

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

State	'S EXHIBITS	1
DATE: _____		

IN THE MATTER OF APPLICATIONS 53987 )  
THROUGH 53992, INCLUSIVE, AND 54003 )  
THROUGH 54021, INCLUSIVE FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS OF SPRING VALLEY, CAVE )  
VALLEY, DELAMAR VALLEY AND DRY )  
LAKE VALLEY HYDROGRAPHIC BASINS )  
(180, 181, 182 AND 184), LINCOLN COUNTY )  
AND WHITE PINE COUNTY, NEVADA. )

NOTICE OF PRE-HEARING  
CONFERENCE AND HEARING

Please take notice: a pre-hearing conference in the above-referenced matter will begin promptly at **9:00 a.m., on Wednesday, May 11, 2011, to be held in the Mock Courtroom at The National Judicial College located on the University of Nevada Reno Campus. The National Judicial College is located east of the Whalen Parking Complex on North Virginia Street, Reno, Nevada.**

As set forth in Nevada Administrative Code (NAC) Chapter 533, the pre-hearing conference will be reported by a certified court reporter. The court reporter will file an original and one copy of the transcript with the State Engineer. The costs of the transcript will be borne equally by all parties actively participating during the pre-hearing conference. Anyone wanting a copy of the transcript should make arrangements with the court reporter.

If a person is a successor in interest to an owner of a water right or an owner of real property upon which a domestic well is located and the former owner of the water right or real property on which a domestic well is located had previously filed a written protest against the granting of an application, the successor in interest is allowed to pursue that protest if the State Engineer is notified using the appropriate form by **April 29, 2011**. The form can be found on the Nevada Division of Water Resources website at <http://water.nv.gov> under Water Rights Forms.

At the pre-hearing conference, the parties should be prepared to discuss the following:

A. Incorporation of any of the record from the hearings held in February 2008 on Applications 53987 through 53992 (Cave Valley, Dry Lake Valley and Delamar Valley) and in September 2006 on Applications 54003 through 54021 (Spring Valley) into this proceeding. Please be informed that the exhibits and exhibit lists from these previous hearings are available on the Nevada Division of Water Resources website under *Hearings - Past Hearings*. Transcripts from those hearings can be reviewed at the State Engineer's Office at 901 S. Stewart Street, Second Floor, Carson City, Nevada. Copies of the transcripts can be obtained from Capital Reporters at 775-882-5322.

**B. Defining the issues to be considered. A list of statutory issues is provided below and the parties are invited to suggest others.**

- (1) Justification of the need to import water from another basin (NRS § 533.370(6)).**
- (2) If the amount of water applied for is necessary (NRS § 533.060(1)) and reasonably required for the beneficial use to be served (NRS § 533.070(1)). This should include a current updated estimate of number of persons to be served and the approximate future requirement (NRS § 533.340(3)).**
- (3) The Applicant's intention in good faith to construct any work necessary to apply the water to beneficial use with reasonable diligence (NRS § 533.370(1)) and estimated time for completion of works and application of water to beneficial use (NRS § 533.380).**
- (4) The Applicant's financial ability and reasonable expectation to construct any work necessary to apply the water to beneficial use with reasonable diligence (NRS § 533.370(1)).**
- (5) The Applicant's demonstration that a plan for conservation is in place for the basin into which the water is to be imported and that such a plan is being effectively carried out (NRS § 533.370(6)).**
- (6) Unappropriated water in the basins of origin (NRS § 533.370(5)).**
- (7) Impact to existing rights and protectable interests in existing domestic wells (NRS § 533.370(5)).**
- (8) Whether the use of the water threatens to prove detrimental to the public interest (NRS § 533.370(5)).**
- (9) If the proposed action is environmentally sound for the basin of origin.**
- (10) If the proposed action is an appropriate long-term use of the water which will not unduly limit the future growth and development of the basin of origin.**

**C. Evidentiary exchanges.**

- 1. Who is to receive service of the exhibits, witness lists and summaries of testimony. Whether service only be to those who have indicated they will be presenting a case in chief during the administrative hearing.**
- 2. If any of the parties are able to agree during the pre-hearing conference for electronic exchange of the exhibits, witness lists and summaries of testimony.**
- 3. Assignment of exhibit numbers.**
- 4. Power points. Do power points need to be exchanged during the evidentiary exchange process? Should power points be entered into the evidentiary record? Will there be objections to the use of power points if they are not exchanged prior to the evidentiary hearing? Should a later date be established for the exchange of power points?**

**D. The hearing.**

- 1. Appearances. The State Engineer will begin the pre-hearing conference by taking appearances for the record and will not read the names of several hundred Protestants into the record and call for their appearances. Legal counsel who are representing more than one Protestant are requested to provide the State Engineer and the court reporter with a list at the pre-hearing conference of those Protestants they are representing.**

2. The parties will be asked whether they prefer written opening statements that will be submitted to the State Engineer and exchanged with the other actively participating parties prior to the actual hearing or whether they would prefer oral opening statements. If written opening statements are chosen, the parties will also need to consider the date by which those statements will be submitted and the page limit.
3. The parties will be asked to consider whether the hearing should be bifurcated in to segments that address various topics, such as those identified above or whether the standard format should be followed in which one party presents its entire case in chief, including cross-examination, and then other parties present their entire cases.
4. Order of case presentations.
5. Legal briefing, if any.
6. Hydrologic models. Will a model(s) be used, and if so, which model and other issues surrounding model evidence and testimony. Can the parties agree on the use of a particular model?
7. Closing arguments, should they be oral, written briefs or proposed draft rulings?
8. Whether the parties agree that NRS § 533.365(5) allows for an additional 240 days after receipt of the transcript or request for additional information for issuing a ruling or whether the one-year time limit provision of NRS § 533.370(2) applies.

#### **INTENT TO PARTICIPATE FORM**

In order to prepare for the pre-hearing conference and administrative hearing, the State Engineer needs to gather information from the Protestants and therefore includes with this notice an Intent to Participate form. The State Engineer needs to know who intends to put on a case in chief, if they will be represented by legal counsel and how much time they anticipate for their case in chief. **Please return the Intent to Participate Form to the Office of the State Engineer, Attention Susan Joseph-Taylor by April 29, 2011.**

#### **HEARING DATES**

Please take notice: pursuant to the authority set forth in NRS § 533.365, 533.370 and 533.375, the State Engineer hereby sets a hearing to consider the matter of protested Applications 53987, 53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020 and 54021. Accordingly, the hearing will begin promptly at **9:00 a.m., on Monday, September 26 continuing through Friday, September 30, 2011, Monday, October 3 continuing through Friday, October 7, Monday, October 10 continuing through Friday, October 14, 2011. Recess the hearing from October 15 through October 30. The hearing will reconvene on Monday, October 31 continuing through Friday, November 4, 2011, Monday, November 7 continuing through Thursday, November 10, 2011, and Monday, November 14 continuing through Friday, November 18, 2011, to be held at the Nevada State Legislature, 401 South Carson Street, Room 1214, Carson City, Nevada.** Please be aware that the starting and ending time each day may vary depending on the circumstances. The State Engineer does not believe

the hearing should take the amount of time currently being set aside, but reserved this many weeks for flexibility and to assure a hearing space as needed.

### **EXCHANGE OF EVIDENCE AND WITNESS LISTS**

The exchange of documents, witness lists and descriptions of witness testimony will take place in two simultaneous exchanges. The State Engineer requires that two copies of any of the documents referenced below be filed in the Office of the State Engineer along with the electronic copy discussed below.

**Initial Evidentiary Exchange:** The parties are hereby ordered to serve on each other and the State Engineer in Carson City, Nevada, no later than Friday, July 1, 2011, an exhibit list, a witness list, a reasonably detailed summary of the testimony of each witness, and copies of any documentary evidence intended to be introduced into the hearing record. If a witness is not identified as testifying on direct as to a certain topic, the witness may not be allowed to testify to the unidentified topic in his or her direct testimony. If a witness is to be presented to provide expert testimony, the evidentiary exchange shall include a written report prepared and signed by the witness, which shall contain a complete statement of all opinions to be expressed and the basis and reasons for those opinions, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or in support of the opinions and a statement of qualifications of the witness.

**Second Evidentiary Exchange:** The parties are hereby ordered to serve on each other and the State Engineer in Carson City, Nevada, no later than Friday, August 26, 2011, an additional exhibit list, witness list, witness testimony summaries or documentary evidence intended to be introduced at the administrative hearing that may be necessary in response to the other parties' first evidentiary exchange. This exchange is meant only to provide evidence that becomes necessary in rebuttal to the original exchange.

In addition to the hard copies of the lists, summaries and evidence to be served on the State Engineer in Carson City, Nevada, **the parties are hereby ordered to also file in the Office of the State Engineer in Carson City, Nevada, a computer disk that includes their exhibit list using the exhibit numbers assigned, their witness list, their witness summaries, all in Microsoft Word format and scanned copies of all their exhibits in pdf 200 dpi format.** The State Engineer will make these documents available on the Division of Water Resources website at <http://water.nv.gov>.

### **EXHIBITS**

Nevada Administrative Code Chapter 533 requires that exhibits introduced into evidence must be in a readily reproducible form on paper that is 8½" x 11" or foldable to that size. Larger charts, maps, drawings and other material will not be admitted into evidence, but may be used for demonstrative purposes. The State Engineer recognizes that if hydrologic models are used some evidence may need to be submitted on computer disks. An original and one copy of each

exhibit must be submitted to the State Engineer. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models. To expedite the exchange of information, reduce paper use, and lower the cost of participating in the hearing, participants are encouraged to agree to electronic service. Each electronically submitted exhibit must be saved as a separate pdf file, with the name of the party presenting the document, the exhibit number and a short description of the document in the title. For example, Exhibit No. 902 is submitted by the Southern Nevada Water Authority and is a report by Dr. Jones, it would be identified as *SNWA Ex. No. 902 Jones Report*.

#### **RULES OF EVIDENCE NOT APPLICABLE**

Pursuant to NRS § 533.365(4), the technical rules of evidence do not apply to administrative hearings before the State Engineer.

#### **COST OF TRANSCRIPT**

As set forth in NAC Chapter 533, the hearing will be reported by a certified court reporter. The court reporter will file an original and one copy of the transcripts with the State Engineer. The Applicant and Protestants participating in the administrative hearing will bear equally the court reporter's appearance fee, travel expenses, reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public. The Applicant and Protestants shall bear pro rata the cost of the portion of the transcript taken up by their own cases, including cross-examination during the case in chief. Anyone wanting a copy of the transcript should make arrangements with the court reporter.

#### **WITNESS EXAMINATION**

The order for examining witnesses shall be direct examination, cross-examination, re-direct examination and re-cross examination. Any redirect examination and recross examination will be limited to the scope of the cross-examination and the redirect examination, respectively. The State Engineer and members of his staff may ask questions at any time.

#### **LIMITATION ON EXAMINATION**

When more than one agent or attorney represents the Applicant or Protestant, only one counsel will be allowed to conduct direct examination or cross-examination of any particular witness, including redirect and recross-examination of said witness. However, a different counsel may participate in separate portions of the same case.

#### **PUBLIC COMMENT**

The State Engineer will take oral public comment on Friday, October 7, 2011, at the hearing in Carson City, Nevada. Oral public comment will be limited to three (3) minutes per person. Written public comment will be accepted by filing said written comment in the Office of the State Engineer, Carson City, Nevada, by 5:00 pm, Friday, December 2, 2011. E-mails will not be accepted as public comment. Please direct any written public comment to the attention of Susan

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Joseph-Taylor, Chief Hearing Officer, Nevada Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada 89701.

#### ACCOMODATIONS

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the pre-hearing conference or administrative hearing. If special arrangements are necessary, please notify Susan Joseph-Taylor at the Nevada Division of Water Resources, 901 South Stewart, Suite 2002, Carson City, Nevada, 89701, or by calling (775) 684-2872.

#### LEGAL COUNSEL

Legal counsel who are not licensed to practice law in the State of Nevada are required to comply with Supreme Court Rule 42. The Verified Application to Associate form that needs to be filed with the Nevada State Bar can be found on the Nevada Division of Water Resources website found at <http://water.nv.gov> under Water Rights Forms. Nevada Supreme Court Rule 43 provides an exception for lawyers employed by or representing the United States Government.

#### NEWS MEDIA

For any additional information, please contact Bob Conrad, Department of Conservation and Natural Resources Communications Officer, 775-684-2712 or [bconrad@dcnr.nv.gov](mailto:bconrad@dcnr.nv.gov). During the pendency of these proceedings, and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Engineer or the Chief Hearing Officer or any members of the hearing team staff regarding substantive or controversial procedural matters within the scope of the proceeding. Any communications regarding potentially substantive or controversial procedural matters, including but not limited to evidence, briefs, and motions, must demonstrate that all parties were served and the manner of service. Communications regarding non-controversial procedural matters are permissible and should be directed to the Chief Hearing Officer.

Sincerely,

  
Susan Joseph-Taylor  
Chief, Hearings Section

Dated this 1<sup>st</sup> day of

April, 2011.

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**SERVICE LIST**

**Notice of Pre-Hearing Conference and Hearing  
In the Matter of Protested Applications 53987 – 53992, 54003 - 54021  
SOUTHERN NEVADA WATER AUTHORITY 1989 APPLICATIONS IN  
SPRING VALLEY, CAVE VALLEY, DRY LAKE VALLEY AND DELAMAR VALLEY**

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