

IN A SPECIAL JOINT MEETING OF THE WHITE PINE COUNTY WATER ADVISORY COMMITTEE AND THE WHITE PINE COUNTY BOARD OF COMMISSIONERS HELD ON APRIL 26, 2016 AT THE WPC EMERGENCY OPERATIONS CENTER CONFERENCE ROOM, 1150 NORTH MCGILL HIGHWAY, ELY, NEVADA

The Following Were Present:

County Commission

Gary Perea, Chairman
Carol McKenzie, Vice-Chairman
Laurie Carson, Commissioner
Mike Coster, Commissioner
Richard Howe, Commissioner
Nichole Baldwin, Clerk of the Board
Susan Lujan, Deputy Clerk

Water Advisory Committee

Dahn Puckett
Elaine Blackham
Rod McKenzie
Bill Butts
Sam Hanson
Angela Martin
Steven Carter
Dave Baker
Kathryn Griffith
Heath Korell

Others Present

Simeon Herskovits, Advocates for Comm. & Environ.
Abigail Johnson, GBWN
Susan Lynn, GBWN
Trent Griffith, Ely Shoshone Tribe
Ross Johnson, Ely Times
Elizabeth Frances, WPC Finance Director
Bill Miller, WPC Road Maint. Superintendent
Maegan Fuller
Rick Spilsbury, GBWN
Mike Wheable, WPC District Attorney
Mindy Seal, BLM
Chaunsey Chau-Duong, SNWA

Chairman Gary Perea called the meeting to order at 5:08 p.m. for the White Pine County Commission. Chairman Angela Martin called the meeting to order at 5:08 p.m. for the Water Advisory Committee. WPC Clerk Nichole Baldwin led the Pledge of Allegiance. Chairman Perea had everyone introduce themselves.

PUBLIC COMMENT

Mr. Rick Spilsbury, Great Basin Water Network (GBWN), attended the Legislative Committee to study water last week. He provided a handout showing how much water Southern Nevada Water Authority (SNWA) will be using during the next 50 years. For their temporary water needs they will be pulling out water from reserves in their Water Bank. The article focused on these questions: Is SNWA trying to mislead us, and will they be using more water than they are generating?

Mr. Heath Korell, WAC Member representing NDOW, advised of some good news regarding Comins Lake; last Summer NDOW did chemical treatments to remove pike from both Bassett and Comins lakes. He reported that fish are now living in Comins Lake again; last Wednesday at noon, the first fish "hit the water in 9 years!" Comins was supplied with brood stock, between 12-18" long, weighing over a pound each. He continued that yesterday production trout were also added, from 6-9" long. There will be a total of 10,000 fish added this Spring, and in the Fall another 10,000, going into Comins Lake. Water Advisory Committee Member Bill Butts advised that Mr. Korell was one of the driving forces behind this,

and he wished to personally thank him on behalf of the committee. Mr. Korell added that a boat dock is also being planned; there is funding set aside for that, with the groundbreaking set for this Fall.

Chairman Gary Perea opened up the first agenda item on the Board of County Commissioners agenda; Chairman Angela Martin also opened up the first agenda item on the Water Advisory Committee agenda. It was noted the agenda items were identical.

UPDATE/DISCUSSION ONLY RE: WATER RELATED ISSUES PERTAINING TO WHITE PINE COUNTY AND THE STATE OF NEVADA

Mr. Simeon Herskovits, Advocates for Community & Environment, introduced himself to the assemblage. He advised of 3 items, to bring everyone up to speed: (1) The Federal lawsuit; (2) the State proceedings; and (3) what efforts are being made to change the water laws in Nevada.

First, the (1) Federal lawsuit: This pertains to the proposal to appropriate large amounts of groundwater from the interbasin system that affects Clark, White Pine, Lincoln, and neighboring Utah counties. Water would be piped to SNWA to serve its agencies, thus shipping water to businesses, residents, etc., as a "pipeline project." This lawsuit is actively proceeding, and is at the stage where there will be held a briefing on the merits. This challenges the Federal agencies' approval of the right-of-way for the pipeline, and also their statements that the project and usage of the land is permissible. The BLM (U.S. Dept. of the Interior) has signed the Record of Decision for that approval, and they probably anticipated this moving quickly into the courts, which prompted the somewhat hasty Record of Decision. Mr. Herskovits explained there would be no trial, but rather a procedure, including a limited motion to dismiss practice. The Tribal claims survived intact, and comprise a large part of this case. He filed opening briefs that noted the process wasn't following certain acts; he added that the Ely BLM District Management Plan ties into all of this, as well as concerns of our Tribal allies. He advised the 3 Tribes involved are the Confederate Tribes of Goshute, Ely Shoshone, and Duckwater. The Federal government failed to comply under both NEPA and FLPMA; he feels these claims are very strong, and the Tribes have also filed their opening briefs. The second (final) round of briefs will be filed on May 18th; he noted the Federal government and SNPLMA have requested filing theirs in July. By July 27th all of the briefs will be in, and the hearing/oral argument date will be announced after that date. Mr. Herskovits reiterated this won't be a trial, but it's an argument by the lawyers for each party to the District Judge. The Judge will hold a question/answer session with the attorneys; following that, the Judge will take everything under advisement and submit a formal, written memo or decision subsequent to the hearing. He felt the hearing/oral argument will be held in September; the ruling could be early next year, or during the Spring; he noted it's uncommon for Judges to issue orders over a year from these kinds of hearings. If we win, he continued, the other side will make its appeal to the 9th Circuit Court of Appeals. If we lose, we are just as likely to appeal, although he won't commit to that statement without seeing an opinion. It's important that we wait and see what the Judge has to say before deciding what course of action to take. He did note that if he feels the Judge erroneously applied the law, however, that would be proper grounds for an appeal, in his opinion. He did advise that the results of the ruling could result in SNWA having to re-examine the project, or produce more forms of evidence. He clarified that the lawsuit alone would not be the end of the project. In reply to a query from County Commissioner Richard Howe, Mr. Herskovits advised the hearing would be held in the Courtroom of the Federal Courthouse in Las Vegas. Water Advisory Committee Member Rod McKenzie asked if there was any way to slow down the Federal procedure; the reply was negative. Mr. Herskovits explained that the reversals from the standpoint of SNWA are victories for us, but they are an issue in the Federal case as they relate to some of the claims. Although the issue with the State Engineer and laws are roughly "in limbo," and the initial rulings have

been reversed, that still doesn't slow down or stop the Federal case. He clarified that whatever happens in State courts doesn't affect the Federal courts from completing their process.

Mr. Herskovits next addressed the State proceedings, which he advised began in 2006. We challenged the Spring Valley hearing process, and that case alone took years to work its way through. The Nevada Supreme Court unanimously agreed with us and reversed everything, as he explained. The Dry Lake-Delamar Valleys were won both in District Court and in the Supreme Court. All previous approvals were voided so SNWA was back to the beginning again. The second hearing combined the Spring, Cave, Dry Lake and Delamar Valleys into one, which took place in the Fall of 2011. The State Water Engineer replicated his original decision with no difference in rulings. It was after the oral argument prior to the end of 2013 that Judge Estes gave his ruling. We won the case on powerful grounds, he continued, and it went to the Supreme Court. SNWA and the State Water Engineer filed petitions for Writs of Mandamus; Judge Estes reversed the State Water Engineer's decision and remanded it back to re-examine some fundamental issues in the case. The Supreme Court, after getting all of us to submit briefs on the merits, decided to let Judge Estes' ruling stand; therefore, no relief was granted to SNWA or the State Water Engineer. That's where the case now stands, and nothing has occurred since. Mr. Herskovits added that the requirements imposed by Judge Estes were such that both SNWA and the State Water Engineer have stated they can't meet those standards. The project isn't sustainable, and it isn't permissible under the Nevada water laws. Regarding the remand, he will communicate with our District Attorney the results of the prehearing conference. WAC Member McKenzie asked about the Cleveland Ranch; while Mr. Herskovits can't predict at this point, he felt the prehearing conference for that could result in a compromise. He explained that the Attorney representing the LDS Church and the Cleveland Ranch had filed a separate additional appeal, or petition, after the Judge had ruled on the case; they had filed a separate issue that Mr. Herskovits didn't feel was appropriate for us to join with them.

The discussion continued and blended in with (3), the efforts to change Nevada's water laws. Mr. Herskovits advised that there's another water rights case involving the Kobe Valley Ranch and its application for groundwater rights. There is a core issue in this, which is if the State Water Engineer properly granted the water rights, with respect to the requirements which the applicant must abide by and comply with in the future. There was no sufficient basis for rational approval, he noted, and essentially the Kobe Valley Ranch had the same issue as ours. The Court agreed that there needs to be more specific/concrete data for the Engineer to make a proper decision. Creating a water right where there is actually some water available, which means certain standards must be met and be more demanding than what was vaguely alluded to in that case. Proposed legislation to change the water law to either eliminate the requirement, or some kind of monitoring or mitigation program, is what is being proposed. It's important for all of us to closely monitor proposals and weigh in on the issues, he continued; it would be "unsound to gut the law for the sake of this project." He also feels strongly that Nevada has some good, sound water laws that have served the State for over a century. We need to stay engaged in the legislative process and do what we can to ensure it's monitored; we also need to educate the legislators, as they really don't know that much about the water laws. He added that opening the door to the State Water Engineer via this legislation would perhaps seriously violate a number of property owners' rights, which would be disastrous for the State. Chairman Gary Perea added that basically, the State Water Engineer hasn't followed the current water law, and now he's trying to change it. Mr. Herskovits advised that eventually the decisionmakers with SNWA and Clark County will begin to realize this project is not sustainable, or even a rational approach, to their water needs in the future; plus they keep losing their cases. He hoped they will be thinking more critically about this pipeline project, and that they would see the parallels with what happened in the Owens Valley.

WAC Member Steve Carter voiced appreciation for everything that's been done on this from the beginning. Ranchers and farmers will take the greatest impact, as they are already struggling with water now. He hopes the County stays with it; it would be pretty devastating if we don't have the water.

Chairman Perea stated that Mr. Herskovits did a great job; he demurred and noted everyone has been doing their part against this pipeline project. Mr. Herskovits added that the GBWN has been an amazing, helpful ally in terms of providing support, getting information out, and keeping people engaged and aware.

Commissioner Carol McKenzie felt that the State Water Engineer is somewhat biased for SNWA, and he should be more neutral on the subject, or at least acknowledge that this project could be detrimental for us. Mr. Herskovits noted that all of the State Water Engineers and their staff, since the beginning of the water issues, have been put under enormous political pressure. He even cited a public remark by a previous General Manager of SNWA, who had threatened to have the State Water Engineer replaced. On a personal level, he continued, he believes most of them feel they're doing their job the way it needs to be done, as well as the way they are doing it. However, he did agree that the State Water Engineer does seem to have "an overly simplistic point of view" of the subject. Like his predecessors, the current Engineer feels his mandate is to promote and advance the development of water in the State for beneficial use. However, he continued, you also need to ensure the water is truly there and available, without destroying the necessities of livelihood for others. Chairman Perea thanked Mr. Herskovits for his update.

At this point, Chairman Gary Perea noted that the County and the Great Basin Water Network work well together. He introduced Ms. Abigail Johnson, President of GBWN.

UPDATE/DISCUSSION ONLY RE: ACTIVITIES PERTAINING TO THE GREAT BASIN WATER NETWORK

GBWN President Abigail Johnson advised she is also a property owner and part-time resident of Baker, Nevada. She introduced Ms. Susan Lynn, part-time advisor to GBWN. She explained that Ms. Lynn is monitoring the Legislative Subcommittee on the water issues. Ms. Lynn advised that Ms. Johnson had encouraged this, in order to see some of the detailed information being disseminated out there. Ms. Johnson noted GBWN is a non-profit, volunteer organization, with the exception of their attorneys and technical experts. She and Ms. Lynn are also volunteers; their network is comprised of volunteers from local governments, tribes, ranchers, farmers, urban, rural, Nevada & Utah representatives; a diverse group, gathered together for a common purpose. GBWN activities focus on public education; their newsletter, Water Gab, is in the Ely Times and other local periodicals, besides a website. In Southern Nevada there's a campaign called "Ranchers to Rate Payers" which gets their information out there. They support their shared attorney, Mr. Herskovits, and do fundraising as well. They've enjoyed a cooperative relationship with White Pine County for a long time, but this is only the first or second time both entities have met in person; she felt we should be doing this more often. One challenge they have is the Groundwater Development Project, which has been going on since 1989; two generations of people have been involved with this. Ms. Lynn advised that support for Mr. Herskovits and the Advocates for Community & Environment has been "an ebb and flow process." When it began, GBWN paid all of the fees, and then White Pine County stepped up and paid as well, so it's working out and holding together. For their fundraising efforts, which cover their legal costs, organization and program needs as well, the "grassroots" comprise their biggest contributors. The Snake Valley Festival, from June 17-19, is a celebration to help support GBWN, and she encouraged people to attend over that weekend for a series

of community events. Ms. Johnson noted that the 2017 Legislative Session will be “a doozy.” The Kobe Valley decision in the Supreme Court was timed to come out at the same time as the Government Water Summit was going on; this gave the State Water Engineer the opportunity to speak about the “need for flexibility in the law.” She showed the Board a map that the State Engineer had submitted as testimony in the first meeting for Senator Pete Goicoechea’s Subcommittee, showing the hydrographic basins in Nevada. Much of the basins are severely over-appropriated, she pointed out. She feels that the State Engineer is thinking his duty in the matter is to push those basins which are not over-appropriated right up to their limits. That doesn’t work, and they end up being over-appropriated after all, she concluded. It’s important, she continued, to understand that whatever proposals come out of the Legislative Subcommittee, they would show how much and which basins would be over-appropriated. Getting the correct information out is essential, and she cited such media as Facebook and Twitter; GBWN does have communications going out that way. The Owens Valley Committee also has a Facebook page, and their postings are comprehensive and enlightening regarding how they are trying to work under the LADWP and the frustrations of working under the agreements, etc. She stated that this is a “David versus Goliath fight;” they value the cooperative relationship they have with White Pine County and also with Mr. Herskovits. She announced that they will continue to do this as long as they have to, to keep up the fight.

Commissioner Laurie Carson stated that she’s very proud of White Pine County, that we have continued the fight, for Mr. Herskovits and GBWN, who have helped to get the word out as to what the realities are. She felt that SNWA had probably thought we would “roll over” and accept their offer, but we didn’t agree, so here we are today; that that went back to 2006, she noted. Mr. Herskovits added that the people in Lincoln County who are part of this fight have always profoundly regretted that their County had entered into the agreement with SNWA. They gave up their ability to fight against the project by doing so; the reality is, the vast majority of the people in Lincoln County want nothing more than to see the pipeline project stopped. He has also heard from other rural counties in Nevada and Utah, and even from other states, such as New Mexico and California rural counties as well; they are all deeply grateful and have much admiration for White Pine County for its steadfastness and the strong leadership role that it has taken in this. He felt White Pine County should be proud of these things that have been spoken of, to our benefit. Ms. Kathryn Griffith added that the Tribes are also proud of White Pine County for standing with them on this. Commissioner Laurie Carson cited the Central Nevada Regional Water Authority (CNRWA), in that when they agreed to move forward with the lawsuit there was much support for White Pine County to do that.

Mr. Herskovits advised that SNWA has signed on as a co-plaintiff to the Federal lawsuit, to their credit. He explained they are a valuable co-plaintiff because they represent a large number of Nevada counties. Chairman Perea noted the next SNWA meeting will be held on June 17th here in Ely, which should be very informative and educational. WAC Member Rod McKenzie recalled that Mr. Doug Carson was the Water Advisory Committee Chairman at the onset of the Groundwater Development Project, and when he and Mrs. Laurie Carson moved to Ely from Clark County, Mr. McKenzie had asked him about the possibility of a conflict. Mr. Carson’s response was that there was no conflict whatsoever. In 2003 the Carsons took out an ad in the newspaper inviting people to come and let their voices be heard regarding the water situation; that was the initial meeting where people came to learn about it. Mr. Herskovits commended the City of Ely, Baker, and other communities in White Pine County who are also engaged in this fight. He wished to recognize them as being very reflective of the unity shared in the rural areas that are endangered by this project. WAC Member Sam Hanson felt we should be educating people and stressing that there are alternatives to the pipeline project that should be explored, such as desalinization

and solar. He would like to see an educational campaign directed at Clark County to advise them they could have a limitless supply of water and develop a viable agricultural industry as well, if they would apply such alternative methods. Mr. Herskovits advised such education targeted at Clark County has been raised over the years; some of the problem comes down to financial resources and figuring out what forms of media would be most effective to achieve that. He suggested contacting Mr. Howard Watts, of the GBWN, who is doing that kind of work and perhaps could be approached to begin to develop some of those ideas.

At this point in the meeting, Water Advisory Committee Chairman Angela Martin cited their agenda item pertaining to approval of their March 15, 2016 minutes. Member Sam Hanson made a motion to approve the March 15 minutes; Member Kathryn Griffith seconded. Motion carried.

PUBLIC COMMENT

WAC Member Bill Butts wished to send thank-you letters to NDOW for all their work, as well as Senator Pete Goicoechea and Assemblyman John Ellison. This will be placed on the Water Advisory Committee agenda.

GBWN Member Rick Spilsbury also commented regarding the website for GBWN. He suggested the possibility of having students upload articles about the water issues, via WAC Member Sam Hanson, commensurate with getting the information out there.

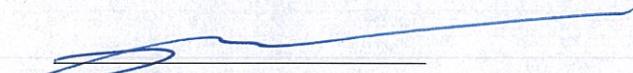
ADJOURNMENT

WAC Chairman Angela Martin entertained a motion to adjourn the meeting at 7:02 p.m. Member Sam Hanson made the motion; Member Bill Butts seconded. Motion carried.

Chairman Gary Perea adjourned the Board of County Commissioners meeting at 7:02 p.m.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF WHITE PINE
STATE OF NEVADA

BY:


CHAIRMAN

ATTEST:


WPC CLERK OF THE BOARD

