



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

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August 19, 2010

INFORMATIONAL STATEMENT REGARDING
SOUTHERN NEVADA WATER AUTHORITY
WATER RIGHT APPLICATIONS IN
SPRING, CAVE, DRY LAKE AND DELAMAR VALLEYS

In the Matter of Protested Applications 53987, 53988 (Cave Valley - Basin 180), 53989, 53990 (Dry Lake Valley - Basin 181), 53991, 53992 (Delamar Valley - Basin 182), and 54003 through 54021 (Spring Valley - Basin 184)

Purpose of this Statement. The purpose of this statement is to provide the public with information regarding the State Engineer's plans for republishing and rehearing the protested applications held by the Southern Nevada Water Authority (SNWA) in Spring, Cave, Dry Lake, and Delamar Valleys.

Background. In 1989, the Las Vegas Valley Water District filed water right applications to appropriate groundwater from Spring, Cave, Dry Lake and Delamar Valleys for importation into the Las Vegas Area. These applications are now held by the Southern Nevada Water Authority. In the early 1990s, status conferences were held on these applications, but many Protestants asked that the proceedings be delayed. The Applicant did not pursue moving forward with the applications before the Office of the State Engineer until the next decade. A public administrative hearing was held on the applications in Spring Valley on September 11-25, 2006, resulting in State Engineer's Ruling No. 5726 issued on April 16, 2007. A public administrative hearing was held on the applications in Cave, Dry Lake and Delamar Valleys on February 4-15, 2008, resulting in State Engineer's Ruling No. 5875 issued on July 9, 2008.

Subsequent to the issuance of these rulings, the Nevada Supreme Court on June 17, 2010, in the case of *Great Basin Water Network v. State Engineer and Southern Nevada Water Authority*, held that the State Engineer violated his duty by failing to act upon the applications within one year after the close of the protest period, because the applications were not properly postponed according to the 1989 version of NRS 533.370(2)(a) or (b). The Court found that because of the State Engineer's failure, an equitable remedy is warranted and that remedy is that the

applications must be republished and the protest period reopened. The State Engineer is intending to send these applications for republication in the next few months, hold a hearing, and issue a ruling within one year from the last day of the protest period.

The State Engineer cannot over emphasize that the one-year timeframe is incredibly compressed for consideration of a matter of this magnitude. The reason for this informational statement is to provide all interested persons additional notice as to upcoming timeframes and to instruct all who intend to participate to begin preparations for hearing.

Costs, efficiency and budgets.

As you are aware, Nevada State Government is in the midst of an extreme budget crisis and funds and resources of this agency to conduct a hearing of this magnitude are very limited. Since a large number of people are anticipated as parties to this matter, the State Engineer must take into consideration the costs for the reproduction of every document, mailing, etc. There is no budget to pay for hearing forums that charge a fee, there are no funds for cameramen to broadcast the hearing over the internet, there are minimal travel funds, and the budget for transcripts is limited. The cost of this hearing alone could use nearly the entire transcript budget for the year. Therefore, every effort must be made by all involved to assist in reducing costs in terms of dollars and personnel for this extremely time consuming and expensive proceeding. Additionally, hearings of this magnitude take the staff of the Division of Water Resources away from handling the matters of others in Nevada; therefore, the State Engineer is going to be cognizant of the amount of time that will be set aside for hearing and will attempt to streamline the process wherever possible. Any reasonable suggestions by the hearing participants as to how to handle this matter in the most cost effective way possible will be considered.

STATE ENGINEER'S ANTICIPATED TIMELINE FOR FURTHER ACTION

Republication - November 2010. The State Engineer intends to republish the notice of the SNWA's applications in Spring, Cave, Dry Lake and Delamar Valleys at the same time and to hold the administrative hearing on the applications as one proceeding. The matter will be heard as one hearing for efficiency and savings of costs and resources for all involved. The State Engineer does not control when the newspaper will actually publish an application, but is intending to submit the applications to the newspapers for republication in late October 2010, anticipating publication in November 2010. Publication runs for four (4) consecutive weeks (NRS 533.360). The notices will be republished in the Lincoln County Record or the Ely Daily Times depending on the particular application.

Protest period - closing anticipated late December 2010. Any person may file a protest within 30 days after the last date of publication (NRS 533.365). The State Engineer is unable to specifically identify the actual publication dates at this time, but anticipates the protest period may be in or about December 2010. Any person interested in the matter must look for the notices and determine the specific dates for which the protest period will close for each application. The original Protestants are not required to refile their protests, unless they want to change the grounds of the protests. However, please be aware the State Engineer may not have a current address on file and any of those Protestants should update their address as soon as

possible if it has changed since the filing of the original protests. Any successors in interest to original Protestants are required to file the appropriate paperwork as addressed below.

Pre-hearing information - December 2010 & January 2011. Due to the large number of parties anticipated and the inability of the State Engineer to utilize the Legislative space prior to and during the Legislative Session, the State Engineer is not planning on holding a pre-hearing conference. Dates for evidentiary exchanges and administrative hearing are going to be set by the State Engineer. However, any suggestions for holding the hearing in an orderly and expeditious manner will be accepted and the State Engineer will expect all parties to be prepared to provide information regarding the number of witnesses they anticipate and an estimate of the time needed to put on their case by **January 28, 2011.** Please be informed that the State Engineer may limit the time provided based on the consideration of such things as number of participants, amount of time any party suggests that may appear excessive, organization of the hearing, etc.. The State Engineer strongly encourages parties who intend to file protests and put on cases to confer and attempt to consolidate their cases or witnesses.

Legal briefs. The State Engineer anticipates setting a time well prior to the hearing that parties may file briefs addressing legal issues if parties to the hearing suggest that such briefing is necessary.

Evidentiary exchanges.

First evidentiary exchange is anticipated to be **April 21, 2011.**

Rebuttal evidentiary exchange is anticipated to be **June 16, 2011.**

Administrative hearing - July and August 2011. The State Engineer is planning on holding several weeks of hearing, recessing for a few weeks and then reconvening to finish the hearing. It is presently anticipated that the first portion of the hearing will address issues germane to all the basins, for example, NRS 533.370(1)(c) and 533.370(6)(a) & (b), then the hearing will likely focus first on Spring Valley followed by Cave, Dry Lake and Delamar Valleys. However, please note, since the State Engineer is going to accept any suggestions for streamlining the hearing and efficiently presenting evidence, this might change. The dates currently planned for the administrative hearing are **Monday through Friday, July 18-22, July 25-29, August 1-5, recess through August 21, and reconvene for hearing August 22-26, August 29 -September 2 and September 5-9, 2011.** The hearing will be held at the Nevada Legislative building in Carson City, Nevada. In the case of *Great Basin Water Network v. State Engineer and Southern Nevada Water Authority*, the Nevada Supreme Court held that the State Engineer must either approve or deny the applications within one year after the final date for filing a protest, unless the matter is postponed using specific statutory criteria. With the number of parties anticipated, the State Engineer does not believe there will be a postponement under any of the statutory criteria. Therefore, all are hereby informed that the State Engineer is going to complete the hearing and decision-making process within that one-year timeframe.

Opening and closing statements and proposed rulings. The State Engineer is currently considering that opening statements will be filed in writing prior to the administrative hearing and ten (10) minutes will be provided for parties to briefly summarize those statements. The State Engineer anticipates that closing statements will not be necessary due to the fact that we are considering allowing the parties to file proposed rulings within a few weeks after the close of the hearing. Please remember to keep in mind the one-year timeframe past the close of the protest date for issuance of a decision and the time constraints it imposes and plan accordingly. We also encourage the parties to consider facts that are not in controversy for which stipulations might be entered, for example, endangered species that exist and where they are found.

NRS 533.364 Inventory. Nevada Revised Statute 533.364 provides that:

1. In addition to the requirements of NRS 533.370, before approving an application for an interbasin transfer of more than 250 acre-feet of groundwater from a basin which the State Engineer has not previously inventoried or for which the State Engineer has not conducted, or caused to be conducted, a study pursuant to NRS 532.165 or 533.368, that the State Engineer or a person designated by the State Engineer shall conduct an inventory of the basin from which the water is to be exported.

The inventory must include:

- (a) The total amount of surface water and groundwater appropriated in accordance with a decreed, certified or permitted right;
- (b) An estimate of the amount and location of all surface water and groundwater that is available for appropriation in the basin; and
- (c) The name of each owner of record set forth in the records of the Office of the State Engineer for each decreed, certified or permitted right in the basin.

2. The provisions of this section do not:

- (a) Require the State Engineer to initiate or complete a determination of the surface water or groundwater rights pursuant to NRS 533.090 to 533.320, inclusive, or to otherwise quantify any vested claims of water rights in the basin before approving an application for an interbasin transfer of groundwater from the basin; or
- (b) Prohibit the State Engineer from considering information received from or work completed by another person to include in the inventory, if the inventory is otherwise conducted in accordance with the provisions of subsection 1.

3. The State Engineer shall charge the applicant a fee to cover the cost of the inventory. The amount of the fee must not exceed the cost to the State Engineer of conducting the inventory.

4. The State Engineer shall complete any inventory conducted pursuant to subsection 1 within 1 year after commencing the inventory.

By letter dated August 19, 2010, the State Engineer designated the SNWA as the entity to conduct an inventory of the basins from which the water is to be exported under the above-referenced applications and indicated his hope that this inventory could be completed before the first evidentiary exchange. We are aware that this is less than the one year provided for under

the statute, but the statute provides that this work must be completed prior to the State Engineer being able to approve an application for an interbasin transfer of more than 250 acre-feet of groundwater from the basins at issue here. The State Engineer notes this is another factor complicated by the one-year timeframe for making a decision.

Successor in interest protestants.

Nevada Revised Statute 533.370(1) provides for successors in interest to pursue original protests under certain circumstances. Successors in interest to original Protestants are strongly encouraged to file the appropriate form as soon as possible if they intend to pursue an original protest filed regarding the above-referenced water right applications. The form can be found on the Division of Water Resources webpage <http://water.nv.gov> under “Forms Room.” Please be informed that successors in interest can also file their own protest during the new protest period.

Webpage and e-mails. During this entire process, all pertinent documents will be scanned and placed on the webpage dedicated to this matter found under the Nevada Division of Water Resources website. You are encouraged to visit this website for information.

News media. Please contact Bob Conrad, Department of Conservation and Natural Resources Communications Officer, 775-684-2712 or bconrad@dcnr.nv.gov for information.