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November 3, 2010

VIA EMAIL AND FEDERAL EXPRESS OVERNIGHT

Ms. Susan Joseph-Taylor, Chief Hearings Officer
Division of Water Resources
Dept. of Conservation and Natural Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701

Re: Motion on Remand in *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op., NV S. Ct. Case No. 49718, Dist. Ct. Case No. CV-0608119

Dear Ms. Joseph-Taylor:

On behalf of the Petitioners in the *GBWN v. Taylor* case (GBWN), I write in response to your letter of October 21, 2010, which I received on October 25, 2010. Your letter responded to GBWN's Motion for a Declaratory Order in this case, which was properly filed on November 15, 2010.

Your letter of October 21 expressed "concern that your motion was not served on all who could be affected by your interpretation of the Supreme Court's decision." Your letter went on to indicate that the State Engineer would recognize "no timeline for responding" to the motion, and that the State Engineer would not address the merits of the motion, until the motion is served on persons who are not now and never have been parties of record in this case.

The concern expressed in your letter and the mistaken assumption that non-parties must be served before the timeline mandated by the applicable rules applies, both appear to be based on a misunderstanding of GBWN's motion and the relief requested therein. GBWN properly served all parties to the case at hand, *GBWN v. Taylor*, and has not requested any relief that extends to any non-party to this case. That GBWN's motion is directed solely at SNWA's applications and water rights is evident from the fact that the motion refers continuously and exclusively to "SNWA's 1989 applications" throughout its text. At no point does GBWN's motion argue that the remedy ordered by the Supreme Court in *GBWN v. Taylor* should be applied to 1989 LVVWD applications that were transferred to other unrelated entities, such as the Moapa Band of Paiutes.[1] Requiring service on such non-party entities that are unassociated with the motion or the case would be inappropriate and improper.

[1]The reference to California Wash on page 5 of GBWN's motion is essentially a quote from the State Engineer's July 7 Interpretation, which was referred to in the context of describing the State Engineer's interpretation of *GBWN v.*

The only non-party that properly could be considered affected, or covered, by GBWN's motion is the Las Vegas Valley Water District (LVVWD), which appears to hold permitted rights in Garnet and Hidden Valleys, which are referred to on page 6 of GBWN's motion (although SNWA, too, claims ownership of those rights in its "Conceptual Plan of Development" for its Clark-Lincoln-White Pine County Pipeline Project).[2] Given the pervasive overlap of governance and management between SNWA and LVVWD, for all practical purposes there is no distinction between SNWA and LVVWD with respect to the 1989 applications. LVVWD is a member agency of SNWA, with a management structure that is subsumed under SNWA's Board. *See* http://www.lvvwd.com/about/board_org.html (last visited Nov. 2, 2010). Such a degree of overlap in the governance of SNWA and LVVWD, together with their shared history of managing the applications in question, makes it logical to include the 1989 applications in Hidden and Garnet valleys within the scope of the Supreme Court's ruling in *GBWN v. Taylor*.

Requiring GBWN to serve entities unassociated with the case or motion would arbitrarily and improperly impose unprecedented procedural requirements on the Petitioners in this case that are contrary to the uniform procedures established for every level of administrative and judicial practice under Nevada law. Such a position also would depart from the consistent practice that has been followed with regard to every filing at every level of review over more than four years in this case, which always has been to serve the parties of record to the case.

This case was commenced over four years ago and is back before the State Engineer on remand from the Nevada Supreme Court, which reversed the State Engineer's and District Court's earlier erroneous rulings. As with every previous filing at every level of review in this case, GBWN's Motion for a Declaratory Order was properly served on every party of record in this case. The parties to this case have remained the same since it was commenced more than four years ago. The State Engineer and every court to handle this case have recognized those and only those parties, and have never required service on anyone else throughout the life of this case, including when the very issue of the scope of remedy was directly before the Supreme Court earlier in 2010.

Consistent with that procedural history, GBWN's service of this Motion on the parties to this case is precisely the correct procedure under all applicable Nevada rules of procedure governing every level of review in this case. For instance, the provision in Chapter 533 of the Nevada Administrative Code governing motions seeking an order from the State Engineer expressly requires that the motion be served "upon all parties of record" and no one else. *See* Section 2(3), LCB File No. R129-08, *available at* http://water.nv.gov/home/pdfs/r129-08_adopted.pdf. This mirrors the Nevada Rule of Civil Procedure governing service of motions before the District Court, which requires service only "upon each of the parties." N.R.C.P. 5(a). It is equally consistent with the Nevada Rule of Appellate Procedure governing the practice before the Supreme Court, which similarly requires that a filing be served only "on the other parties to the appeal or review." N.R.A.P. 25(b).

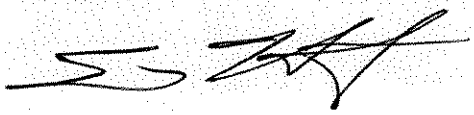
Taylor, not to bring that unrelated basin into the case. *See* State Engineer Interpretation of *GBWN v. Taylor*, at 1 (July 7, 2010).

[2] *See* Southern Nevada Water Authority Clark, Lincoln, and White Pine Counties Groundwater Development Project Conceptual Plan of Development § 1.3.3 (April 2010).

It would be improper to arbitrarily impose new procedural hurdles, or requirements, on an ad hoc basis at a late stage of a long-running case. The issues concerning the interpretation and implementation of the remedy ordered by the Supreme Court, which are addressed in GBWN's Motion, have been issues in this case for some time. Imposing a new burdensome requirement, and dragging non-parties into the case, would be inappropriate in the context of this straightforward motion requesting an order in this case, which is back before the State Engineer on remand.

For the reasons set forth above, GBWN respectfully requests the State Engineer to require that any response to GBWN's Motion be filed and served not later than November 5, 2010, or another date reasonably soon thereafter, which represents an extension beyond the 10-day deadline for responses under Section 2(7), LCB File No. R129-08. The State Engineer further should direct that GBWN reply to such response not later than a date that represents a comparable extension beyond the 10-day deadline for replies under Section 2(7), LCB File No. R129-08. Finally, once the State Engineer has received any response and reply, he should rule on the Motion as expeditiously as possible.

Sincerely,



Simeon Herskovits
Attorney for Petitioners

cc:
Jason King
Paul Taggart
Richard Berley