socio-economic situation in the vulnerable</p>

				<p>western portions of those counties. The west desert portions of those three counties are significantly different from the eastern portions, particularly in Juab and Tooele Counties which are part of the Wasatch Front urban region.</p> <p>Socioeconomic characterization of the rural areas is “past to current”, lacking a future attitude investigation of trends and attitudes. This leaves the estimation of impacts solely to the modeling phase, without the desires of residents and potential residents included in the model or analysis.</p> <p>Rural areas are characterized by either small area data clusters or by averages of the total county. The separate, isolated and varied aspects of Snake Valley are not depicted correctly in general, ranging from precipitation to migration and employment trends.</p>

Comment Review Form

Document Title: Preliminary Draft Groundwater Model Report - Clark, Lincoln, and White Pine Counties Groundwater Development Project			
Document Date: April 1, 2008		Date Comments Due: May 16, 2008	
Agency: Millard, Juab and Tooele Counties ("the Counties")		Responsible contact: J. Mark Ward Utah Association of Counties 5397 South Vine Street Murray Utah 84107 Tel. 801-265-1331 Fax 801-265-9485 email: mark@uacnet.org	
Comment #	Page #	Section and paragraph	Reviewer Comment
Report Part A – Conceptual Model			
1		General	The Counties incorporate herein by reference all the prior comments they submitted concerning the hydrology baseline report.
2		General	The Counties incorporate herein by reference all the prior comments they submitted concerning draft Chapters 1-3 of the EIS.
3		1.0 Introduction	The dynamics of the discussion at the May 6, 2008 technical review meeting at the SNWA offices in Las Vegas, reinforced the growing concern of many cooperators that NEPA sufficient independent objectivity is lacking in the preparation of the groundwater model study. SNWA, Earth Knowledge and ENSR agents seemed to be consciously triangulating in a vigorous defense of the preliminary water model against all criticisms. ENSR holds itself out as an independent third party contractor of BLM. Earth Knowledge is for all purposes a hired extension of SNWA – a paid agent of SNWA. Given that BLM’s obligation under NEPA is to objectively and critically study the impacts of the SNWA proposed groundwater project – and there for critically objectively study the water model, and given that ENSR is an extension of BLM for this purpose, it follows that ENSR should have applied a more critical eye and critical objective review of Earth Knowledge’s preliminary work than was demonstrated by ENSR at the

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			<p>May 6th meeting. The water model is the heart of the BLM's required "study" of environmental impacts from the proposed pumping and transport of water southward from the project valleys. It is therefore not appropriate for ENSR hydrologists and other operatives to act as Earth Knowledge's apologist in the face of critical questions addressed to Earth Knowledge during the May 6th meeting. To the contrary, ENSR operatives if anything should be matching the level of critical scrutiny and review that was exhibited by other cooperators.</p> <p>In essence, SNWA (through Earth Knowledge) is really the one doing the water model study here, not BLM (or ENSR). The Counties want to see evidence of more independent scrutiny by ENSR. Or, perhaps ENSR should sub-contract with another independent reviewer of Earth Knowledge's preliminary work.</p> <p>This is all in keeping with the spirit with which Congress itself approached this entire project. In virtually the very same breath in which Congress authorized the groundwater development rights of way in Clark and Lincoln County (though such rights of way were conspicuously absent in White Pine County), Congress commissioned an independent groundwater model study by USGS, known as BARCASS. See LCCRDA Section 301(b), (e). There are serious questions whether the report issued by USGS (BARCASS I) has fully returned all the information Congress commissioned it to return. Whatever the case, we know that Congress certainly <u>expected, anticipated and outright required</u> that USGS perform the following:</p> <ul style="list-style-type: none"> - determine how much water is stored in the relevant aquifers - determine discharge and recharge characteristics of each aquifer - determine hydrogeologic and other controls that govern discharge and recharge of each aquifer system - determine water quantity, quality and flow characteristics in deep carbonate and alluvial aquifers of White Pine County, and any groundwater basins that are located in White Pine County, or Lincoln County <u>or</u>

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Comment #	Page #	Section and paragraph	Reviewer Comment
			<p><u>adjacent areas in Utah.</u> BLM and DOI believe those adjacent areas include the Area of Interest identified in Figure 1 of the Spring Valley Stipulated Agreement.</p> <p>In other words, Congress commissioned USGS to come up with a water model. Notice, Congress was not content to let SNWA come up with the water model, nor a paid agent of SNWA. In the same spirit, BLM should reconfigure this EIS to inject USGS into a meaningfully active role in preparing this water model.</p> <p>USGS, to comply with the spirit and letter of the Congressional requirement, ought to have a much larger role in developing the water model that SNWA now attempts to do through paid surrogate Earth Knowledge. At any rate, the whole spirit of the LCCRDA mandated USGS water model study underscores the notion that is not for SNWA (nor for a paid operative of SNWA) to be the sole performer of the groundwater model study while ENSR sits by and functions as apologist for that work. For this EIS process to pass NEPA muster, there must be a better showing in the record of a healthy, skeptical independent review of SNWA's (through alter-ego Earth Knowledge) preliminary ground water model work.</p> <p>The BLM's partial response to the foregoing critique is something along the lines of "Not to worry; USGS is right there to steer the water model project and ensure that it is done right." That contention did not bear out at the May 6th hearing. The impression at the May 6th meeting is that the USGS was rather marginalized (to put it generously) as far as any meaningful role in the preparation of the water model. USGS should have a more integral role in preparing the water model effort in order to achieve the independence and objectivity required in a NEPA compliant process. USGS should direct the effort, or at least direct a vigorous peer review of Earth Knowledge's effort. That active role by USGS was not on display at the May 6th meetings.</p>

Document Title: Preliminary Draft Groundwater Model Report - Clark, Lincoln, and White Pine Counties Groundwater Development Project			
Document Date: April 1, 2008		Date Comments Due: May 16, 2008	
Agency: Millard, Juab and Tooele Counties ("the Counties")		Responsible contact: J. Mark Ward Utah Association of Counties 5397 South Vine Street Murray Utah 84107 Tel. 801-265-1331 Fax 801-265-9485 email: mark@uacnet.org	
Comment #	Page #	Section and paragraph	Reviewer Comment
			In short, USGS should be the dog that wags the Earth Knowledge tail in this water model effort, not vis-versa, especially if ENSR declines to perform that function. USGS involvement is obviously what Congress wanted, as manifested by its insistence that USGS perform a relevant groundwater model study.
4		1.3 Scope & Figure 1-1 Location of Study Area	The study area should at least be co-extensive with the geographic area known as the "Area of Interest" identified in Figure 1 to the Spring Valley Stipulated Agreement signed by SNWA and various federal agencies including BLM's parent agency DOI. There is no acceptable rationale to explain why the "Area of Interest" sought to be protected by BLM/DOI in the Spring Valley Stipulated Agreement, is not co-extensively the subject of the subject water model study. That "Area of Interest" map includes the Fish Springs National Wildlife Refuge in Juab and Tooele Counties. Figure 1-1 of the Conceptual Water Model Report does not. The Area of Interest Map includes Deep Creek Valley which embraces the Federated Tribe of the Goshutes Indian Reservation. Figure 1-1 does not. The Area of Interest Map includes Pine Valley, All of Hamlin Valley, Wah Wah Valley, Tule Valley, Fish Springs Flat and Dugway-Govt Creek Valley. Figure 1-1 does not.
5		2.3 Soil and Vegetation	The water model should more comprehensively study, analyze and predict the anticipated drops in groundwater tables, in order to provide a foundation to assess the resultant impact on groundwater dependent vegetation, and in turn the resultant impacts on soil, wind erosion and air quality through loss of groundwater dependent vegetation.

Document Title: **Preliminary Draft Groundwater Model Report - Clark, Lincoln, and White Pine Counties Groundwater Development Project**

Document Date: **April 1, 2008**

Date Comments Due: **May 16, 2008**

Agency:

Millard, Juab and Tooele Counties ("the Counties")

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Comment #	Page #	Section and paragraph	Reviewer Comment
6		General	It was apparent at the May 6 th meeting at SNWA in Las Vegas that the water model efforts continue to be hampered by SNWA's inability to pin down exactly what the proposed action is. It keeps shifting, so the water model analysis has to shift, and then re-calibrations problems ensue.
7		General	The Counties continue to be dismayed at the premature nature of key aspects of this EIS is following, as now manifested in the difficult water model study. It is still not known how much water, if any, the Nevada Engineer will appropriate to SNWA., nor the myriad conditions, points of diversion, etc. Moreover Utah and Nevada have yet to agree on how to divide up the water resources. Moreover, SNWA has still not come to rest on a definitive proposed action in terms of points of diversion, quantity of water diverted, size of pipeline, etc. In face of this substantial two and three-layered uncertainty, BLM seemingly yields to SNWA pressure to have its paid agent Earth Knowledge plow forward with an infinitely complex water model based on unknown and unverified water rights. This is all compounded further with the apparent recalcitrance of SNWA and Earth Knowledge operatives to expand the model boundaries to match that of the Area of Interest charted by BLM and DOI in the Spring Valley Agreement, and we have the makings of a seriously flawed NEPA process. For all the lip service over the past year that was paid to the importance of the Fish Springs National Wildlife Refuge, to cite and example, Figure 1-1 in the Conceptual Report still maddeningly omits that important areas.

**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project EIS
Administrative Preliminary Draft EIS – January 2010**

Date (mm/dd/yy)	January 29, 2010 – modified and submitted 2-1-10 to reflect 1-28-10 Nevada Sup Ct Ruling
Name	Millard County, Juab County & Tooele County Utah c/o J. Mark Ward Utah Association of Counties
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Agency	
Office	

**Global Comments on Chapters and Appendices (insert extra rows if needed)
(Specific comments on individual chapters can be provided in the second section of this form).**

GLOBAL COMMENT REGARDING THE ENTIRE DRAFT EIS:

In a written decision dated January 28, 2010, the Nevada Supreme Court held that the Nevada State Engineer (NSE) violated Nevada law by failing to timely process Southern Nevada Water Authority’s (SNWA’s) 1989 groundwater applications in Cave, Dry Lake, Delamar, Spring and Snake Valleys. The Nevada Supreme Court remanded the matter back to the Nevada district court to determine a remedy for the NSE’s violation, and decide whether SNWA must re-file those applications or whether at the very least the protest period on applications in all five project valleys should be re-opened. At the very least, it is expected that the district court will require SNWA’s applications in all five project valleys to be re-opened to a new round of protests. In addition, there is a reasonable probability that SNWA may have to re-file its groundwater applications and thereby lose its 1989 priority date and be relegated to a new 2010 priority date.

As a result of the Nevada Supreme Court’s January 28th court decision (“1-28-10 court ruling”), the State of Utah has pulled away from the draft Utah-Nevada groundwater agreement which was released to the public on August 23, 2009 and has suspended further discussions with Nevada. As far as Utah’s governor is concerned, many if not all of the main assumptions which supported the draft agreement are gone as a result of the 1-28-10 court ruling. In short, the 1-28-10 court ruling made the draft Utah-Nevada agreement dematerialize, and all references thereto in the draft EIS should be expunged.

Moreover, the entire Clark, Lincoln, and White Pine Counties Groundwater Development Project Administrative Preliminary Draft EIS (“draft EIS”) is premature. The 1-28-10 court ruling has reduced SNWA to a state of having no reliable groundwater rights to speak of. There is a reasonable probability that SNWA will have to start completely over with the groundwater application process and thus lose over 20 years of seniority and priority as against intervening groundwater applications. At the very least, dozens if not hundreds of stakeholders from Nevada and Utah who were not able to protest SNWA’s groundwater applications, will now have opportunity to do so. The amount of

groundwater available for the pipeline project may be drastically reduced regardless of which remedy the district court chooses, due either to the re-filing and/or the new opportunities for protest. The 1-28-10 court ruling could effectively undo part or all of this groundwater project.

At the very least, the 1-28-10 court ruling effectively eliminates the Snake Valley portion of the project and the project EIS. Why? Because the State of Utah has now backed away from the draft agreement thanks to the 1-28-10 court ruling. With no interstate agreement of record, and no such agreement in the foreseeable future, there is no authority for BLM to permit an interbasin transfer of groundwater out of the Snake Valley, and hence no legal basis to issue a pipeline right-of-way in and out of Snake Valley. Accordingly, all alternatives in the draft EIS which contemplate a pipeline ROW to and from Snake Valley, **ARE ILLEGAL AND NOT FEASIBLE AND MUST BE SCRAPPED FROM THE DRAFT EIS UNDER NEPA.**

The Snake Valley portion of the draft EIS was doomed anyway even if the 8-23-09 now defunct draft Utah-Nevada agreement had been finalized. Why? Because that draft agreement purported to divide up the groundwater only of Snake Valley and not the entire Great Salt Lake groundwater flow system as required by section 301(e)(3) of PL 108-424, the 2004 LCCRDA, which states:

“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 those interstate groundwater flow system(s) from which water will be diverted and used by the project.”

Therefore, BLM still would have lacked authority to permit a transbasin diversion of groundwater from Snake Valley even if the Utah-Nevada draft agreement had been signed, given the lack of a Congressionally required interstate agreement to divide the appropriate interstate groundwater flow system.

But now that there is **NO INTERSTATE AGREEMENT** to speak of – much less the deficient draft agreement which addressed only the Snake Valley – the conclusion is even more obvious, to wit: **BLM is without authority to grant SNWA a groundwater pipeline ROW into Snake Valley.**

Hair-splitting arguments which try to separate out the issuance of a ROW from the allowance of an actual transbasin diversion of groundwater are specious and illogical. There is no point or authoritative basis to issue a ROW to permit an activity which is unquestionably illegal. To argue that the ROW itself is not the actual act of permitting the activity is so much sophistry which erodes already waning public confidence in the reasonableness of this groundwater EIS process. If it is illegal to permit an actual transbasin diversion without an interstate agreement, then it is equally illegal and futile to issue a ROW for such a transfer. The two do not match up. BLM cannot feign compliance with a Congressional mandate that says no to a transbasin groundwater diversion based on no interstate agreement, only to pivot and issue a Record of Decision which grants the ROW for the transbasin diversion – despite the lack of such an agreement. **If BLM were to engage in such behavior it would be the epitome of arbitrary and capriciousness governmental conduct barred by NEPA and controlling NEPA case law.**

Accordingly if the BLM somehow found a way to go forward with the draft EIS despite its glaring prematurity in light of the 1-28-10 court ruling, then the only feasible and legal course for the BLM to follow would be to publish as its preferred alternative in the public draft EIS, one of the alternatives which stay out of Snake Valley, i.e., one of the LCCRDA-only alternatives as modified and/or mitigated to allow more dispersed pumping in the White Pine County portion of Spring Valley. Any other course would be futile, non-feasible, illegal and hence ill-advised under NEPA. Congress did not mandate a ROW in White Pine County. Congress effectively barred a ROW in Snake Valley absent the proper interstate agreement. Thus BLM's remaining options are clear: Adopt a preferred alternative in the public draft EIS that stays out of Snake Valley.

GLOBAL COMMENT WITH RESPECT TO CHAPTER 3

BLM does a good job of describing to the best of its ability the affected environment presently. However, Chapter 3 is an unacceptable description of the environment after 2050, when the proposed project is supposed to go on line. Impacts from the project will occur some time after it goes on line. Too many decades will elapse between the present EIS and the actual implementation of the proposed action. Therefore, this demonstrates why the current EIS is fundamentally defective and flawed because it is premature. The present affected environment may significantly differ by the mid 21st century. The project is too speculative and too far off in the future, to perform a reasonable EIS at the present time. Again, the better course for BLM to follow is (1) wait until the groundwater allocation process has run its course with the NSE, (2) wait until such time, if ever, that Utah and Nevada reach an agreement with respect to groundwater division for the GLS flow system, as required by the Congressional statute, and (3) wait until we draw reasonably close – at least as close as 10 years – to the actual project date and impacts in order to perform a timely and contemporary EIS, i.e, study the relevant affected environment in its contemporary state in relation to the expected project buildout. The present EIS is simply too remote – by the order of too many decades remote – of the actual project and its future impacts.

**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project EIS
Preliminary Draft Chapters 1, 2, and 3**

Specific Comments

Page	Section	Paragraph	Line	
	Section 1.1.2.1			The purpose is an ROW to develop and convey water rights permitted by the NSE in Cave, Dry Lake and Delamar Valleys and applied for in Snake Valley? What water rights in Cave, Dry Lake and Delamar Valleys. That decision was over turned by the Nevada District Court for Lincoln County. What water rights in Snake Valley? The NSE hasn't even conducted the hearing yet? What water rights in any of the project valleys? The 1-28-10 court ruling held the NSE violated Nevada State law by acting on SNWA's groundwater applications too late. Moreover there is no required interstate agreement necessary to allow an interbasin conveyance of Snake Valley groundwater. Even the now-defunct draft agreement failed to meet the requirements of the LCCRDA provision requiring an interstate to address the Great Salt Lake Groundwater flow system (GSL Flow System). But now that draft agreement is in the trash bin thanks to the 1-28-10 court ruling. <u>The overall purpose of the EIS is thus illusory, and the draft EIS should be re-worked to properly inform the public of the present speculative state of the hoped-for SNWA groundwater rights.</u>
	Figure 1.1-1			This figure is incomplete and defective, because it does not show the location of the proposed points of diversion, i.e, the actual location of the drilling and pumping. It's no excuse to say the project proponent has not provided that information. That just goes to show how premature this EIS is.
	Section 1.1.2.2			This section should expressly point out that 2004 LCCRDA does not require BLM to grant ROW's for groundwater development in White Pine County. It is a misleading and insufficient statement of need as to why ROW's are needed in White Pine County, to merely note that that the 2004 LCCRDA requires that ROW's be granted in Clark and Lincoln Counties.
	Section 1.1.2.2			The draft EIS states: "The applicant's proposal to construct, operate and maintain a groundwater development and conveyance system on public lands is consistent with this objective." That is an untrue statement with respect to the White Pine County portion of the proposed project. The objective of the 2004 LCCRDA pertains to Clark and Lincoln Counties, not White Pine Counties. Moreover, to grant a ROW in Snake Valley absent a Utah-Nevada agreement IS PATENTLY INCONSISTENT

				WITH THE 2004 LCCRDA.
	Section 1.1.2.2			Applicant’s Supporting Rationale: This is an inadequate rationale. There needs to be more extensive discussion here. What is the rationale for exploiting other counties’ and other state’s groundwater aquifers? The EIS is seriously deficient in stating a rationale by the applicant’s proposed actions.
	Section 1.1.2.2			The draft EIS states: “The GWD project will protect the SNWA member users from drought and shortage and will help to meet projected future demand.” This is just a blanket swallowed-whole assertion of the applicant that underwent no scrutiny whatsoever by the BLM. How does it protect from drought?? What projected future demand?? Where is the scrutiny of this?
	Section 1.3.1			The draft EIS states in red: “In White Pine County, the BLM may grant the ROWs under its own FLPMA general authority.” This is misleading. BLM’s authority to grant ROW’s in White Pine County is restricted by the Congressional mandate in the 2004 LCCRDA which mandates that before any interbasin transfer occurs there must be in place a Utah-Nev agreement to divide up the groundwater of the interstate regional groundwater flow system. You need to explain and reconcile this limitation on BLM authority or the public is will be seriously mislead.
	Section 1.3.1			It is improper that BLM would go to such lengths to point out the SNPLMA and LCCRDA affirmative requirements for ROW grants in Clark and Lincoln Counties, and then glaringly omit from the discussion (1) the fact that neither SNPLMA nor LCCRDA impose such requirements in White Pine County, and (2) that LCCRDA imposes important restrictions with respect to groundwater conveyance in White Pine County, namely the requirement of a properly-scoped Utah-Nevada agreement to divide up the GSL groundwater flow system. For BLM to omit this lack of a White Pine County related mandate and omit this White Pine county related restriction from the discussion, when BLM takes such special pains to point out what SMPLMA and LCCRDA requires in Lincoln and Clark Counties, is, again, unconscionable and smacks of an arbitrary and “stacked” approach to this entire draft EIS.
	Section 1.3.2			It is not correct to say merely that the NSE process is “concurrent” with the EIS process. To be properly candid with the public, BLM needs to forthrightly confess and disclose that the NSE process is really a pre-condition to the issuance of the SNWA sought after BLM ROW’s. In other words, BLM needs to concede and

				<p>declare that without the NSE appropriations on SNWA’s groundwater applications, there is really no basis for issuance of the ROW’s. Moreover BLM really needs to inform the public about how SNWA’s groundwater applications to the NSE are in such a current state of disarray, given the 1-28-10 court ruling. Another very important process which like the NSE process is a pre-condition to the Snake Valley portion of the groundwater project, is the failed Utah Nevada attempt to arrive at a groundwater interstate agreement. BLM needs to disclose to the public the current state of disarray in which that process finds itself, given Utah’s pulling away from the 2009 draft agreement and pulling away from further negotiations given the 1-28-10 court ruling. The BLM should fully inform the public of the necessity of such an agreement for the Snake Valley portion of the project to go forward.</p>
	Section 1.3.2.1			<p>This section improperly implies that BLM is slave to whatever the NSE decides as far as granting groundwater applications to SNWA. It improperly implies that if a groundwater application for interbasin transfer is granted by the NSE, then that means the BLM has no choice but to issue a ROW across its land to accommodate that groundwater appropriation. Not true, particularly in White Pine County. The Congressional mandate extends only to the White Pine County line. Moreover, Congress prohibits BLM from accommodating an inter basin transfer out of Snake Valley absent the inter-state agreement, of which there is none and none is expected in the foreseeable future thanks to the 1-28-10 court ruling. Yes the NSE has authority to determine whether to grant SNWA’s applications, but NSE has no authority to force BLM permit the conveyance of that groundwater across BLM land. This section of the draft EIS improperly implies otherwise.</p>
	Section 1.3.2.1			<p>The draft EIS states: “On October 15, 2009, the Seventh Judicial District Court of Nevada issued an Order vacating and remanding NSE Ruling 5975 (July 9, 2008) on Delamar, Dry Lake, and Cave valleys in response to a request for a judicial review.” BLM needs to include the basis of the court ruling, the status of the appeal, and the fact that the outcome on appeal would implications for the Snake Valley portion of the project as well, since the point of the ruling is that the NSE may not appropriate groundwater rights to SNWA absent sufficient evidence concerning perennial yield and interbasin impacts, etc. As for the status of the appeal, BLM should note that the Nevada Supreme Court has issued an order to show cause why the appeal should not be dismissed for lack of jurisdiction – in apparent reference to the Nevada Supreme Court’s 1-28-10 ruling.</p>

	Section 1.3.2.1			Add a paragraph describing the 1-28-10 court ruling, the basis of the ruling, and the ruling’s impact on the overall groundwater project.
	Section 1.3.2.2			<p>The long detailed explanation of the draft agreement is all for naught thanks to the 1-28-10 court ruling. The Governor of Utah has stepped away from and basically repudiated that draft agreement in the wake of the 1-28-10 court ruling. It would be misleading and nonproductive for BLM to try to recount the draft agreement’s provisions, because the draft agreement has been relegated to the scrap heap. Accordingly, BLM should delete the present text of this section and replace it with the following simple statement or something similar: “As of the date of this public draft EIS, there is no groundwater interstate agreement between Utah and Nevada as required by Section 301(e)(3) of the 2004 LCCRDA. Therefore, BLM is without authority to permit an interbasin transfer of groundwater from the Snake Valley portion of the proposed groundwater project. Accordingly, it would be futile and inappropriate for BLM to adopt an alternative that contemplates a pipeline ROW in Snake Valley.”</p>
	Section 1.3.2.2			<p>One sentence states: “The LCCRDA requires the states of Utah and Nevada to reach such an agreement regarding the division of water resources prior to any transbasin diversion from groundwater basins located within both states.” The LCCRDA does not require the states to do anything. Such commands aimed at two States would violate the Tenth Amendment to the Constitution. Rather, the imperative of LCCRDA is aimed at the BLM. The LCCRDA prohibits <u>the BLM</u> from permitting an interbasin transfer of groundwater out of Snake Valley absent a properly scoped interstate agreement. BLM has it all wrong to be talking in terms of what the LCCRDA “requires” the states to do. It requires the states to do nothing. The states can agree or not agree, to divide up the moon or the London Bridge, or Snake Valley, or the GSL flow system, or nothing at all. The mandate is on BLM: Do not permit an interbasin transfer of groundwater from a basin shared by two states, unless those two states divide up the groundwater flow system of which that basin is a part.</p> <p>Moreover, it is improper for BLM in this section to skirt the fact that the BLM’s authority to permit such an interbasin transfer depends upon a properly scoped interstate agreement, i.e., an agreement which divides up the interstate groundwater flow system as opposed to a mere groundwater basin. It is wrong for BLM to gloss over this important pre-condition to BLM’s authority to permit the interbasin transfer.</p>

				<p>In summary, this section needs to be re-written to clarify (1) that the LCCRDA’s imperative is aimed at the BLM, not the states, and (2) that the imperative to BLM is no permitting of interbasin transfers absent an agreement that properly divides up the entire groundwater flow system as opposed to just Snake Valley.</p>
	Section 1.4.1			<p>This section should include a discussion regarding the severe economic downturn that has prevailed in Las Vegas for the past year to two years, and the dismal and bleak economic outlook for the Las Vegas economy in the foreseeable future. Building and construction permits are at a standstill. Anticipated growth projections are impacted by this downturn. The draft EIS’s silence on this downturn is disappointing and disturbing, again raising worries and doubts as to the veracity of this EIS process.</p> <p>Also missing is any discussion regarding the ability of SNWA and Las Vegas to develop more water through other sources such as de-salination. That and other options should be thoroughly explored, analyzed and discussed in the draft EIS.</p> <p>Also, the whole discussion of demand and conservation and future needs is not trustworthy unless the public is informed that SNWA has stated it does not expect to complete this project until the 2040’s or 2050, depending on the project valley. What is the urgent need when SNWA by its own admission does not even plan to turn to this resource until mid-century?</p>
	Section 1.4.2			<p>This final paragraph incorrectly implies that Utah is okay with modifying the Colorado River Compact once Nevada has developed all of its in-state resources. That is incorrect.</p>
	Section 1.4.2			<p>Where is the discussion concerning SNWA’s plans to acquire Colorado River rights from downstream users in California, as well as other plans of SNWA to increase supply (de-salination, etc.)?</p>
	Section 1.6			<p>The fact that BLM has to put a future 2nd tier in the impact analysis of the groundwater production wells, merely underscores the impropriety of going forward with the EIS at this time, before the location of the production wells has been determined. Lack of specificity as to the location of the production wells, renders meaningful impacts analysis impossible. SNWA puts up a constant moving target on the location of these wells. Thus the is EIS is void of meaningful analysis of the</p>

			<p>groundwater table drawdown and related environmental impacts. That is the most important impact of all, and this EIS really fails in this regard. All of this is compounded by the 1-28-10 court ruling, which places ever growing doubt on the viability of the groundwater project. <u>This EIS process should be put on hold pending the exhaustion of SNWA’s groundwater permit application process with the NSE, plain and simple. Otherwise it is defective as being unreasonably premature.</u> One can see how SNWA and BLM are coordinating to play the game: BLM will rush Tier 1 of the current EIS, avoiding disclosure of the damaging impacts to be caused by SNWA’s groundwater pumping, in essence shrugging their shoulders saying, “Sorry, we can’t evaluate it because we don’t know the exact location of the groundwater production wells.” Then in the future when the critical Tier 2 impact analysis is done and a public outcry over the impacts is received by the BLM, the BLM will again say, “Sorry, our hands are tied because we already issued the ROW’s back in the tier 1 part of the EIS. And so the game of moving targets, bob and weave, and obfuscation will play out. <u>The Spirit and Letter of NEPA require that this EIS be put on hold until groundwater pumping locations and the full extent of NSE allocation is known, so then a comprehensive impacts analysis will be possible. Otherwise, the EIS falls short.</u></p>
	<p>Section 1.6.1</p>		<p>A huge area of controversy is the timing – i.e., the perception that BLM is unreasonably rushing this EIS at SNWA’s insistence, when (1) the buildout of this project is not until the 2040’s with a projected 2050 completion date, (2) SNWA’s groundwater application process is far from over and has received a huge setback due to the 1-28-10 court ruling, and (3) the groundwater hearings in Snake Valley may be years away. All these delays render an EIS at the present meaningless and of no value to the public. There are so many contingencies that they swallow any meaningful approach to this EIS. Groundwater rights? What Groundwater rights? The effects of ongoing climate change and its implications for a 2050 buildout? Set back from latest court ruling? Utah walking away from the negotiating table?? The more BLM presses forward despite these uncertainties, the less the public trusts that veracity and integrity of this process. The BLM should at least acknowledge in this section that this is a huge part of the public controversy. It defies logic and reason that BLM should be studying today the impacts of a project that won’t occur for nearly half a century and beyond, based on a house of cards otherwise known as SNWA’s tenuous and repeatedly beat down groundwater applications. At the very least, the BLM should sit back and wait for the permitting process to run its course with the NSE. That process is very much in doubt given the 1-28-10 court ruling.</p>

Section 2.1			<p>The draft EIS states: “NEPA regulations encourage federal agencies to tier environmental documents for multi-phased projects such as the GWD Project. Doing so helps to eliminate repetitive discussions and to focus on the issues that are ready for a decision at each level of environmental review.” BLM is improperly hiding behind the phrase “multi-phased project.” That notion does not apply here. There is only one material phase for purposes of groundwater pumping impacts analysis: determine and drill the groundwater production wells and start pumping the prescribed amounts. BLM is obligated to wait until SNWA has first secured groundwater rights and determined the points of diversion. BLM can’t begin to assess the impacts of this project until those details (extent of groundwater rights and points of diversion) are known. All the rest is immaterial detail. BLM has been goaded by SNWA into rushing the EIS before the project well locations are known, a very basic piece of information necessary to do any meaningful impacts analysis. SNWA is a long way from determining the locations, because it is a long way from obtaining any groundwater rights. The 1-28-10 court ruling all but requires SNWA to start over after over 20 years. The Utah-Nevada agreement which is a prerequisite to conveyance of Snake Valley water is a long ways off. Again, the smoke screen used to prop up a tiered process, is nothing more than a subterfuge to allow the EIS to be rushed through at SNWA’s insistence through forcing the false notion that this is a multi-phased project, when really it is a project that is far off in the future, too far off, with too many dots left to still connect to do any meaningful EIS impacts analysis presently. Yes, actual implementation of the project is a long way off (decades), but that does not make it “multi-phased” and give BLM a subterfuge for okaying the ROW’s. Rather, the far off time table for implementation merely shows how utterly premature any part of this EIS is. Congress did not mandate a rush job EIS with feigned tiering. Congress mandated a NEPA compliant EIS, i.e, one that is timely, not rushed, and based on actual knowledge of the groundwater to be developed, both in terms of amount, and points of diversion. Location of wells is all important to assessing the impacts to groundwater table and dependent flora and fauna.</p>
Table 2.1-1			<p>The red colored language states in part: ”Points of Diversion: Within the five basins, 29 specific locations—called Points of Diversion—for groundwater development have been identified. Permits have been either applied for or received for these sites. Under certain alternatives, groundwater development would occur at or close to these Points of Diversion.” It is remarkable how BLM flits back and forth between the assumption that the points of diversion (POD’s) are known, to the assumption that</p>

				<p>they but yet they are not known and hence tiering is needed. Which is it? SNWA's POD's are moving targets, and BLM's analysis on the PODS' (one page they're fixed and known and the next page they are not) is likewise a moving target. If the POD's are fixed and known and not subject to change, then that is one more reason why tiering is improper, in addition to the reasons cited in the previous comment. On the other hand, if the POD locations are not yet known, then that does not constitute a case for tiering. Rather it constitutes a case for putting the entire EIS on hold until such time as the POD locations are known.</p>
	Table 2.1-1			<p>As stated during the cooperating agency meetings in Las Vegas on January 28th, it would be preferable for BLM to rewrite alternatives D & E to make them flexible enough to spread the Spring Valley pumping into White Pine County if deemed necessary to avoid the impacts of concentrating the Spring Valley pumping all in the Lincoln County portion of Spring Valley. That would help avoid rendering alternatives D & E as non-feasible. The real point of the two alternatives D & E is to stay out of Snake Valley given the lack of an interstate agreement necessary to justify BLM's allowance of interbasin transfers from Snake Valley, as well as to reflect the fact that Congress did not mandate the issuance of ROW's in White Pine County. Hence it would be better to rewrite those two alternatives to be flexible enough to spread pumping around in the White Pine Co. portion of Spring Valley while avoiding Snake Valley. This would be a better approach than the other approach of writing mitigation measures for alternatives D & E.</p>
	Table 2.1-2			<p>The figures in this table are no longer reliable due to the 1-28-10 court ruling. Because of that ruling, all bets are off as to the expected volume of conveyed water. This is one more demonstration as to why the EIS is seriously premature because of the 1-28-10 court ruling.</p>
	Table 2.1-2			<p>The information in the row entitled Well Locations, reveals the lack of specificity as to POD locations, thus underscoring the premature and incomplete nature of this EIS at this time. See prior comments.</p>
	Section 2.2 and Table 2.2-1			<p>The numerical information in this section and corresponding table is no longer reliable due to the 1-28-10 court ruling. This table simply has no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this</p>

				EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this table.
	Section 2.2.1			The numerical information in this section is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA’s existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.
	Section 2.2			The discussion concerning Dry Lake and Delamar Valleys is no longer reliable due to the 1-28-10 court ruling. See previous 2 comments.
	Section 2.3.2			It is improper that BLM would go to such lengths to point out the SNPLMA and LCCRDA affirmative requirements for ROW grants in Clark and Lincoln Counties, and then glaringly omit from the discussion (1) the fact that neither SNPLMA nor LCCRDA impose such requirements in White Pine County, and (2) that LCCRDA imposes important restrictions with respect to groundwater conveyance in White Pine County, namely the requirement of a properly-scoped Utah-Nevada agreement to divide up the GSL groundwater flow system. For BLM to omit this lack of a White Pine County related mandate and omit this White Pine county related restriction from the discussion, when BLM takes such special pains to point out what SMPLMA and LCCRDA requires in Lincoln and Clark Counties, is, again, unconscionable and smacks of an arbitrary and “stacked” approach to this entire draft EIS.
	Section 2.4.4			This section should expressly declare that no such stipulated agreements exist between SNWA and the DOI bureaus with respect to the Snake Valley groundwater applications. Also, the 1-28-10 court ruling casts doubt on the validity of the stipulated agreements referenced in this section, because they were entered into and approved under the putative authority of the NSE. However the 1-28-10 court ruling held the NSE violated state statute in waiting more than a year to process SNWA’s groundwater applications in all of the project valleys. Thus there is a serious question whether any action taken by the NSE in any of the groundwater hearings, including the approval of the referenced stipulated agreements, are valid. This the validity of this section of

				the draft EIS is in serious doubt.
	Section 2.5			The numerical information in this section and all of its subsections regarding the volume of groundwater pumped and conveyed is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.
	Section 2.6			The numerical information in this section and all of its subsections regarding the volume of groundwater pumped and conveyed is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.
	Section 2.7			The numerical information in this section and all of its subsections regarding the volume of groundwater pumped and conveyed is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.
	Section 2.8			The numerical information in this section and all of its subsections regarding the volume of groundwater pumped and conveyed is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.

	Section 2.8.1.1 other subsections of section 2.8 affected by this comment.			This section should be rewritten to allow for flexibility to space the production wells into the White Pine County portion of Spring Valley. As stated during the cooperating agency meetings in Las Vegas on January 28th, it would be preferable for BLM to rewrite alternatives D & E to make them flexible enough to spread the Spring Valley pumping into White Pine County if deemed necessary to avoid the impacts of concentrating the Spring Valley pumping all in the Lincoln County portion of Spring Valley. That would help avoid rendering alternatives D & E as non-feasible. The real point of the two alternatives D & E is to stay out of Snake Valley given the lack of an interstate agreement necessary to justify BLM's allowance of interbasin transfers from Snake Valley, as well as to reflect the fact that Congress did not mandate the issuance of ROW's in White Pine County. Hence it would be better to rewrite those two alternatives to be flexible enough to spread pumping around in the White Pine Co. portion of Spring Valley while avoiding Snake Valley. This would be a better approach than the other approach of writing mitigation measures for alternatives D & E.
	Section 2.9			The numerical information in this section and all of its subsections regarding the volume of groundwater pumped and conveyed is no longer reliable due to the 1-28-10 court ruling. These numbers have no reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Once again, the proper thing for BLM to do here is to call time out on this EIS until all of these uncertainties can be resolved. This will most likely require a resort back to the drawing board to determine new numbers for this section.
	Section 2.9.1.1 other subsections of section 2.9 affected by this comment.			This section should be rewritten to allow for flexibility to space the production wells into the White Pine County portion of Spring Valley. As stated during the cooperating agency meetings in Las Vegas on January 28th, it would be preferable for BLM to rewrite alternatives D & E to make them flexible enough to spread the Spring Valley pumping into White Pine County if deemed necessary to avoid the impacts of concentrating the Spring Valley pumping all in the Lincoln County portion of Spring Valley. That would help avoid rendering alternatives D & E as non-feasible. The real point of the two alternatives D & E is to stay out of Snake Valley given the lack of an interstate agreement necessary to justify BLM's allowance of interbasin transfers from Snake Valley, as well as to reflect the fact that Congress

				<p>did not mandate the issuance of ROW's in White Pine County. Hence it would be better to rewrite those two alternatives to be flexible enough to spread pumping around in the White Pine Co. portion of Spring Valley while avoiding Snake Valley. This would be a better approach than the other approach of writing mitigation measures for alternatives D & E.</p>
	<p>Section 2.13.1.2 and Table 2.13-1</p>			<p>The numerical information in this section and corresponding table is no longer reliable due to the 1-28-10 court ruling. The information has reliability or utility to the public. The 1-28-10 ruling has thrown everything into a state of uncertainty regarding SNWA's existing and applied for groundwater rights in the five project basins. Hence groundwater consumptive use analysis and cumulative consumption analysis is not reasonably possible given the current state of disarray with respect to the groundwater allocations sought by SNWA. Once again, the proper thing for BLM to do here is to call time out in light of the 1-28-10 court ruling until all of the uncertainties created by the ruling can be resolved, if ever. This will most likely require a resort back to the drawing board to determine new numbers for this table.</p>
	<p>Section 2.14</p>			<p>Due to the absence of a Utah-Nevada groundwater agreement in the foreseeable future, the preferred alternative should be changed to Alternative D or E, as modified to allow disbursement of groundwater production wells into the White Pine County portion of Spring Valley. Going into Snake Valley is neither nor legal given the lack of the required Utah-Nevada agreement.</p>
	<p>Section 2.15.2</p>			<p>This section and all of its subsections should be rewritten to compare the alignment alternatives with pumping Alternatives D or E as the preferred alternative.</p>

**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project
Preliminary Draft EIS – November 2010**

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Overall Main Comments
(Specific comments on chapters can be provided below).

- 1. Alternatives D and E are the only legally feasible alternatives absent a fully executed Utah-Nevada interstate division of groundwater for the entire Great Salt Lake Desert regional groundwater flow system, as opposed to just the Snake Valley Basin. See the relevant provisions of the 2004 LCCRDA.**
- 2. Any interstate groundwater division should be tied to groundwater discharge, historic use and recharge, and it should make allowance for impacts in one groundwater basin (e.g. Snake Valley) caused by pumping in an up-flow groundwater basin (e.g., Spring Valley), until such impacts can be ruled out with sufficient years of pumping, spring flow and water table data.**
- 3. Any interstate ground water agreement must guarantee that Utah water rights which have already been allocated post 1989 will be given a higher priority than future allocations which the Utah or Nevada State Engineers may allocate.**
- 4. Any estimates of safe annual yields of groundwater in this PDEIS should be based not on estimates, but on solid evidence established after many years of low level pumping sufficient to establish that un-appropriated ground water exists to fulfill SNWA's applications or such other levels contemplated in the various alternatives.**
- 5. USGS studies confirm that 84% of the groundwater dependent acres in Snake Valley are situated in Utah (220,779 acres), and only 16% or 41,364 acres of groundwater dependent acres in Snake Valley are in Nevada. Similar studies show that 82% (108,085 acre feet) of the groundwater discharged annually in the Snake Valley basin is discharged in Utah, and only 18% (25,162 acre feet) is discharged in Nevada. Historic human consumption of groundwater in Snake Valley associated with historic pre-1989 water rights is 74% (35,00 acre feet) in Utah and only 26% (12,000 acre feet) in Nevada. Therefore, Millard, Juab and Tooele Counties will oppose any interstate agreement that purports to divide up groundwater in Snake Valley unless the division is congruent with the foregoing percentages, which show that the large lion share of groundwater in Snake Valley should go to Utah. Any notion that groundwater should be subject to an overall 50/50 split is untenable because it ignores the foregoing percentages which are overwhelmingly in Utah's favor in Snake Valley.**
- 6. Spring to Snake Valley inter-basin flow of groundwater is estimated with 95% confidence to be around 49,000 acre feet per year, with**

33,000 af/y coming around the southern flank of the Snake Range, and another 33,000 af/y coming across further north of US Highway 50. Proper divisions of groundwater between the States and proper monitoring of impacts must take this dynamic into effect, because Spring Valley pumping will interfere with this groundwater flow and impact recharge in Snake Valley.

7. In addition to being legally insufficient to meet the demand of 2004 LCCRDA because it fails to address the entire Great Salt Lake Desert Regional Groundwater Flow System, the draft Utah-Nevada agreement is an unfair split that fails to recognize the reality of groundwater discharge, groundwater dependent acres and relative historic use as between the two states in Snake Valley. The draft agreement awards unallocated groundwater to Nevada over Utah nearly 6 to 1 (35,000 af/y to Nevada and 6,000 af/y to Utah). After assessing the impact of Spring Valley pumping on available groundwater for Utah, it is clear that Utah ends up with less than even half of all available groundwater in Snake Valley Basin, while the vast majority of groundwater dependent acres, groundwater discharge and historic use is in Utah. This is why the draft agreement, in addition to being legally deficient in scope under the 2004 LCCRDA, is inequitable and cannot serve as the legal basis for BLM allowing an inter-basin transfer of groundwater out of Snake Valley.

8. Millard County has proposed an interstate agreement that includes the following: 1) Split the 108,000 af/y of available wet water according to the Snake Valley basin's natural discharge, historic use and recharge interstate ratios (65% Utah – 35% Nevada). 2) Divide the Regional Groundwater Flow System as required by the Congressional Statute. 3) Suspend part of Nevada's share due to anticipated Spring Valley Pumping Impacts by 16,000 af/y to be adjusted down or up based on eventual proven impacts on inter-basin flow.

9. Pump first and monitor and mitigate later, with no empirical evidence that a valley can withstand that much pumping and whether such pumping will impact valleys down –gradient, is unlawful according to the Nevada court decision in the Cave, Dry Lake and Delamar Valley case. This EIS should not allow such a practice, regardless of the alternative chosen, because it is not legal or feasible.

10. Throughout the PDEIS, the groundwater study area is not large enough. In Utah that area should have extended as far as the “Area of Interest” that DOI through its Nat'l Park Service stipulated to with SNWA in the Spring Valley Stipulated Agreement and Ruling. See Figure 1 of the Spring Valley Stipulated Agreement and Ruling Showing the Area of Interest in the Upper Great Salt Lake Desert Flow System and vicinity extending well over into Tule Valley, Fish Springs Flat, Dugway-Govt Creek Valley and other portions of Tooele County on the north, and extending into Pine Valley and Wah Wah Valley in parts of Beaver and Iron Counties to the south. It is arbitrary and capricious for a bureau in the DOI to negotiate and agree upon extensive protections such a broad Area of Interest, for purposes of resolving the NPS's objections to the Spring Valley applications, and then for DOI's BLM to not provide that same geographic extent hydro studies, groundwater modeling and other analyses in the PDEIS

11. It would be grievous indeed if the BLM were to ignore the plain language of 2004 LCCRDA at Section 301(e)(3), which states: “Prior to any transbasin diversion from groundwater 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.” This is unmistakably clear that the interstate agreement's scope is not just the Snake Valley. Rather, the statutorily required scope of the agreement is those “interstate ground-water FLOW SYSTEM(s) from which water will be diverted and used by the project.” The current draft Utah-Nevada agreement fails in this regard. Moreover, it's a draft, not even final. But even if it were, it does not provide the legal foundation necessary for BLM to approve a transbasin diversion from a groundwater basin located within both Nevada and Utah, namely Snake Valley. Therefore, the only 2 legally viable and feasible alternatives in the PDEIS are Alternatives D and E. All the rest would fail the “legality and feasibility” test of NEPA.

12. The PDEIS is deficient because it does not adequately illustrate and alert the public to the impact to interbasin flow for a down-gradient valley caused by pumping in the up-gradient valley.

- 13. The PDEIS should inform the reader that 100% of surveyed citizens at a Millard County public hearing held in Delta, Utah September 8, 2009 did not support the Utah-Nev draft agreement that was circulating at that time.**
- 14. Millard County's opposition to the draft Utah-Nevada agreement received broad substantial support in Utah. Reference: September 18, 2009 Resolution by the Utah Legislature Interim Natural Resources Agriculture and Environmental Committee (urging the Utah Negotiating Team to "seriously consider" Millard County's position; September 8, 9 public hearings in Delta and Salt Lake City – persons commenting expressed near unanimous opposition to the draft agreement and support for Millard County's position; September 15, 2009 bi-partisan unanimous resolution by the Salt Lake County Council, supporting Millard County's position; Support for Millard County's position from the Salt Lake County Mayor and the County Commissions of Juab, Tooele and Utah Counties; Deseret News September 20, 2009 editorial; Salt Lake Tribune September 18k 2009 editorial (switching its earlier position); Support for Millard County's position from the Utah Farm Bureau; and Past Resolutions from the Utah Legislature and the Utah Association of Counties consistent with Millard County's position.**
- 15. The draft Utah-Nev agreement as it currently stands gives away far too much of Utah's rightful water; it makes Utah alone absorb the inter-basin impacts of SNWA's pumping – both up-gradient and down-gradient from Snake Valley; and it fails the Congressional standard, because it fails to divide the resources of the Great Salt Lake Desert Regional Groundwater Flow System. Under such an agreement, the BLM will not have the statutory authority to allow the transport of Snake Valley water out of that basin. So alternatives A-C are not legally feasible.**
- 16. The NSE has indefinitely postponed the Snake Valley groundwater hearing. The idea, that a 2011-2012 dated EIS and ROD can reasonably fulfill the NEPA requirements of Snake Valley when water rights rulings in that valley have not even been issued, much less hearings held or even scheduled, strains NEPA's feasibility requirements to the breaking point. Compound this with the fact that there is no Utah-Nevada groundwater agreement in place – nor even a tentative draft (which, incidentally, the Governor of Utah took a step back from in January 2010 and which is still vigorously opposed by many stakeholders in Utah) that satisfies the regional groundwater flow system scope requirement of LCCRDA, and all of these factors strongly indicate that the current EIS process risks going down a non-feasible path were it to adopt alternatives A, B or C.**
- 17. The April 11, 2007 comments of Millard County, et al., on the Purpose and Need Statement are incorporated herein by reference. A pdf version of those April 11th comments area submitted herewith.**
- 18. The May 16, 2008 comments of Millard, Juab and Tooele Counties on the Preliminary Draft Groundwater Model Report are incorporated herein by reference. A pdf version of those May 16, 2008 comments are submitted herewith.**
- 19. The March 17, 2008 comments of Millard, Juab and Tooele Counties on Chapters 1, 2 and 3 of the Preliminary Draft EIS are incorporated herein by reference. A pdf version of those March 17, 2008 comments are submitted herewith.**
- 20. The January 29, 2010 comments of Millard, Juab and Tooele Counties, modified and submitted February 1, 2010 to reflect January 28, 2010 Nevada Supreme Court Ruling, are incorporated herein by reference. A pdf version of those comments are submitted herewith.**

**Comments on Clark, Lincoln, and White Pine Counties Groundwater Development Project
Preliminary Draft EIS – November 2010**

Specific Comments

Page	Section	Paragraph	Line	
	1.2.1.1			There is no mention of the Snake Valley groundwater process. The reader should know how that process has come to a halt with no hearing dates or deadlines in sight.
	Table 1.4.1			This should include the biggest permit condition of all: The project out of Snake Valley cannot go forward without a signed Utah-Nevada agreement on the entire Great Salt Lake Groundwater flow system, as required by LCCRDA.
	1.5.1			This section glosses over and ignores the ongoing sharp economic downturn and housing slump in the Las Vegas area, that is going on and on year after year lately.
	1.6			Section fails to recognize the interstate competing claims over water in a shared basin and groundwater flow system, which has permeated this EIS process.
	1.6.1			It is missing the requirement for an interstate water agreement as required by 2004 LCCRDA, to address not just the Snake Valley basin but the entire Great Salt Lake Groundwater flow system, as required expressly in the relevant language of 2004 LCCRDA
	1.6.2			Fails to address the interstate water rights controversy and how the project threatens Utah water rights, if the project is allowed to go into a groundwater flow system (Spring and/or Snake Valley) that is shared by Utah and Nevada, namely the Great Salt Lake Groundwater Flow System.
	2.1.1 Alternatives Overview		The bullet point for Alternative D at lines 75-81	Reference should also be made to the legal inability of BLM to permit a groundwater transfer out of White Pine County for lack of a signed Utah-Nevada interstate groundwater agreement that is not only final and signed (which is not the case presently or in the foreseeable future), but which also meets the statutorily mandated scope of addressing the entire Great Salt Lake Groundwater Flow System (which the current draft does not) as clearly mandated per the requirement of the 2004 LCCRDA.
	2.1.1 Alternatives Overview		The bullet point for Alternative E at lines 82-87	Reference should also be made to the legal inability of BLM to permit a groundwater transfer out of White Pine County for lack of a signed Utah-Nevada interstate groundwater agreement that is not only final and signed (which is not the case presently or in the foreseeable future), but which also meets the statutorily mandated scope of addressing the entire Great Salt Lake Groundwater Flow

