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October 2, 2018

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2018 OCT -3 AM 10:55
STATE ENGINEERS OFFICE

Jason King, P.E.
Nevada State Engineer
Department of Conservation and Natural Resources
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701-5250

Re: Workshop Process / Draft Order

Dear Mr. King:

As you know, I am legal counsel for Coyote Springs Investment LLC (“CSI”).

This letter is our formal objection to be placed in the record concerning the ongoing Workshop process and the Draft Order you distributed on or about September 19, 2018. With your Draft Order, you informed the participants to the Workshop process that a formal response must be provided on or before October 4, 2018. CSI objects to the manner in which the State Engineer’s office has proceeded in this matter.

The Draft Order is not unlike the May 16, 2018 letter you formally rescinded. Like your May 16, 2018 letter, the Draft Order has been distributed without any meaningful investigation, supporting hydrogeological studies or the Hydrologic Review Team (“HRT”) involvement. Moreover, the State Engineer’s office has failed to provide any technical reports, findings, test results or studies that in any way justify adoption of such a restrictive and draconian order. Without an opportunity to review and analyze any supporting technical information, it is impossible to provide appropriate, well-reasoned comments on the Draft Order.

CSI further objects to the unreasonable timing involved in this very prejudicial process. You have scheduled a response from CSI for October 4, 2018. The time allowed for a cogent and technologically sound response to be formulated in a period of 15 days (September 19, 2018 to October 4, 2018), is unfair, prejudicial and inequitable.

While in litigation with CSI in Case No. A-18-775817-J, the Court ordered the State Engineer’s office to produce the “record” on which your May 16, 2018 letter was

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based. The production of that “record” was required to be made on August 30, 2018. The record was described by counsel for the State Engineer as consisting of documents, reports and written material exceeding thousands of pages. We are confident that as of the date of the settlement (August 29, 2018), those documents were ready for production due the very next day.

The documents required to be produced by the State Engineer’s office in Case No. A-18-775817-J are purportedly the same documents that pertain to the positions you have stated in the Draft Order. However, expecting a meaningful and thorough response to the Draft Order without producing the documents upon which you relied in formulating the Draft Order is impossible and unfair. To avoid further prejudice, those documents should be immediately produced, and the October 4, 2018 deadline should be continued accordingly for at least 30 days. You are insisting that CSI provide a response to findings based on documents and records never produced. The prejudicial nature of the timing limitations you have imposed is self-evident.

The Workshop process has involved only a handful of meetings. In those meetings, consensus, sustained evaluation and analysis and in-depth evaluations never occurred. Further, the HRT process was informal and did not provide any technical consensus as to the interconnection and movement of ground water in the 6-Basins area. A basis for establishing the maximum allowable pumping limit was not discussed, evaluated or analyzed by HRT or at the Workshops.

The recent three-year time period used to establish an estimate of annual pumping is at best arbitrary and is without technical support. If a Draft Order is adopted, the time period used for determining the average annual pumping should include a period of time representative of the observed hydrogeological data. That type of analysis would include necessarily an assessment of long-term climatic changes, pumping from the four Reed Gardner units and the impact to streamflow and springs from other nearby alluvial and carbonate wells.

While the Draft Order addresses a possible vehicle for sustainably managing the water resources in the 6-Basins area, it fails to provide the process or timeline for implementation. It further fails to state how the administration of water rights can be combined with sustainable groundwater management. As currently drafted, the Draft Order precludes collection of data required to define the occurrence and movement of groundwater, thus preventing the maximization of the water resources of the State. Any

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limit on pumping is premature, since no relationship has been established between location of pumping and impact on spring flow and spring discharge. While CSI was led to believe that the Workshop process would focus on an adaptive management plan, the State Engineer has apparently departed from that priority.

Strikingly, the Draft Order prematurely and primarily harms one water right user, CSI. The State Engineer's office has permitted CSI to use 4,140 acre feet per year (afy). There are no findings, orders or decisions that directly challenge the notion that CSI's use of its 4,140 afy in and of itself has an adverse impact on senior right holders or to environmental concerns. Relying on the permits your office granted to CSI, CSI has invested millions of dollars in infrastructure in Coyote Spring Valley. From the dates of your Rulings in 6254 and 6255, neither your office nor any other regulatory agency has issued a report, finding, decision or order that suggests in any way that CSI's use of its 4,140 afy should not be permitted.

The Draft Order lacks an appropriate process for incorporating technical knowledge in an apparent *de facto* curtailment order. The Draft Order cedes the State Engineer's responsibility of assessing the validity of existing appropriative groundwater rights to the public. Without a process that incorporates technical knowledge, the planned hearings will be an exercise in futility. The outcome appears to have been predetermined. The failure to solicit and consider written reports describing the groundwater and surface water relationships in the 6-basin area has significant due process implications, since one informal meeting of the HRT (August 23, 2018) and one of senior water rights holder meeting (September 19, 2018) do not constitute any form of technical analysis. This is particularly true where the Draft Order fails to identify how currently undefined relationships between pumping and impacts on endangered species will and can be addressed through the administrative process. At the very least, the process and Draft Order should specify how, and over what time period, the required hydrogeologic data will and can be developed.

The nature of the process and the time restrictions imposed by the State Engineer's office has left CSI with no alternative but to express these objections and concerns and respectfully ask that they be made part of the formal record.

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Notwithstanding the foregoing, CSI, albeit in an unfair position, will provide a response on October 4, 2018 unless the State Engineer extends that date so that all involved are treated fairly and equitably.

Yours very truly,

KENT R. ROBISON

KRR:jf

cc: Emilia Cargill, Esq.
Michael Van Zandt, Esq.
James N. Bolotin, Esq.
Clients

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