

U.S. Bureau of Land Management Nevada Groundwater Projects

Southern Nevada Water Authority Right-of-Way Project Update

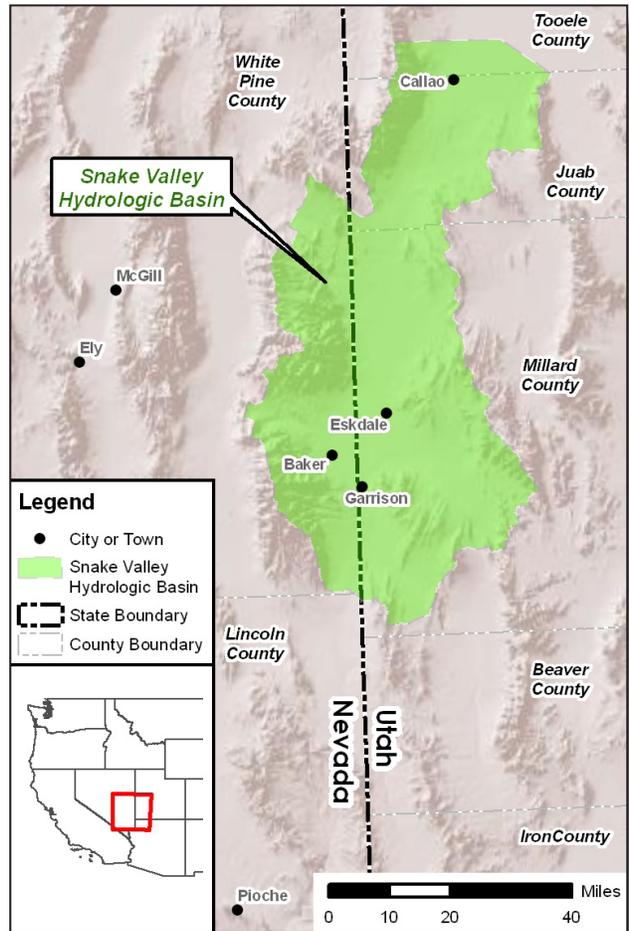
November 2009 – Newsletter No. 5

Newsletter #4 provided an overview of the NEPA process relevant to the GWD project. To view newsletters #1-4, visit our website (listed at the bottom of page 4). This newsletter includes a brief summary of the Nevada water rights process. Although the BLM has no regulatory authority for water rights permitting, we offer this information in response to the many public comments and questions we have received.

Utah/Nevada Draft Agreement on Snake Valley Groundwater Management

On August 13, 2009, the states of Utah and Nevada issued the Draft Agreement for Management of the Snake Valley Groundwater System (Draft Agreement). Snake Valley is a hydrologic basin shared by the two states. This Draft Agreement was negotiated to comply with the requirements of the Lincoln County Conservation, Recreation, and Development Act (P.L. 108-424), signed into law in 2004. The Act requires the states of Nevada and Utah to reach such an agreement regarding the division of water resources prior to any transbasin diversion from groundwater basins located within both states. The responsible state agencies held public hearings on the Draft Agreement and offered a public comment period. Below is a brief summary of the major provisions of the Draft Agreement.

1. **Available Groundwater Supply.** The Draft Agreement defines “available groundwater supply” as the total amount of groundwater available for appropriation and use on an annual basis from the Snake Valley groundwater basin. It proposes that available groundwater supply in Snake Valley is 132,000 acre-feet/year (afy), based on best available data. The two states equally divide this groundwater, and the table below (adopted from the Draft Agreement) provides the allowed amounts of consumptive use (depletion) of groundwater.



Allocated	Water set aside for existing rights with a priority date prior to October 1989	Utah 55,000 afy Nevada: 12,000 afy
Unallocated	Water available to the State Engineers of both states to appropriate in accordance with the laws of their respective jurisdictions	Utah 5,000 afy Nevada: 36,000 afy
Reserved	Water the State Engineers may grant when and if reliable data is gathered indicating this water can be safely and sustainably withdrawn without impacting other water rights holders	Utah: 6,000 afy Nevada: 18,000 afy

The States have identified 36,000 afy of water available for allocation in Nevada. Accordingly, BLM will analyze 36,000 afy as the maximum quantity Southern Nevada Water Authority (SNWA) could be permitted in Snake Valley at this time. The remaining 14,679 afy of SNWA’s applications in Snake Valley would not be permitted unless the Nevada and Utah State Engineers agree that additional groundwater can be safely and sustainably withdrawn from Snake Valley. Thus, the remaining quantity of these applications is considered as a possible future action under the cumulative analysis in the Environmental Impact Statement (EIS) for the Clark, Lincoln, and White Pine counties Groundwater Development (GWD) Project.



1. Hearing Schedule for Snake Valley Applications.

The Draft Agreement provides that the Nevada State Engineer (NSE) will not schedule a hearing for SNWA's Snake Valley applications until after September 1, 2019. This 10-year period will be used to conduct additional studies and collect data on the Snake Valley aquifer and groundwater availability. This information may be submitted to the NSE for consideration if a hearing is held on the SNWA applications. Without this 10-year abeyance period, a hearing on the SNWA applications would be held in fall 2011 (see <http://water.nv.gov> for Interim Order 3 and other Orders and related documents).

2. Identification and Mitigation of Impacts. The Draft Agreement includes a review and appeal process under which existing water right permit owners who claim adverse impact from SNWA's pumping can seek remedies. The appeal process only applies to Utah water rights holders. SNWA also would establish and maintain a \$3 million mitigation fund for as long as it has groundwater development facilities in Snake Valley. Appended to the Draft Agreement is a plan between the State of Utah and SNWA (Snake Valley Environmental Monitoring and Management Agreement) that provides monitoring and management obligations and includes commitments for biological, hydrologic, and air quality monitoring, creation of an operation plan, and a process for management response actions.

Nevada Water Rights Process

All waters of Nevada belong to the public. Nevada water law, administered and enforced by the NSE, follows the doctrine of prior appropriation. The water rights process is started by filing an application with the NSE to appropriate water. When considering whether to grant an application, the NSE evaluates the amount of unappropriated water in that basin, and if the proposed use of water would (1) conflict with existing rights, (2) prove detrimental to the public interest, and (3) adversely impact existing domestic wells. The public are notified of an application through publication in a local newspaper.

An affected party may file a protest to an application with the NSE during the period established by Nevada statute. If there are protests, a hearing may be held in which the applicant and protestant(s) present evidence to the NSE. The hearings are formal, and all testimony is sworn and recorded. Federal agencies may participate in the water rights process, including submitting protests, in the same manner as an affected party.

After the hearing, the NSE issues a decision. NSE rulings include the amount of water appropriated, based on the specific points of diversion in the original application, as well as any necessary monitoring, mitigation, and other requirements. A water right is established if a permit is granted and the water is put to the ascribed beneficial use. If an applicant wants to change location for one or more points of diversion after the NSE ruling, the applicant must submit a Change of Point of Diversion Application. Changing a point of diversion follows the same process outlined previously (including allowing protests).

To resolve any protest, the applicant and any protestant, e.g., federal agency, may reach an agreement prior to the hearing date. Such an agreement or stipulation, when signed and filed with the NSE, may be treated as a withdrawal of the protest. The NSE is not party to the agreement, and is not bound to its terms. However, NSE rulings typically acknowledge the agreements and associated requirements.

After an application is approved and the water right perfected, the ability to challenge groundwater pumpage with the NSE is usually restricted to terms of the permit that are not being followed, effects on senior water rights, or on some statutory duty. In general, a federal agency has only the same recourse to a remedy as any other affected party.

The NSE, not BLM, is responsible for determining if there is unappropriated groundwater and whether to grant SNWA's groundwater applications. As a federal land manager, BLM will consider granting SNWA's rights-of-way as proposed. In doing so, NEPA requires BLM to analyze alternatives and identify monitoring and mitigation measures; these alternatives may or may not be within the jurisdiction of BLM. For example, reduced pumping is one of several alternatives not within BLM's jurisdiction.

Water Rights Stipulated Agreements

Any affected party may file a protest with the NSE regarding a water rights application during the period established under Nevada statute. A protestant may enter into an agreement or stipulation with the applicant to resolve concerns raised in the protest. Stipulations for water rights applications for groundwater development often include monitoring, mitigation, and management plans and implementation. In 1989, SNWA filed applications for water rights in the GWD Project basins. Department of Interior (DOI) agencies, including the BLM, protested these applications. DOI agencies and SNWA have negotiated several agreements (and DOI agencies may have withdrawn protests). Descriptions of relevant agreements are on page 3 of this newsletter, on the NSE website (<http://water.nv.gov>), and on the BLM website.

Spring Valley Stipulated Agreement (NSE Ruling 5726; April 16, 2007)

This agreement between Bureau of Indian Affairs (BIA), BLM, U.S. Fish and Wildlife Service (FWS), National Park Service (NPS), and SNWA (Parties) has several goals: 1) manage the development of groundwater by SNWA without causing injury to federal water rights and/or unreasonable adverse effects to federal resources, including water-dependent ecosystems; 2) accurately characterize groundwater movement between Spring and Snake valleys; 3) avoid any effect on federal resources within Great Basin National Park including water-dependent ecosystems, and scenic values of and visibility from the park, and 4) avoid unreasonable adverse effects on water-dependent ecosystems and maintain biological integrity and ecological health. The agreement identifies a process for consultation by the Parties to address concerns about adverse effects based upon monitoring results or predictions from groundwater modeling, and to determine mitigation actions that SNWA would take.

The framework for developing hydrologic and biological monitoring, management, and mitigation plans were appended to the stipulated agreement to meet the goals described above. Technical committees were formed and included subject experts from state agencies in Nevada and Utah. Initial detailed hydrologic and biological monitoring plans have been completed and are available to the public at the following web sites: <http://www.fws.gov/nevada> and <http://www.snwa.com/>.

Delamar, Dry Lake, and Cave Valleys Stipulated Agreement (NSE Ruling 5875; July 9, 2008)

This agreement between BIA, BLM, FWS, NPS, and SNWA has the common goal of managing groundwater development by SNWA without causing injury to federal water rights and/or unreasonable adverse effects to the federal resources and special status species. Special status species are defined in the agreement as groundwater-dependent species that are proposed for listing, listed, endangered, threatened, candidate, state listed (<http://heritage.nv.gov/spelists.htm>), BLM sensitive, and TNC G1/G2 (<http://www.natureserve.org/explorer/ranking.htm>).

The framework for developing a hydrologic and biological monitoring, management, and mitigation plan was appended to the agreement. Technical committees with representatives from the Parties and subject experts from Nevada state agencies were formed and currently are drafting the detailed initial monitoring plans.

Tuffy Ranch Stipulated Agreement (Ruling 5918; December 3, 2008)

Tuffy Ranch Properties (a private ranch in Lincoln County) filed change applications with the NSE to provide water to a new housing development (Coyote Springs Development, LLC). Some of this water may be conveyed by SNWA for Lincoln County Water District (LCWD) through the GWD pipeline, in accordance with a cooperative agreement between SNWA and LCWD. Prior to the hearing, the BLM and Tuffy Ranch Properties reached an agreement in response to the change applications. The agreement has the common goal of managing development of the regional carbonate rock and overlying basin-fill aquifer systems as a water resource without causing injury to BLM water rights and/or unreasonable adverse impacts to BLM water-related resources. The stipulation requires completion and implementation of a hydrologic monitoring, management, and mitigation plan.

Other Stipulated Agreements

Although groundwater pumpage from the projects listed below will not be conveyed through the GWD pipeline, impacts from the projects may be considered in the cumulative impacts analysis for the EIS. Descriptions of each can be found on our website (provided at the bottom of page 4):

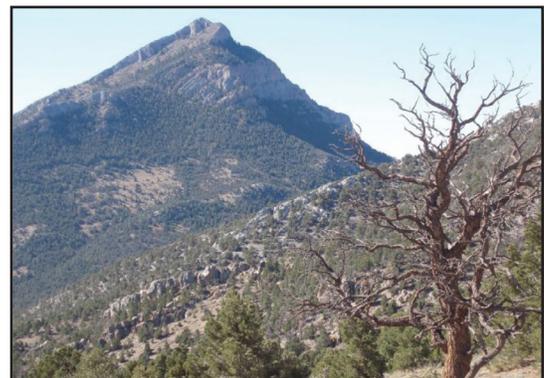
Coyote Spring Stipulated Agreement (Order 1169; March 8, 2002)

Three Lakes/Tikapoo Stipulated Agreement (Ruling 5621; June 15, 2006)

Kane Springs Valley Stipulated Agreement (Ruling 5712; February 2, 2007)

Tule Desert Stipulated Agreement (Ruling 5181; November 26, 2002)

Meadow Valley Wash Stipulated Agreement (Ruling 5167; October 24, 2002)



Mount Grafton Wilderness area.

Incorporation of Agreements in the EIS

As noted on page 1 of the newsletter, BLM will analyze 36,000 afy as the maximum quantity SNWA could be permitted in Snake Valley at this time. The remaining 14,679 afy of SNWA's applications in Snake Valley would not be permitted unless the state engineers of Utah and Nevada agree that additional groundwater is available for allocation. Thus, the remaining quantity of SNWA's Snake Valley applications is considered as a possible future action under the cumulative analysis for the GWD Project EIS. When the Utah/Nevada Agreement is finalized, the BLM will review it and make any necessary changes to the EIS and/or right-of-way.

All of the agreements and associated plans described in this newsletter, as well as other agreements and NSE rulings related to the GWD Project, may require specific monitoring and mitigation actions of SNWA. The EIS will incorporate these requirements as part of the applicant's proposal. BLM may also include additional monitoring and mitigation measures based on the analysis. The Record of Decision will detail the specific provisions extracted from stipulated and other agreements that BLM can enforce (actions taking place on BLM-managed lands and for which BLM has authority).

Water Rights News – Judicial Review of NSE Ruling

On October 15, 2009, the Seventh Judicial District Court of Nevada issued an Order vacating and remanding NSE Ruling 5875 (July 9, 2008) on Delamar, Dry Lake, and Cave valleys in response to a request for a judicial review. That ruling had granted 18,755 afy of groundwater rights from these basins to SNWA. The Order is available on BLM's website. Under "Links of Interest" click on "Groundwater Development Projects and Pipeline Rights-of-Way" then "CLARK, LINCOLN, AND WHITE PINE COUNTIES GROUNDWATER DEVELOPMENT PROJECT". The Order is posted under "Water Rights Process" and "Documents and Maps".

BLM Groundwater Projects Office

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Website: http://www.blm.gov/nv/st/en/prog/planning/groundwater_projects/eis_home_page/snwa_groundwater_project.html

Cooperating Agencies

Central Nevada Regional Water Authority	U.S. Army Corps of Engineers
National Park Service	U.S. Bureau of Indian Affairs
Nellis Air Force Base	U.S. Bureau of Reclamation
Nevada Counties: Clark, Lincoln, White Pine	U.S. Fish and Wildlife Service
Nevada Department of Wildlife	U.S. Forest Service
State of Utah	Utah Counties: Juab, Millard, Tooele

EIS Project Schedule

As mentioned, the Utah/Nevada Draft Agreement has not been finalized. It is premature to speculate what effects, if any, the final, signed agreement may have on the EIS for the GWD Project. The following is the anticipated schedule for release of the EIS documents:

Draft EIS: Expected to be completed and available to the public for review in spring 2010. It will include environmental impact analyses of the no action, proposed action, and alternatives.

Final EIS: Anticipated completion/release is December 2010. It will include revised analyses and responses to comments received on the Draft EIS.

EIS Updates

Hydrology Model: A groundwater flow model has been developed to estimate the areal extent, magnitude, and timing of groundwater drawdown and changes to the water balance resulting from pumping alternatives considered for the EIS. The EIS alternatives are described on page 5 of newsletter #3.

New Cooperating Agency: The U.S. Army Corps of Engineers (Corps) is now a cooperating agency for the EIS. A major area of environmental emphasis of the Corps is wetlands and waterways permitting under the Clean Water Act.

Next Newsletter

Newsletter #6 will include topics to better prepare the public to review and comment on the Draft EIS. These will include:

- BLM's choice of alternatives to analyze
- Opportunities to be better informed and involved
 - Attending public meetings
 - Submitting public comments
- BLM's use of public input on a Draft EIS.

If you have topics you would like to see addressed in future newsletters, please send your ideas to nvgwprojects@blm.gov