

Courthouse - Fillmore
50 South Main
Fillmore, UT 84631-5504
Fax: (435) 743-8019
Commission Secretary:
(435) 743-6223
Fax: (435) 743-6923



Millard County Commission

www.millardcounty.org

Delta Office
71 South 200 West • P.O. Box 854
Delta, UT 84624
Phone: (435) 864-1400
Fax: (435) 864-1404

November 9, 2012

Utah State Water Development Commission
c/o Commission Staff Tracy Nuttal and Brian Allred
UTAH OFFICE OF LEGISLATIVE RESEARCH & GENERAL COUNSEL
P O Box 145210
W210 State Capitol Complex
Salt Lake City, UT 84114

RE: Millard County's opposition to the draft Utah-Nevada Snake Valley groundwater agreement

Dear Members of the Utah State Water Development Commission:

We understand that the agenda of the November 13, 2012 meeting of the Utah State Water Development Commission ("the Commission") may possibly include a discussion of the draft Utah-Nevada Snake Valley groundwater agreement ("the draft agreement").

On November 2, 2012 a meeting was held at the Governor's Office to discuss the draft agreement. Those in attendance included the Millard County Commissioners, three attorneys who were requested by Governor Herbert to review the draft agreement, representatives from the Governor's Office and others. The focus of the meeting was to allow the Millard County Commissioners and the three attorneys to discuss their respective positions on the draft agreement.

At the same meeting, we were informed that this Commission will not take a vote or a position on whether the Governor should authorize signature of the draft agreement but that the Commission's discussion of the draft agreement at the November 13th meeting will be "for informational purposes only."

Accordingly, as a courtesy and for informational purposes, we have enclosed copies of our October 29, 2012 letter to the Governor opposing the draft agreement and the suggested counteroffer that accompanied that letter.

Commissioner Daron P. Smith
435-864-1414

Commissioner Bart A. Whatcott
435-743-4703

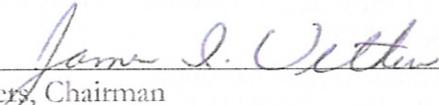
Commissioner James I. Withers
435-864-1413

Utah State Water Development Commission
November 9, 2012
Page Two

We will address this matter further when the subject of the draft agreement comes before the Snake Valley Aquifer Advisory Council.

Sincerely,

MILLARD COUNTY BOARD OF COMMISSIONERS



James I. Withers, Chairman

cc Honorable Gary R. Herbert
Michael R. Styler
Kathleen Clarke

Courthouse - Fillmore
50 South Main
Fillmore, UT 84631-5504
Fax: (435) 743-8019
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Millard County
Commission www.millardcounty.org

Satellite Offices – Delta

71 South 200 West • P.O. Box 854
Delta, UT 84624
Phone: (435) 864-1400
Fax: (435) 864-1404

October 29, 2012

Hand Delivered

Governor Gary Herbert
350 State Capitol Building, Suite 200
Salt Lake City Utah 84114

Re: Opposition to Current Draft of Proposed Snake Valley Agreement

Dear Governor Herbert:

Introduction and Summary of Millard County's Position

As we have repeatedly and consistently stated since 2009, Millard County remains strongly opposed to the draft proposed Snake Valley agreement (hereafter "draft") and Millard County respectfully urges you not to sign it.

Under Federal law, the groundwater resources of the entire Great Salt Lake Desert Flow System, not just Snake Valley, must be addressed by the two States. The draft fails to do this; therefore, the draft cannot legally support a BLM pipeline right-of-way to convey water out of Snake Valley.

No amount of monitoring and mitigation plans, inter-state committees, and other so-called "safeguards" written into the draft can overcome the grossly unfair split of groundwater between the two States. Once that split takes effect, the groundwater that is rightfully and fairly Utah's property and birthright is forever forfeited, and the residents of Millard County will forever bear the brunt of that injustice. Please do not let this be Utah's legacy. The draft agreement splits unallocated Snake Valley groundwater between Nevada and Utah in a manner that is grossly unfair to Utah and ignores the inter-state geography and patterns of usage and consumption in Snake Valley.

Some say the draft is not unfair because it achieves an overall 50/50 split of total groundwater. First of all, that 50/50 split is an illusion for the reasons shown below. But more importantly, a 50/50 overall split is non-sensical because it contradicts the geographical reality that the vast majority of groundwater consumption and historic usage, have occurred and continue to occur on the Utah side.

The draft penalizes Utah for potential impacts to the next basin down-gradient (Fish Springs), but turns a blind eye to potential impacts to Snake Valley from pumping in the next basin up-gradient (Spring Valley).

The draft is pointless, because its limited scope (Snake Valley basin as opposed to the entire Great Salt Lake Desert Regional Flow System) cannot legally support the BLM's permitting of a right-of-way to transfer of groundwater out of Snake Valley.

**The Draft's Groundwater Split is Grossly Unfair to Utah;
The U.S. Supreme Court Would Not Likely Impose Such a Split**

The following explains why the draft is grossly unfair to Utah:

1. The draft inexplicably skews unallocated groundwater 7 to 1 and reserve groundwater to 3 to 1 in Nevada's favor. (Ex. A) In doing so, the draft:

a. Grossly conflicts with the ratio of groundwater dependent acres in each State's portion of Snake Valley:

Utah:	220,779 acres	84%
Nevada	41,364 acres	16%

(Ex. B)

b. Grossly conflicts with the ratio of groundwater acre feet discharged through evapotranspiration (ET) in each state's portion of Snake Valley:

Utah:	108,085 af/y	82%
Nevada	24,162 af/y	18%

(Ex. C)

- c. Grossly conflicts with the ratio of historic groundwater beneficial usage in each state's portion of Snake Valley, as reflected in the amount Snake Valley groundwater allocated by each State's Engineer as of 1989:

Utah:	35,000 af/y	76%
Nevada:	12,000 af/y	24%

(Source: *Utah and Nevada Divs. of Water Rights/Water Resources*)

2. The draft's suggested overall 50/50 split of groundwater is an illusion.

This is the proposed allocation of groundwater between the two States:

Table 1 – Allowed Amounts of Consumptive Use of Groundwater

Allocated	Utah:	55,000 af/y
	Nevada:	12,000 af/y
Unallocated	Utah:	5,000 af/y
	Nevada:	36,000 af/y
Reserved	Utah:	6,000 af/y
	Nevada:	18,000 af/y

(Exhibit A)

On its face this table suggests the overall Snake Valley groundwater totals are 66,000 af/y for each State. But the "allocated" 55,000 af/y figure to Utah is misleading. 20,000 af/y of that 55,000 af/y are not allocated Utah groundwater rights for use in Snake Valley. Those 20,000 af/y were carved out Utah's supposed 50/50 share to make sure that groundwater flowed down-gradient to the Fish Springs complex in the next basin. Utah officials have been candid about this 20,000 af/y offset from the time the draft was introduced to the public. There is nothing wrong with trying to account for down-gradient impacts to Fish Springs. (In fact doing so shows an unspoken realization that the scope of the agreement should really be the entire Great Salt Lake Flow System instead of just the Snake Valley basin, as the 2004 Lincoln County Land Act mandates, and more on that topic below.) But the 20,000 af/y should have never been counted to produce the impression that Nevada needed more in order that both states could have an equal amount of groundwater at their

disposal for use in Snake Valley. The real story behind Table 1 is 46,000 total af/y for Utah and 66,000 af/y for Nevada, for use in Snake Valley.

3. A 50/50 overall split is an unrealistic and potentially harmful measure of fairness in any event, because, again, the geographical reality is that the vast majority of natural, agricultural and municipal groundwater utilization of Snake Valley's groundwater budget has long since been established on the Utah side of Snake Valley.

Even if one could get past the 20,000 af/y Fish Springs discrepancy to the Table 1 impression of an overall 50/50 split, the point remains: 50/50 is not the proper benchmark in light of the following facts that:

a. Groundwater dependent acres in each State's portion of Snake Valley:

Utah:	220,779 acres	84%
Nevada	41,364 acres	16%
(Ex. B)		

b. Volume of groundwater ET discharged in each state's portion of Snake Valley:

Utah:	108,085 af/y	82%
Nevada	24,162 af/y	18%
(Ex. C)		

c. Historic groundwater beneficial usage in each state's portion of Snake Valley, as reflected the amount Snake Valley groundwater allocated by each State's Engineer as of 1989:

Utah:	35,000 af/y	76%
Nevada:	12,000 af/y	24%

(Source: *Utah and Nevada Divs. of Water Rights/Water Resources*)

These ratios, ranging from 76% to 84%, manifest that far more than 50% of Snake Valley's total groundwater water budget historically and currently go to support irrigation utilization and natural groundwater-dependent vegetation utilization (ET) on the Utah side, including crop lands, pastures, municipal water systems, domestic groundwater systems, grazing forage for private ad public lands grazers and non-grazed vegetation so vital to hold down the desert playa and prevent dust storms such as were experienced in 2007-2010 following the

Milford Flat Fire . All of those uses on the Utah side are and have been claiming 76% to 84% of the total Snake Valley groundwater budget, for years and decades. It is frightening for the Utah residents of Snake Valley to think of how a 50/50 split, so seemingly fair and innocuous at first glance, would cut so deeply into the above-stated long established uses on the Utah side. Again, something would have to give on the Utah side.

It is time to set aside the artificial 50/50 benchmark and seriously re-think and re-calibrate the proper principles and framework for allocating Snake Valley groundwater between the two States. If there is wet, provable, unallocated Snake Valley groundwater to be had, let it be divided between the States in such a way as to preserve the above-stated, long established overall interstate ratios of utilization. That is a sound and defensible position Utah should not have to apologize for before the U.S. Supreme Court if litigation becomes necessary, and certainly not apologize for in making a counter-offer to Nevada. See more on a suggested counter-offer in the accompanying materials.

4. The draft penalizes Utah for potential impacts to the next basin down-gradient (Fish Springs), but turns a blind eye to potential impacts to Snake Valley from pumping in the next basin up-gradient (Spring Valley).

If Utah has to absorb a 20,000 af/y adjustment to its share of the interstate Snake Valley groundwater division, to account for potential down-gradient impacts to groundwater resources in Fish Springs, then it is only fair that Nevada make an appropriate adjustment to its share of Snake Valley water, to account for potential impacts to Snake Valley's groundwater budget caused by up-gradient pumping in Spring Valley.

In the March 2012 ruling on SNWA's application to pump and export groundwater to Las Vegas from Spring Valley ("the Spring Valley 2012 ruling), the Nevada State Engineer ("NSE") expressly found that interbasin flow from Spring Valley into Hamlin Valley (which comprises the southern portion of the Snake Valley hydrographic basin) ranges from 4,000 to 12,000 af/y. (See pp. 76-85 of NSE's *Spring Valley Ruling 6164*, dated March 22, 2012.) In that same ruling, the NSE approved over 61,000 af/y to SNWA for pumping and conveyance out of Spring Valley, to be done in stages eventually moving up to the total allocated amount barring any impacts to resources in Spring Valley and other basins.

Utah Geological Survey's Hugh Hurlow, Ph.D. testified as an expert witness for Millard County at the Spring Valley hearing in the Fall of 2011. Dr. Hurlow testified to the 4,000 – 12,000 af/y inter-basin flow connection, and the

NSE agreed with him. Dr. Hurlow further testified that based on this inter-basin flow connection, it is his opinion that SNWA's pumping and export of groundwater from Spring Valley could potentially reduce groundwater that would otherwise be available for flow into Hamlin and on into Snake Valley's available groundwater supply, although Dr. Hurlow did not predict the extent of such an impact.

The draft is unfair to Utah, because it makes no account for this potential impact to the Snake Valley groundwater budget. In other words, Utah's share of the supposed 66,000/66,000 split is further eroded not only by the 20,000 af/y offset for Fish Springs, but also by the potential 12,000 af/y impact from Spring Valley pumping, thus exacerbating an already unfair situation. The draft should be modified to account for up to 12,000 af/y annually until a sufficient number of years of pumping and conveyance of Spring Valley groundwater have passed and potential impacts to Snake Valley's groundwater budget are adequately determined.

5. The draft gives an insufficient legal basis for the BLM to permit SNWA to divert groundwater from Snake Valley, because the draft fails to divide the groundwater resources of the several basins that comprise the Great Salt Lake Desert Regional Flow System of which the Snake Valley basin is only one part, as required by the 2004 Lincoln County Conservation, Recreation and Development Act (LCCRDA).

Section 301(e)(3) of LCCRDA, Public Law 108-424 states:

(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.

This provision may be summarized as follows: Before the BLM may grant a right of way for the **diversion** of groundwater from an interstate **basin**, the two States sharing the basin must **divide** the ground water resources of the **interstate flow system** of which the basin is a part.

Snake Valley is one of several basins that comprise the interstate basin

known as the Great Salt Lake Desert Flow System. This flow system is clearly interstate in nature. (*Ex. D*) The draft does not constitute a division by the two States of the Great Salt Lake interstate ground-water flow system, for purposes of LCCRDA Section 301(e)(3). Thus the draft, even if were signed the two States, would not justify the BLM's granting a right of way to SNWA to divert groundwater out of Snake Valley.

All of which bear on two points:

(a) Why would Utah give away its rightful share of Snake Valley water in the cause of facilitating SNWA's groundwater project (which everyone knows is the driving force behind the interstate negotiations), when the draft could not legally support the SNWA transport of groundwater out of Snake Valley project due to the draft's insufficient scope when measured against Section 301(e)(3) of LCCRDA.

(b) This is more than just legalistic wrangling. It goes to the very mischief caused by the draft's failure to completely and equitably account for impacts from up-gradient pumping in Spring Valley. Little coincidence, then, that the Spring Valley basin, as well as the basin where Fish Springs is located, are both part of the Great Salt Lake Desert Flow system. (*Ex. D*)

It was wisdom in Congress to require that the entire flow system, not just one basin, be divided. Why? Because the basins in the flow system are all connected. They are what make a flow system a "flow system." The groundwater flows from one basin to the other. A single interstate basin cannot be properly divided in a vacuum. The inter-connectivity and domino effect of pumping, both up-gradient and down-gradient must be accounted for and addressed in the division and negotiations leading to the division. Hence the wisdom of Congress in including the above-quoted Section 301(e)(3) of LCCRDA. And hence the mischief due to failure to account for Spring Valley pumping impacts to Snake Valley, especially given the one-sided call for Utah to account for Fish Springs.

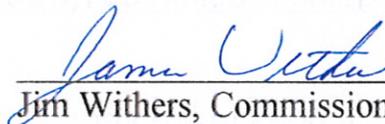
Why the draft ignores this mandate of Congress is unknown to Millard County. Millard County along with Juab and Tooele Counties as cooperating agencies in the BLM EIS process, have served notice that they will take legal action against the BLM for violation of LCCRDA Section 301(e)(3) if BLM grants a right of way out of Snake Valley based on the draft if signed.

Conclusion

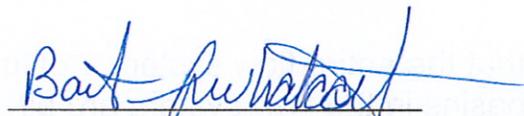
For these reasons, Millard County is steadfastly opposed to the draft and urges that it not be signed. The Juab and Tooele County Commissioners stand solidly with Millard County in opposing the draft, and collectively join with Millard County in asking that you not sign it. Thank you Governor Herbert for giving Millard County a chance to explain its concerns with the existing draft and to proposed a constructive and fair counter-proposal.

Sincerely,

MILLARD COUNTY BOARD OF COMMISSIONERS


Jim Withers, Commission Chair


Daron Smith, Commissioner


Bart Whatcott, Commissioner

cc. Warren Peterson, Esq. Steve Clyde, Esq., and Dallin Jensen, Esq.
Boards of Commissioners of Juab and Tooele Counties
Lt. Governor Greg Bell, c/o Cody Stewart
Utah Association of Counties

Exhibit A

To Millard County's
October 29, 2012 Letter to
Governor Herbert



Draft Agreement – On its Face

	<u>Utah</u>	<u>Nevada</u>
Allocated	55,000	12,000
Unallocated	5,000	36,000
Reserve, Dry	<u>6,000</u>	<u>18,000</u>
Total	66,000	66,000
		132,000

Draft Agreement – Closer Look

	<u>Utah</u>	<u>Nevada</u>
Allocated	55,000	12,000

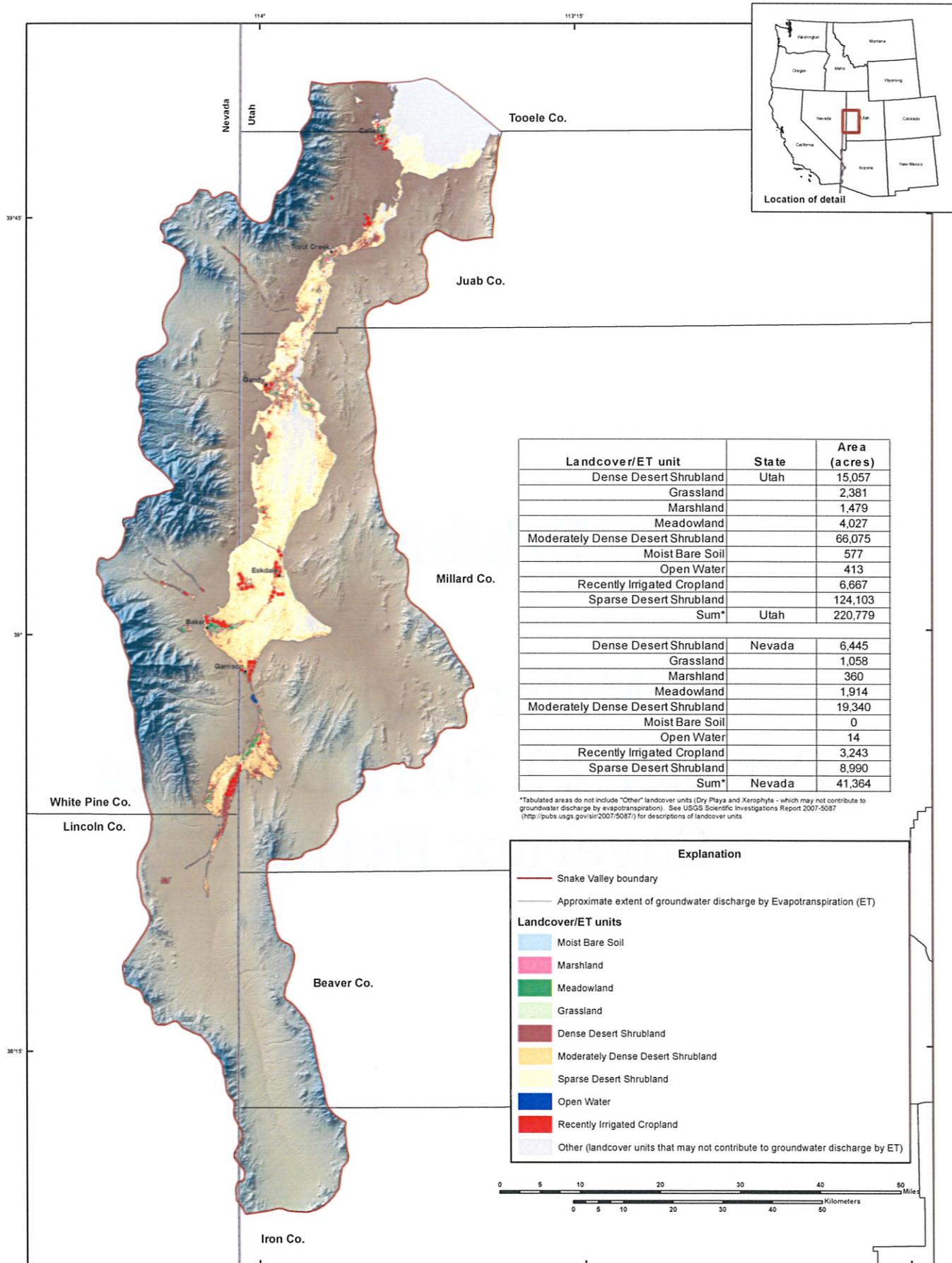
(20,000 af/y Allowance to Prevent Fish Springs Impacts)

(No Account Made for Spring Valley Pumping Impacts)

Unallocated	5,000	36,000	<i>7 to 1 Nev</i>
Reserve, Dry	<u>6,000</u>	<u>18,000</u>	<i>3 to 1 Nev</i>
Total	66,000	66,000	132,000

Exhibit B

To Millard County's
October 29, 2012 Letter to
Governor Herbert



Landcover/ET unit	State	Area (acres)
Dense Desert Shrubland	Utah	15,057
Grassland		2,381
Marshland		1,479
Meadowland		4,027
Moderately Dense Desert Shrubland		66,075
Moist Bare Soil		577
Open Water		413
Recently Irrigated Cropland		6,667
Sparse Desert Shrubland		124,103
Sum*	Utah	220,779
Dense Desert Shrubland	Nevada	6,445
Grassland		1,058
Marshland		360
Meadowland		1,914
Moderately Dense Desert Shrubland		19,340
Moist Bare Soil		0
Open Water		14
Recently Irrigated Cropland		3,243
Sparse Desert Shrubland		8,990
Sum*	Nevada	41,364

*Tabulated areas do not include "Other" landcover units (Dry Flats and Xerophyte - which may not contribute to groundwater discharge by evapotranspiration). See USGS Scientific Investigations Report 2007-5087 (<http://pubs.usgs.gov/sir/2007/5087/>) for descriptions of landcover units

Explanation

- Snake Valley boundary
- Approximate extent of groundwater discharge by Evapotranspiration (ET)

Landcover/ET units

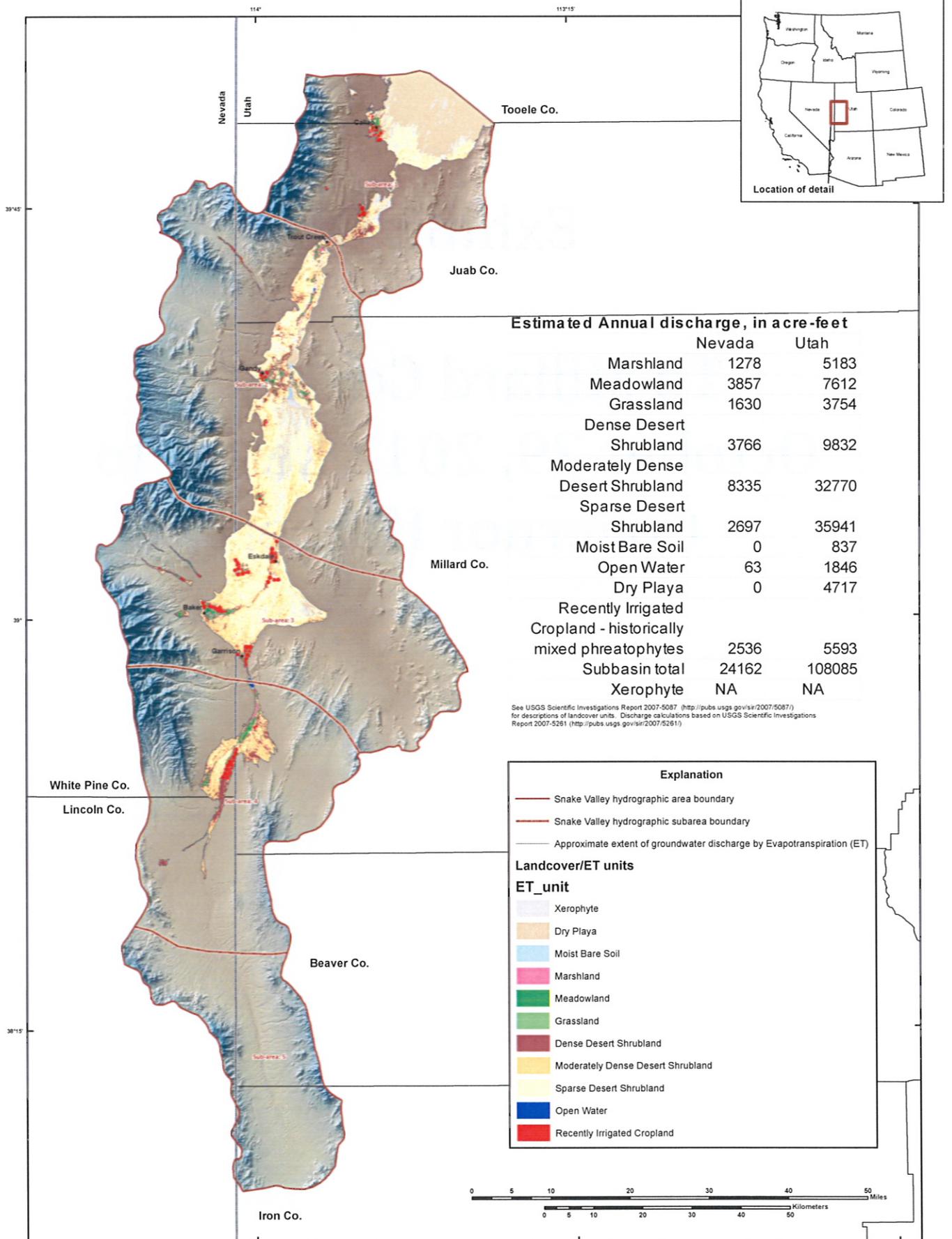
- Moist Bare Soil
- Marshland
- Meadowland
- Grassland
- Dense Desert Shrubland
- Moderately Dense Desert Shrubland
- Sparse Desert Shrubland
- Open Water
- Recently Irrigated Cropland
- Other (landcover units that may not contribute to groundwater discharge by ET)



Base from U.S. Census Bureau 1:500,000-scale digital data, 2000. ET units from 28.5-meter USGS digital data, 2007. Groundwater discharge boundary from 1:500,000-scale USGS digital data, 2007. Hydrographic area boundary from 1:1,000,000-scale USGS digital data, 2009. Hillshade from 30-meter National Elevation dataset. Albers Equal Area Conic Projection, Central Meridian at -114°, Standard Parallels at 29.5° and 45.5°. Latitude of origin at 23°

Exhibit C

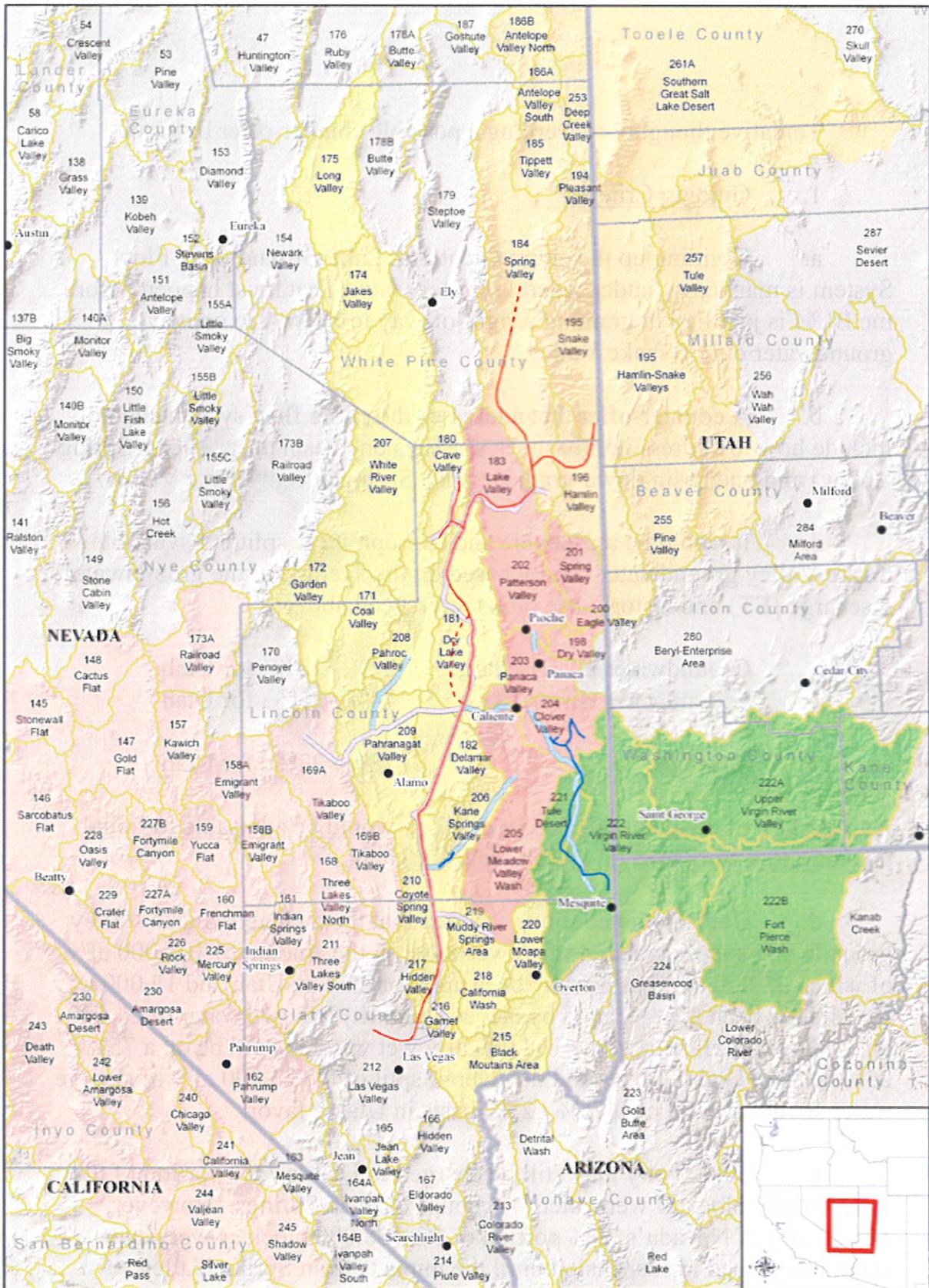
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Base from U.S. Census Bureau 1:500,000-scale digital data, 2000. ET units from 28.5-meter USGS digital data, 2007. Groundwater discharge boundary from 1:500,000-scale USGS digital data, 2007. Hydrographic area boundary from 1:1,000,000-scale USGS digital data, 2009. Hillshade from 30-meter National Elevation dataset. Albers Equal Area Conic Projection, Central Meridian at -114°, Standard Parallels at 29.5° and 45.5°, Latitude of origin at 23°

Exhibit D

To Millard County's October 29, 2012 Letter to Governor Herbert



U. S. Department of the Interior
Bureau of Land Management
15 February 2006

No Warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data.

Hydrologic Basins and Flow Systems

- LCWD Corridor (LCCRDA)
- SNWAC Corridor (LCCRDA)
- Proposed Corridors**
- Lincoln County Water District
- Southern NV Water Authority
- - - Southern NV Water Authority Alternative
- Flow Systems**
- Death Valley
- Meadow Valley Wash
- Salt Lake Desert
- Virgin River Valley
- White River
- Cities & Towns
- County Boundary
- Hydro Basins



Tentative thoughts concerning a possible counter-offer by Utah

1. Guiding Criteria:

a. Dividing up the entire Great Salt Lake Groundwater Flow System is mandatory under federal statutory law. That must happen before the BLM is justified in granting a right-of-way to SNWA to convey groundwater out of Snake Valley.

b. A counter-offer that addresses the entire flow system should include how to address interbasin flow issues one basin up-gradient (Spring Valley) and one basin down-gradient (Fish Springs) from Snake Valley.

c. It would be reasonable and appropriate to split the available Snake Valley groundwater supply based on the average of the groundwater discharge (ET) and historic-use ratios referenced above:

Groundwater ET Discharge	82% / 18%	for Utah
Groundwater Historic Use	74% / 26%	for Utah
Average:	78% / 22%	for Utah

As a gesture of cooperation and good will, it would be advisable to round this ratio to a workable 75% / 25% split for Utah.

d. Utah should continue to agree that the available Snake Valley groundwater supply consists of (i) wet water in the amount of 108,000 af/y, of which 35,000 af/y has already been appropriated by Utah and 12,000 af/y has already been appropriated by Nevada, and (ii) Reserve water of 24,000 af/y. The overall split of the 108,000 af/y wet water should be on a 75% / 25% basis in Utah's favor, and the overall split of the 24,000 af/y of reserve water should also be on a 75% / 25% basis in Utah's favor.

e. 20,000 af/y may still be charged to Utah's 75% portion of the 108,000 af/y block of wet water to account for Fish Springs. However, 12,000 af/y of Nevada's 25% portion of the 108,000 block of wet water should be placed in suspension until the impacts from Spring Valley pumping can be determined; then necessary permanent offsets should be made depending on those impacts.

2. Proposed revision to Table 1 of the Draft Agreement Based on a Proposed 75/25 Split and Spring Valley related Suspension.

	<u>Utah</u>		<u>Nevada</u>	
Allocated	35,000		12,000	
Unallocated	<u>46,000*</u>	1	<u>15,000**</u>	
Total Wet:	81,000		27,000	108,000 af/y
	75%		25%	
Reserve, Dry	<u>18,000</u>		<u>6,000</u>	24,000 af/y
	75%		25%	
Total	99,000		33,000	132,000 af/y
	75%		25%	

* Reserve 20,000 af/y for Fish Springs, leaving a net unallocated 26,000 af/y.

** Suspend 12,000 af/y for potential impacts from Spring Valley pumping, leaving a net unallocated 3,000 af/y for now, and possibly more later if and when portions of the 12,000 af/y are released from suspension after duly studying the potential impacts to Snake Valley groundwater from transbasin diversions out of Spring Valley.

This essentially gives Nevada 15,000 af/y of unallocated wet water, while protecting Utah from potential impacts from Spring Valley pumping. It concedes that the limit of such potential impacts from Spring Valley pumping is capped at 12,000 af/y, the upper limit of the NSE's findings concerning interbasin flow from Spring to Snake Valley. If SNWA is so confident that the available Snake Valley groundwater supply will not be impacted by Spring Valley pumping and export of groundwater, then SNWA should be confident that eventually part or all of the suspended 12,000 af/y portion Nevada's unallocated ground water will eventually be freed up for appropriation by the NSE.

Even the foregoing is overly generous to Nevada, for the following reasons: When one says that 20,000 af/y of groundwater must not be touched by Utah in Snake Valley so that it may flow through to the next hydrographic basin to be utilized at the Fish Springs complex, one essentially admits that the available total supply of wet water for use in

Snake Valley is not 108,000 af/y, but rather only 88,000 af/y. That really is the proper way to think of it, especially one when is having a discussion about what is equitable. This is not mere pedantic manipulation of data in the name of “equity.” It is a substantial and real alignment with the reality of how Utah water rights have been appropriated: Water rights appropriated by the Utah State Engineer for use in Fish Springs were not appropriated out of the Spring Valley hydrographic basin; they were appropriated out of the hydrographic basin where the Fish Springs complex is situated. So it’s really a myth to say that the available groundwater supply of wet water in the Snake Valley hydrographic basin is 108,000 af/y. It’s not. It’s 88,000 af/y. This exercise of ratcheting up to 108,000 af/y followed by the ratchet down of 20,000 af/y in the interest of Fish Springs, strikes Millard County as an artificial construct done to jack up Utah’s share and make it look like Nevada had to have more in order to achieve so-called 50/50 parity with Utah.¹

To be purely equitable, i.e., to take all of the impurities out of the equity calculation, one should wipe the slate clean and start over with the beginning sum of 88,000 af/y of total wet Snake Valley groundwater supply; then apply the foregoing 75/25 % equitable ratio to that 88,000 figure as follows:

Allocated	35,000		12,000	
Unallocated	<u>31,000*</u>	1	<u>10,000**</u>	
Total Wet:	66,000		22,000	88,000 af/y
	75%		25%	
Reserve, Dry	<u>18,000</u>		<u>6,000</u>	24,000 af/y
	75%		25%	
Total	84,000		28,000	112,000 af/y
	75%		25%	

¹ And once again, the whole Fish Springs back and forth adjustment is a tacit nod to the mandate of Section 301(e)(3) of LCCRDA: That the interstate agreement must address the entire regional flow system, not just one hydrographic basin in that flow system, before the BLM has the green light to issue a pipeline right of way for conveyance of groundwater out of Snake Valley. While the Draft tries to do this for the hydrographic basin down-gradient from Snake Valley (Fish Springs), the Draft fails to make the necessary adjustment to account for potential impacts in Snake Valley caused by SNWA’s Spring Valley pumping and export.

* No need to reserve 20,000 af/y for Fish Springs; the adjustment was already made to the total available groundwater supply of wet water, from 108,000 af/y to 88,000 af/y.

** Suspend 12,000 af/y for potential impacts from Spring Valley pumping, leaving a net unallocated -2,000 af/y for now, and possibly more later if and when portions of the 12,000 af/y are released from suspension after duly studying the potential impacts to Snake Valley groundwater from transbasin diversions out of Spring Valley.

Notwithstanding that applying the 75%/25% ratio is the more purely equitable analysis, Millard County would concede applying the 75%/25% ratio to the 108,000 af/y figure solely for counter-offer purposes. But if negotiations broke down and Nevada took Utah to court, then Utah should be prepared to argue based on the 88,000 af/y figure.

Bottom line: Any allocation based on the beginning assumption of 108,000 af/y of total available wet water in Snake Valley, is a myth born of the 20,000 af/y Fish Springs back and forth that produces an overly generous split for Nevada. But Millard County will go along with it solely for counter-offer purposes.

3. Proposed edits to the draft agreement to reflect the foregoing, plus some other minor revisions.

See the attached edits to the draft agreement, highlighted in yellow.