



Mining Water

A recent court ruling disrupts the largest interbasin water transfer in U.S. history.

By Ramona Hage Morrison

On Dec. 10, 2013, an unlikely team of plaintiffs including ranchers, farmers, Indian tribes, environmentalists, rural counties and the Church of Latter Day Saints came one step closer to derailing a \$15.5-billion scheme by Las Vegas to mine and import groundwater from desert valleys in eastern Nevada and western Utah. The plan includes the construction of a seven-foot-high, 200-mile-long pipeline to transport the water to Las Vegas. A ruling handed down by Senior District Judge Robert Estes of the 7th Judicial District Court of Nevada poses a serious setback to the 24-year-old import plan orchestrated by Southern Nevada Water Authority (SNWA).

Judge Estes described the water import project as “likely the largest interbasin transfer of water in U.S. history,” affecting a region the size of New England. However, he found state engineer Jason King’s order granting permits to pump and export 84,000 acre-feet of groundwater from the Nevada/Utah border to be arbitrary and capricious. While Estes approved the water applications and recognized Las Vegas’ need for water, he found the engineer’s nonexistent monitoring standards insufficient to provide verifiable protection to historic water-right owners, much less the environment. He wrote, “The engineer has, in effect, relinquished his responsibilities to others, [and] failed to state under what specific conditions he will require mitigation.” King instead relied upon a stipulated agreement between SNWA, the National Park Service (NPS), U.S. Fish & Wildlife Service (FWS) and Bureau of Indian Affairs in which the parties promise to mitigate the effects of pumping in the future.

Estes wrote, “It seems that if there is enough data to make informed decisions, exactly when an unreasonable impact to either the environment or existing rights occurs, the engineer or SNWA should recognize it and make the decision to mitigate. If

there is not enough data...granting the appropriation is premature. The ruling is arbitrary and capricious.”

Estes defended existing water rights, contrary to the engineer’s finding that “if no measurable impacts to existing rights occur within hundreds of years, then the statutory requirement of not conflicting with existing water rights is satisfied.” Estes disagreed, spelling out the plain meaning of Nevada water law: “The statute is unequivocal, if there is a conflict with existing rights, the applications *shall* be rejected,” he wrote. (Emphasis added) Admonishing the engineer for abdicating his statutory duties, Estes wrote, “[I]t is also unseemly to this court that one transitory individual may simply defer serious water problems and conflict to later generations.”

To date, the public has no idea how much the Las Vegas water import project has cost. SNWA has refused to open its books to the bond holders, rate payers, taxpayers or the public, but it has spent approximately \$90 million to purchase ranches in eastern Nevada while attempting to pressure the few remaining ranchers and farmers to also sell.

Dean Baker’s ranch in Spring Valley could have easily fetched \$50 million based on comparable SNWA ranch acquisitions. Yet for 24 years he and his family have refused to discuss money with Las Vegas officials including Sen. Harry Reid. “They always thought I was just negotiating tough,” Baker says. “We just want to continue to ranch and farm.”

Since 1989, SNWA has pursued the water rights applications through a trio of three- to six-week administrative hearings and five court proceedings, always represented by multiple attorneys, many earning over \$500 per

hour—and that doesn’t count the cost of legal research, witness preparation, or writing of briefs necessary to the legal proceedings. At least 20 paid expert witnesses were called during one hearing. SNWA also commissioned draft and final environmental impact statements and other purported “scientific” studies.

There is plenty of irony to be found in Las Vegas’ unprecedented plan to wrest billions of gallons of agricultural water, seemingly at any cost, from the state’s rural counties. Parodying the old joke—How many attorneys does it take to screw in a lightbulb?—one might ask how many SNWA attorneys, experts, “scientific” studies and hundreds of millions of dollars does it take to bamboozle one district judge? “Whatever it takes” apparently was not enough in this case.

Perhaps most astounding of all has been the support Las Vegas has received from federal land-management agencies including the FWS, NPS, and in particular the Bureau of Land Management, where most of the pumping is to occur. Water mining on the scale proposed by Las Vegas from desert valleys that receive less than six inches of annual precipitation has all the ingredients of a real environmental calamity. Yet, though the

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pumping project impacts an area the size of Massachusetts, Connecticut, New Hampshire, Rhode Island and Maine combined, these agencies support the water-mining plan, which they claim they will monitor. Meanwhile, as is often reported

in *RANGE*, these same federal agencies routinely threaten to prosecute and/or fine individuals and property owners across the United States for alleged environmental infractions that are minuscule by comparison, and often not even based in law. Apparently SNWA was successful in duping the brilliant scientists and bureaucrats working for the federal government. ■

*Ramona Morrison writes from Sparks, Nev. For more information about SNWA’s import project visit Great Basin Water Network at www.greatbasinwater.net and check Tim Findley’s “To Move an Ocean,” *RANGE*, Fall 2005, at www.rangemagazine.com. For further information about Sen. Harry Reid’s involvement in the water import project read Harvey Whittemore’s entry at [Wikipedia.org](http://en.wikipedia.org) or read the Las Vegas Sun’s “Quenching Las Vegas’ Thirst” at <http://www.lasvegassun.com/news/2008/jun/01/satiating-booming-city/>.*