

## **BLM\_NV\_NVSO\_GWProjects**

---

**From:** Ian Zabarte <mrizabarte@gmail.com>  
**Sent:** Monday, October 10, 2011 1:57 PM  
**To:** BLM\_NV\_NVSO\_GWProjects  
**Subject:** Comment on the DEIS  
**Attachments:** Comments of Newe Sogobia LCWGDP-DEIS 10-2011.pdf; MDM 1.pdf; MDM 2.pdf; MDM 3.pdf; MDM 4.pdf; MDM 5.pdf; MDM 6.pdf; MDM 7.pdf; MDM 8.pdf; MDM 9.pdf; MDM 10.pdf; MDM 11.pdf; MDM 12.pdf; MDM 19.pdf; MDM 20.pdf; MDM 21.pdf; MDM 22.pdf; MDM 23.pdf; MDM 24.pdf; MDM 25.pdf; MDM 26.pdf; MDM 27.pdf; MDM 28.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Attached are the comments of the govermemnt of Newe Sogobia.

Comments  
of the  
Western Shoshone Government  
on the  
Clark, Lincoln, and White Pine Counties  
Groundwater Development Project  
Draft Environmental Impact Statement  
October 11, 2011

Comments were prepared by:

Ian Zabarte, Principal Man for Foreign Affairs  
P.O. Box 134, Moapa, NV 89025

## **Introduction**

The Government of Newe Sogobia is the original traditional government of the Newe people that has existed in the Great Basin since time immemorial. Newe Sogobia is the embodiment of the Western Shoshone people and land together as one, forming a distinct ethnically identified nation of people in relation to tribal homelands. The Government of Newe Sogobia does not consent to the inclusion of any part of Newe land into the boundaries or jurisdiction of any state or territory.

### **Comment 1: The US cannot prove lawful ownership to lands that are part of the Clark, Lincoln, and White Pine Counties Groundwater Development Project.**

It is important at this time to draw a distinction between the rights naturally involved with “absolute ownership” of land within the boundaries of the Treaty of Ruby Valley in 1863 (18 Statute 689) owned by Newe Sogobia and the “privileged rights” granted to the U.S. by the terms of the treaty. The line between Western Shoshone “national interests” and the U.S. government’s “privileged access” lay along the boundary between the Western Shoshone Nation’s ownership rights and the U.S. government violation of those rights. On one side, there are the lawful property rights of the Western Shoshone people as possessors -- recognized and protected by Newe custom and the treaty, and, on the other, duties of the U.S. government not to violate Western Shoshone ownership rights during limited entry by the US for purposes which a particular privilege exists under the treaty.

In the 1860’s the US was engaged in a civil war. The US Congress passed the Nevada Territorial Act in 1861 that specifically prohibit the inclusion of any part of Indian country into the boundaris of jurisdiction of any state or territory, including the State of Nevada. This was done to protect Native American interests and prevent hostilities between the parties. The government of Newe Sogobia allied itself with the United States government to allow rights of passage across Newe Sogobia to facilitate the transportation of gold east. The Treaty of Ruby Valley is an instrument of International Law employed as a purchase agreement for the interests owned by Newe Sogobia that were sought by the US. In Article 7 of the Treaty of Ruby Valley the US acknowledged and agreed to pay for the interests owned by the government of Newe Sogobia. No other rights title or interests were sought or acknowledged to be transferred to the United States government.

Attached to these comments are a map and 28 pages listing of Western Shoshone lands by state, meridian, township and range (for reference purposes only and do not imply that the lands are actually a part of any state or territory) that conform to the boundaries of Article 5 of the Treaty of Ruby Valley. Any claim of right, title or interest by the United States government that does not conform to the “supreme law of the land” vis a vis the treaty and US Constitution Article 1, Supremacy Clause, and are not legitimate and a violation of the organic law of the states involved.

### **Comment 2: The US cannot demonstrate jurisdiction.**

Evidence of this fact is aforementioned in Comment 1 above.

### **Comment 3: Adverse impact to Native American pathways have not been identified.**

The pattern of argument employed by the US pattern of argument in addressing Western Shoshone concerns seeks to minimize any assertion or assumption of existing ongoing rights, title or interest to land within the boundaries identified in the Treaty of Ruby Valley. Western Shoshone native pathways preexisted the European use and occupancy. The Spanish Trail was found and overlays the native pathway used prehistorically and historically by the Western Shoshone people to access the sea. No analysis of the impact to native pathways has been conducted.

**Comment 4:           The failure of the DEIS to not use a culturally appropriate context is a violation of Executive Order 12898 Environmental Justice.**

A culturally appropriate context for identifying impacts to Western Shoshone interests and concerns is not used and therefore, Native American concerns in the DEIS are insufficient.

**Comment 5:           The Programmatic Agreement for Historic Preservation and Protection of and Cultural Properties is not lawful or valid within Newe Sogobia and is a violation of Western Shoshone custom.**

Federal historic preservation legislation provides a legal environment for documentation, evaluation, and protection of historic properties that might be affected by federal undertakings, including private undertakings that operate under federal license or on federally managed or private lands. The National Historic Preservation Act (NHPA) of 1966, as amended through 2006, established the ACHP and expanded the National Register of Historic Places (NRHP). The NHPA mandates that federal agencies consider the effect of an undertaking on cultural resources that are listed or are eligible for listing on the NRHP (i.e., historic properties). The US seeks to fulfill its responsibilities for protection of historic and cultural properties by use of a programmatic agreement, or use of an existing programmatic agreement previously entered into with the State of Nevada.

The use of a programmatic agreement by the US and the State of Nevada to address any interest within the boundaries of the Treaty of Ruby Valley is a violation of the US Constitution Article 1, Supremacy Clause, the Nevada Territorial Act and the Treaty of Ruby Valley.