

DUCKWATER SHOSHONE TRIBE

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REC'D - BLM - NSO
9:00 A.M. OCT 14 2011

October 11, 2011

SNWA Project
Bureau of Land Management
Attn: Penny Woods, Project Manager
P.O. Box 12000
Reno, Nevada 89520

Dear Ms. Woods:

On behalf of the Duckwater Shoshone Tribe, I respectfully submit comments on the Draft Environmental Impact Statement, Including a Draft Programmatic Agreement, for the Clark, Lincoln, and White Pine Counties Groundwater Development (GWD) Project.

I would first like to address the Draft GWD Project Programmatic agreement. The Duckwater Shoshone Tribe will not sign the agreement unless and until substantial changes are made to the agreement. The National Historic Preservation Act, 16 U.S.C. 470f, 36 CFR Part 800, Section 106 and implementing regulations do not require Tribes to enter the draft programmatic agreement with Bureau of Land Management (BLM) and Southern Nevada Water Authority (SNWA). The federal agencies' trust responsibility and obligation to consult with affected Tribes exists independent of the programmatic agreement.

The programmatic agreement states that the "full effects" of the proposed GWD project cannot be fully determined and considers delegating to SNWA major decision making responsibilities. The Tribe does not support delegating SNWA major decision making responsibilities when the project's full effects are yet unknown. Within

C1 the agreement, BLM acknowledges that important tribal historic properties may be affected, but only suggests, that tribes may attach religious and cultural significance to affected project areas that may be affected. This language fails to acknowledge that important resources and areas will certainly be affected by any construction of the proposed project.

C2 The agreement purports to give affected Tribes an opportunity to consult with BLM about affected properties, but the BLM has refused to disclose to Tribes full cultural information known by the BLM without first placing conditions and restrictions on the Tribes ability to utilize

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this information in appropriate forums to protect these important tribal cultural resources.

C3 The draft programmatic agreement does not allow for consultation in a manner respectful of tribal sovereignty or the unique government to government relationship between American Indian Tribes and the United States government. The Duckwater Shoshone Tribe will not approve a process for addressing facilities identified but not yet designed, or whose location has yet to be determined, and those that may be added in the future.

The changes that must occur to the draft programmatic agreement before the Tribe will consider signing are listed below:

C4 1. Any information know by the BLM, any federal agency, or the proponent regarding tribal natural or cultural resources that may be significant to a tribe will be fully disclosed to the Tribe immediately, including information obtained in the past and the future.

C5 2. No consultation may be said to occur without a resolution of the Tribal Council with participation of Tribal attorneys.

C6 3. BLM and Bureau of Indian Affairs will respect the Tribal request to renegotiate the previously entered stipulations regarding impacts to Tribal resources by proposed SNWA groundwater project.

C7 4. Federal agencies will assist the Tribe (funding and staff participation) to quantify and obtain a legal recognition of the affected Tribes reserved water rights, prior to any construction of the proposed groundwater project. Federal agencies and proponent should assist the Tribe in construction of necessary infrastructure to develop and utilize their water rights prior to any construction of the proposed project.

C8 5. Federal agencies will withhold any approvals related to the proposed project until the Tribes water rights are quantified and legally recognized.

C9 6. Tribal cultural resources personnel should have equal and full access and participation with federal agency staff, with full funding for their expenses and work.

- C10** 7. Federal agencies should not enter the programmatic agreement the affected Tribes approve the terms.
- C11** 8. Affected Tribes should participate in determining and documenting areas of potential effects (APEs).
- C12** 9. Section D.1.c should be changed. Federal law requires BLM to consult with affected Tribes regardless of whether the Tribe enters the draft agreement.
- C13** 10. BLM should enter data sharing agreements proposed by the Tribes, which require BLM to share fully cultural information and allow the Tribe to utilize the information as the Tribe deems appropriate to protect Tribal resources. See Section D.4.
- C14** 11. Any contacts with the Tribes by the proponent or federal agency regarding National Historic Preservation Act compliance should be copied to the Tribal Councils and Tribal attorneys assigned to this issue. Section D.1.e.
- C15** 12. Any discovery of cultural resources should be communicated to the Tribe and not just the BLM for determination of significance. See Section 1.2. Tribes should be able to evaluate for themselves the significance of the discovery. The time periods in Section 1 are too short.
- C16** 13. Failure of the Tribe to respond should not be interpreted as a concurrence to any action or activity. Section J.5.
- C17** 14. Consulting Tribes should participate fully in monitoring. Section L. Funding for all monitoring activities (staff and legal expenses) should be provided by the proponent.
- C18** 15. Information on location and nature of all cultural resources should be made fully available to Tribes. See Section N.7.
- C19** 16. Dispute resolution provisions should provide for a neutral decision-maker with binding authority. The agreement should also include provisions that Tribal participation or signing does not waive tribal sovereign immunity in any way.

C20 17. The Tribe should be able to terminate participation by written notice and without prejudice or waiver of any rights or obligation of the federal agencies.

C21 18. Termination of the Tribe's participation in any agreement will not impact or limit the federal agencies' consultation or obligations or trust responsibility in any manner.

In regard to the Draft Environmental Statement for the Groundwater Development (GWD) Project, Maurice Frank-Churchill, Duckwater Shoshone Tribal Representative made oral comments at the Public Hearing held on August 9 at the White Pine High School Gym in Ely, Nevada from 5:00 PM to 8:00 PM. At the time, Mr. Frank-Churchill indicated that the Tribe recommends BLM deny the SNWA Right-of-Way applications. The Duckwater Shoshone Tribe recommends the "No

C22 Action" alternative because the DEIS contains many defects that requires addressing prior to reaching a fully informed Record of Decision. The defects include failure to disclose and independently analyze the total economic cost of the project, failure to provide and analyze the cost of proposed mitigation and monitoring, and the lack of

C23 providing real alternatives to the groundwater pumping project. There were many alternatives provided during the scoping hearing that the public demanded. These alternatives include efficiency and conservation of existing water resources in Southern Nevada, purchasing water rights currently used for agriculture in Southern Nevada and along the Colorado River, and desalination options.

C24 The DEIS predicts extensive environmental damage from the SNWA groundwater project and contains a weak analysis of the social and economic impacts on eastern Nevada and western Utah from the Proposed Action and the five pumping scenarios.

The DEIS groundwater modeling assumes the ground water might flow between basins through permeable carbonate rocks in the basins and may or may not flow from recharge areas in the mountains to local basins through permeable carbonate rocks bordering the part of the aquifer system in the five valleys. The DEIS does not address how to mitigate the cumulative impacts of the environment by the SNWA GWD in the five valleys. It accepts the fact that there will be substantial irreversible, irreparable injury and damage to the local and regional ecosystem and does not include preventive remedy in the mitigating plan. The DEIS does not describe if the local streams and aquifer are in

C26 direct hydraulic connection and does not indicate if the surface and ground waters function as an interdependent stream-aquifer system.

C27

There aren't supporting documents that describe a clear set of conditions that will trigger shutting off the pumps. It does not include Environmental Assessment for each well site and for the capillary distributive water pipes.

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Finally, on behalf of the Duckwater Shoshone Tribe, I thank you for the opportunity to comment on the DEIS for the Groundwater Development project and respectfully recommend that the BLM select the "NO ACTION" alternative and deny the Right-of-Way permit.

Sincerely,



Virginia M. Sanchez
Tribal Chairwoman