

**IN THE OFFICE OF THE STATE ENGINEER
STATE OF NEVADA**

IN THE MATTER OF APPLICATIONS 54022)
THROUGH 54030 FILED TO APPROPRIATE)
THE UNDERGROUND WATERS OF THE)
SNAKE VALLEY HYDROGRAPHIC BASIN)
(195), WHITE PINE COUNTY, NEVADA.)

**INTERIM ORDER NO. 3
NOTICE OF POSTPONEMENT
OF HEARING
AND SCHEDULING**

I.

Pursuant to Interim Order No. 2 and Scheduling Order, the State Engineer established schedule and procedure in the matter of the administrative hearing regarding Applications 54022 through 54030. The evidentiary exchanges were set for June 19, 2009, and August 21, 2009, and the continuation of the administrative hearing begun on July 15, 2008, was set for September 28, 2009, through October 29, 2009.

II.

By letter dated March 30, 2009, the Applicant Southern Nevada Water Authority requested that the State Engineer postpone the administrative hearing for a period of one year. The request indicated that additional time was needed for preparation of the hydrologic ground-water model and specific results being required by the State Engineer. The Applicant indicates that it has been working with the United States Bureau of Land Management (BLM) in the preparation of a ground-water model for the federal environmental review process (NEPA) and believes the public interest would be best served by utilizing the same model in both the NEPA process and the water rights administrative hearing process. However, the Applicant indicates that because there have been significant and recurring delays in the preparation and review process, it is unlikely the model will be ready for the first evidentiary exchange set for June 19, 2009, and therefore, it requests postponement of the administrative hearing.

III.

The State Engineer provided all Protestants an opportunity to respond to the request for continuance. Protestants represented by Advocates for Community & Environment (Advocates) argue that the State Engineer should deny the applications because the Applicant is not demonstrating good faith and reasonable diligence in moving forward with the applications. Advocates takes issue with the Applicant first arguing that the State Engineer's process does not

have to wait for NEPA process and now it is using the NEPA process as the excuse to delay the hearing. Advocates argues that the Applicant already had one model, but abandoned it. Additionally, it argues that the Applicant has publicly admitted it does not have the money to build the project and told the Nevada legislature that it would not build the pipeline unless absolutely necessary. Thus, Advocates argues that the Applicant's rationale for requested delay is slim. If the State Engineer is inclined to delay, Advocates asserts that it should only be for a minimal amount of time, such as one month. Advocates also requests that before granting a delay that the State Engineer should require a detailed report on the current status of the model and should require the Applicant demonstrate to all that it is acting in good faith to develop evidence and require periodic updates.

The Federal Agency Protestants merely stated that they do not object to the request for stay, and Protestant Millard County, Utah, defers to the position of the Federal Agencies alleging it does so because the substance of the model is a secret to all right now but the BLM. However, Millard County requests the State Engineer to ask the Applicant whether the delay is to meet the State Engineer's requirements or the BLM's, and if the model is good enough for the State Engineer the hearing should continue as scheduled. Millard County requests that the Applicant provide information as to what it has now with regard to the model and questions whether there are other reasons for the request for delay.

Protestants Dean Baker and Baker Water & Sewer responded indicating that they do not believe they have enough information to adequately respond to the request for delay and also request information on what work has been accomplished to date, what still needs to be done, what is specifically meant by "significant and recurring delays," why the current model cannot be used, and why a whole year is required. These Protestants want the State Engineer to require the Applicant to provide more justification to delay the hearing for an entire year.

Nye County does not object to the request for delay.

The Eskdale Center indicates it would not object to having additional time to prepare for the hearing, but alleges that if the State Engineer grants the request, he is conceding *de facto* that his role is subordinate to that of other agencies and alleges that granting the request gives credence to the view that the Applicant will be allowed any actions it desires until it ultimately gets what it wants.

Protestant Ely Shoshone Tribe objects to the request to postpone arguing that the Applicant has had 20 years to prepare and requests the State Engineer deny the request to postpone the hearing and merely deny the applications.

IV.

The State Engineer is aware that the June 19, 2009, first evidentiary exchange is quickly approaching and parties need to know now whether or not they are required to meet that deadline. The State Engineer is an active observer in the NEPA process for the proposed pipeline and the required ground-water flow model, and is fully aware of issues relating to the modeling delay, but is also aware that the public is not informed as to that process. The State Engineer does not believe there is sufficient time for the requested reporting on the progress of the model before deciding whether or not to grant the request for postponement.

V.

At the first day of hearing on this matter held on July 15, 2008, various parties requested the State Engineer provide a significant amount of time to prepare for the evidentiary portion of the hearing in this case. The Federal Agencies requested that the earliest the hearing be held was January 2010 on the basis that there was not much information available with reference to Snake Valley indicating there are many more water rights in this hydrographic basin and the issues are different than have been addressed in previous hearings.¹ The Federal Agencies requested at least one full field season (2009) for data collection. Additionally, since the Federal Agencies are also involved in work related to the Spring Valley Stipulation and the data gathering taking place there, they felt information from that work would be important in the Snake Valley hearing. The National Park Service referenced a specific study it is conducting in Snake Valley with the final report due in September 2011.²

Millard County provided information on work being performed by the Utah Geological Survey that will not be completed until the summer of 2009, and noted that the Utah Legislature had funded a study to characterize springs and seeps as reasons for not proceeding to hearing for another year or so.³ Advocates argued for a significant period of time to prepare for the initial

¹ Transcript, pp. 19-20, public administrative hearing before the State Engineer, July 15, 2008, official records in the Office of the State Engineer.

² Transcript, p. 33.

³ Transcript, pp. 47-48.

evidentiary exchange and then also a significant period of time for analysis and review of the first evidence before the exchange of the rebuttal evidence.

While the State Engineer at the July 2008 hearing expressed his concern that there can always be another study, because of the Applicant's request, the State Engineer will reconsider comments and suggestions made at the hearing by not only the Applicant, but also the Protestants. The State Engineer is also aware that currently there is litigation regarding decisions already made in regard to the previous interim orders in this matter and believes it prudent to wait and to take that into account in considering the request to postpone.

The State Engineer does not agree that the Applicant is not demonstrating good faith and reasonable diligence in attempting to move forward with these applications; however, the State Engineer also agrees that the public should have more information as to what the Applicant meant by "significant and recurring delays."

This is the first hearing where the State Engineer has ordered the preparation of a ground-water model, and while it is unnecessary that the ground-water model for the NEPA process be identical to the model presented in the State Engineer's administrative hearing, in this case, the State Engineer believes it is preferable to have consistent models. Delays are understandable given the size and complexity of the ground-water model particularly when considering the NEPA process. The Applicant's argument that the State Engineer did not need to wait for completion of the NEPA process was made before the State Engineer ordered the preparation of a ground-water model. The State Engineer still takes the position that he does not have to wait for the completion of the NEPA process before review of the water right applications and strongly rejects Eskdale's argument that the State Engineer is *de facto* conceding that the State Engineer's role is subordinate to that of other agencies. The issue here is not completion of the NEPA process, but preparation of a completed, thoroughly reviewed model for the State Engineer's hearing.

It should be noted that the first model prepared by the Applicant was developed using FEMFLOW, which was not in a format acceptable to the State Engineer due to the proprietary claim, difficulty in review and simulation of results. Therefore, the State Engineer has ordered that all models be prepared in MODFLOW to accommodate accessibility to all parties and does not accept Advocates unsubstantiated allegations that the model would have shown adverse impacts in Snake Valley.

Because of the requested delay, the State Engineer has reconsidered all the parties' positions and related matters. The State Engineer is going to delay this hearing in order to provide all parties more time for their various scientists, experts and witnesses to perform their work and for other ongoing studies to be advanced. However, this is not to be taken as a sign that repeated requests for delay will be readily considered.

VI.

As a result of these considerations, PLEASE TAKE NOTICE, the continuation of the hearing in the matter of Applications 54022 through 54030 will be postponed until the fall of 2011. This timeframe takes into consideration, the ground-water modeling process, the information on field work and reporting provided by the parties, many of the Protestants concerns that hearings should not be held in the spring and summer as many of them are farmers and ranchers for whom a hearing during that timeframe is problematic, timing of the next legislative session and pending litigation. The June 19, 2009, and August 21, 2009, dates for the evidentiary exchanges are also continued.

The State Engineer is unable at this time to determine what physical space might be available for holding the administrative hearing in 2011 or the State Engineer's schedule; therefore, the specific dates for hearing will not be set at this time. However, the State Engineer notes and takes into consideration Advocates suggestion that the hearing take place in mid-October through November.

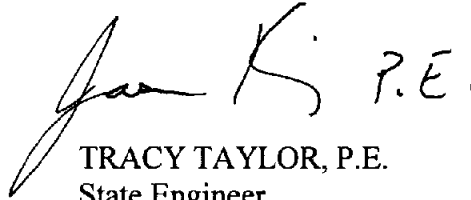
VII.

PLEASE TAKE NOTICE, the Applicant is hereby ordered to file in the Office of the State Engineer and serve on the Protestants by June 19, 2009, more specific information regarding the "significant and recurring delays" that have caused the request to continue the hearing.

VIII.

PLEASE TAKE NOTICE, the State Engineer may set additional status conferences as he may believe warranted during the time before the evidentiary portion of the hearing is reconvened. The State Engineer anticipates the day and month dates for evidentiary exchange will be very similar to those already established, but moved to 2011 and the hearing will be set for a similar timeframe during 2011.

Sincerely,

A handwritten signature in black ink that reads "Jason King P.E.". The signature is written in a cursive style with a large, sweeping initial "J".

TRACY TAYLOR, P.E.
State Engineer
JASON KING, P.E.
Acting State Engineer

TT/jm

Dated this 24th day of

April, 2009.

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