

The Ely Times

Legal advocate fighting SNWA briefs county commission and water committee on progress

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The White Pine County Board of Commissioners held a joint meeting with the County Water Advisory Committee on April 26, and two important players in the county's defense of its groundwater provided a progress report.

Simeon Herskovits, an attorney from Advocates for Community and Environment and the leader of the legal effort to protect rural Nevada groundwater, and Abby Johnson, president of the Great Basin Water Network, spoke in front of an attendant crowd of about two dozen.

According to Herskovitz, the current federal case is "in the midst of briefing on the merits," meaning the Bureau of Land Management's right-of-way approval is currently being reviewed. Herskovitz will file his next briefs by May 18, while the Southern Nevada Water Authority has until July 27. After that, the federal judge will set a date for a hearing where lawyers from each side will make oral arguments.

"The judge will almost certainly not rule," Herskovits said. "He will issue a written order and that could take several months. A likely timeframe for a decision is early next year. Be prepared, if we win, they will appeal. If we lose, we're likely to appeal. A victory in the federal lawsuit would not kill the project. The ruling would be that the federal government has failed to follow the requirements of the law, but SNWA could produce more forms of evidence."

SNWA first applied for water rights in rural east-central Nevada in 1989. In 2013, state district judge Robert Estes ruled against the state engineer's 84,000 acre-ft allocation to

the project, directing him to rework his calculations and develop a monitoring and mitigation plan.

“SNWA and the state engineer petitioned for writs of mandamus,” Herskovits said. “It went up to the state supreme court, but the argument was that it was not right for that court. The Supreme Court decided not to address the merits, and it let Judge Estes’ decision stand. The requirements are very difficult. SNWA claims it can’t meet the new requirements and what is required by the state engineer on remand. SNWA needs more time. The state engineer will hold a pre-hearing conference with the lawyers and eventually, the case will be reviewed on its merits, which should be the last time.”

Herskovitz also described the efforts to change current water law to fit SNWA’s project.

“We’ll have to monitor what is being proposed,” Herskovits said. “We have to weigh in on issues they are considering. It would be terrible to gut the law just for the interest groups in power for the short-term. Good, sound water law has served Nevada for a hundred years. Nevada has a history of water law that only allows planning with sustainable use of real water resources. We have to stay engaged and do what we can. Some of it is about educating legislators. Southern Nevadans have a genuine water problem, but I don’t think the project is a legitimate solution. There are other alternatives that are sounder, and the project is incredibly unsound and unnecessary for Nevada. It should be possible to demonstrate that the water is there, and they should be able to create a monitoring and mitigation system. It’s not in the state’s general, long-term interest.”

“We have to stay on top of it,” Commission Chair Gary Perea said. “They can’t follow the rules, so they’re trying to change them. The state engineer hasn’t followed current water law.”

“It’s been significant to win repeatedly in court,” Herskovits said. “The project is not an economic or rational approach, and it’s a legal conflict they keep losing. I keep hoping against hope that Las Vegans will come to their senses. There are other cost-effective alternatives. It’s not a sound project. They should stop wasting money on it and threatening a large part of the state.”

“In our view,” Herskovitz said, “the state engineer’s office is being put under enormous political pressure, and has even been threatened overtly. I heard that one general manager with SNWA claimed that if things didn’t go their way, they would have the state engineer replaced. There’s a lot of stress and a lot of pressure put on them, but their policy position is also overly simplistic and slanted. The state engineer and staff think their mandate is to promote and advance beneficial economic use, but that’s a fairly slanted approach to the law. The thinking is deeply, consistently flawed. It’s a real, vital, long-term threat and it’s important that we defeat it.”

“We’ve enjoyed a cooperative relationship with White Pine County,” Johnson said. “It’s been a challenge for more than a generation already. Our fundraising focus is for legal costs.”

Johnson distributed a copy of the state engineer’s hydrological map of Nevada, the department’s interpretation of groundwater available for development.

“The state engineer keeps giving water rights out,” Johnson said. “His strategy is to push water basins to the limit, but they will end up being overdrawn. It’s bifurcated thinking. We’re trying our best to educate in the 21st century. This is a David vs. Goliath fight and we value our relationship with the county as well as Simeon’s brilliance and determination.”

“I’m very proud of White Pine County that we have continued the fight,” Commissioner Laurie Carson said. “SNWA thought the county was just going to roll over and here we still sit.”

“We need an educational effort directed toward Clark County,” said water advisory committee member and Ely City Councilman Sam Hanson. “There are solar-powered desalination and agricultural alternatives, but it almost seems about an inflated Las Vegas ego.”

Water advocate and McGill resident Rick Spilsbury also provided the meeting with copies of a chart presented by the Southern Nevada Water Authority at the State

Legislative Commission's Subcommittee to Study Water meeting on April 22 in Las Vegas.

The chart clearly identifies an ever-increasing southern Nevada population that will require "future water resources" as early as 2040. Those future sources include the groundwater of Spring, Snake, Cave, Dry Lake and Delamar Valleys.

Spilsbury attended the Las Vegas meeting and claims that SNWA's population growth prediction is far too low. He worries that southern Nevada "could hit panic mode within five years."

"The whole state of Nevada is at risk," Spilsbury wrote in the packet he distributed to the White Pine County meeting. "At some [point], there will be no choice but allowing the Watergrab (sic). This will destroy much of rural Nevada's economy. And since the Watergrab will be so expensive, especially with cost overruns, the rest of Nevada might be called upon to help pay for the Watergrab pipelines. One more thing I noticed at the meeting: every city that made a presentation tried to make us believe that they had their water issues solved— at least as long as they could take water from other basins."