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

In the Matter of *Great Basin Water Network*)
v. Taylor, 126 Nev. Adv. Op. 20 (June 17,)
2010); Nev. S. Ct. Case No. 49718; Dist. Ct.)
Case No. CV-0608119 on Remand to the)
Nevada State Engineer.)

INTERIM ORDER

GENERAL

I.

On October 15, 2010, pursuant to NAC §§ 533.390(2)(5) (2009) [sic] as amended by Section 2 of Legislative Counsel Bureau (LCB) File No. R129-08, the Great Basin Water Network, et al. (GBWN) filed a Motion for Declaratory Order on Scope and Implementation of Remedy Ordered by Supreme Court. This motion requests the State Engineer issue a declaratory order (1) to define the scope of the Supreme Court's ruling in *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op. No. 20 (June 17, 2010) (*GBWN v. Taylor II)* and (2) to consolidate the hearings on the original 1989 applications with the SNWA's 2010 applications. The GBWN requests the State Engineer declare that the Supreme Court's decision requires the re-noticing of all of the Southern Nevada Water Authority's (SNWA) 1989 applications, whether granted by permit issued years ago or whether they are still applications that have not been acted on to date. It also requests that since the applications filed in 2010 are duplicative of the original 1989 applications, the State Engineer consolidate the hearings on the 1989 and 2010 applications, or in the alternative, declare that the protests to the SNWA's duplicative 2010 applications will be treated as valid and effective as to both the original underlying 1989 applications and the 2010 applications.

II.

On October 21, 2010, the Office of the State Engineer informed the GBWN that the State Engineer was concerned that the Motion impacted water right applications and permits held by entities that had not been served with the Motion and, until the Motion was served on all concerned, no timeline for responding to the Motion would be set. Many of the original 1989 applications, all of which were filed by the Las Vegas Valley Water District, have been conveyed to other entities such as the Virgin Valley Water District, Lincoln County Water District, Moapa Band of Paiute Indians and Southern Nevada Water Authority (SNWA). The Motion had only

been served on the SNWA. By letter dated November 3, 2010, the GBWN took the position that it was not required to serve anyone who was not a party to the case of *GBWN v. Taylor* because it was not requesting relief that extends to any non-party in the case. It indicated that the relief it is requesting is directed solely at the SNWA's applications and water rights and it is not arguing that its Motion should be applied to any of the original 1989 applications filed by the Las Vegas Valley Water District that have been transferred to other unrelated entities, such as the Moapa Band of Paiute Indians.

On November 4, 2010, the Office of the State Engineer informed the GBWN that it was unable to ascertain which applications its Motion was addressing and requested GBWN to provide a list specifically identifying the applications its Motion is referencing. By letter dated November 9, 2010, the GBWN provided that list and included the following water right applications and previously permitted water rights: Applications 53947, 53949, 53952, 53963 (which is held by the Lincoln County Water District),[1] 53965, 53966, 53967, 53968, 53969, 53970, 53971, 53972, 53973, 53974, 53975, 53976, 53977, 53978, 53979, 53980, 53981, 53982, 53983, 53985, 53986, 53987, 53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021, 54022, 54023, 54024, 54025, 54026, 54027, 54028, 54029, 54030, 54055, 54056, 54057, 54058, 54059 (54055 through 54059 are held by the Las Vegas Valley Water District), 54061, 54063, 54064, 54065, and Permits 53948, 53950, 53951, 54060, 54062 (which is abrogated by Permits 72792, 72793, 72794), 54066, (which is abrogated by Permits 72795, 72796 and 72797), 54068, 54069, 54073 (which is held by the Las Vegas Valley Water District) and 54074 (which is held by the Las Vegas Valley Water District).

III.

On December 1, 2010, the SNWA filed an Opposition to Motion for Declaratory Order on Scope and Implementation of Remedy Ordered by Supreme Court. The SNWA requests the State Engineer reject the Motion in its entirety and refuse to issue any declaratory order on the matters addressed in its opposition. The SNWA asserts that the Motion is not the "case at hand" in *GBWN v. Taylor II*, but rather is an entirely new and separate matter that GBWN is attempting to initiate because the Motion extends to matters beyond those 34 applications that were at issue in *GBWN v. Taylor II* case. The SNWA argues that the GBWN is making a request that the State

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[1] In its Reply, the GBWN withdrew its motion as to Application 53963.

Engineer reopen previously permitted water right applications that were not the subject of the "case at hand" and there is no statutory authority for the State Engineer to hold a hearing on such a request and so the Motion does not fall under the hearing rules on protested applications cited to by GBWN as authority for filing the Motion. On December 22, 2010, the GBWN filed a Reply to the SNWA's Response and takes the position that the Nevada Supreme Court's decision in *GBWN v. Taylor II* applies to all of the 1989 SNWA applications even if the water right application was permitted long before its 2005/2006 request to reopen the protest period because, it asserts, those permits were granted in violation of law.

On January 10, 2011, NV Energy through its legal counsel sent the State Engineer a letter in which it describes its interest in Permits 54073 and 54074 and presents its arguments as to why the Motion is improper as to those permits.

FINDINGS OF FACT

I.

A declaratory order or advisory opinion is a tool by which a citizen can request an agency give its opinion as to the applicability of a statutory provision, agency regulation or decision of the agency. A portion of the GBWN's Motion is not requesting the State Engineer determine the applicability of a statutory provision, is not requesting the State Engineer interpret the applicability of an agency regulation and is not requesting the applicability of an agency decision, i.e., a ruling or order of the State Engineer. Its Motion is requesting the State Engineer determine the applicability of the Nevada Supreme Court's decision in the case of *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op. 20 (June 17, 2010) ("*GBWN v. Taylor II*") to matters that were not before the Nevada Supreme Court. It is trying to fashion a method to reopen final decisions made by the State Engineer in matters that were not before the State District Court or the Nevada Supreme Court.

The State Engineer finds GBWN is attempting to use its Motion to reopen matters long since decided by the State Engineer that were not before either the State District Court or the Nevada Supreme Court in its appeal of the 34 applications in Snake, Spring, Cave, Dry Lake and Delamar Valleys. The State Engineer finds the Motion for Declaratory Order is not requesting the State Engineer interpret the applicability of a statutory provision, agency regulation or decision of the agency, but rather is attempting an improper and collateral attempt at an untimely appeal of a final decision and as such that portion of the Motion is denied.

II.

The GBWN cites to NAC §§ 533.390(2)&(5) (2009) as amended by Section 2 of LCB File No. R129-08 as its authority for requesting a declaratory order; however, the State Engineer notes there is no such regulatory provision as NAC § 533.390. The rules found in NAC chapter 533 are only applicable to hearings on protested water right applications and are not an avenue for reopening final decisions of the State Engineer.

Nevada Revised Statute § 533.365(6) instructed the State Engineer to adopt rules of practice regarding the conduct of a hearing held on protested water right applications and NAC § 533.010(1) specifically provides that the provisions of NAC chapter 533 govern the practice and procedure of hearings before the state engineer on protests against applications. Section 2 of LCB File No. R129-08 provides that a party requesting an order by the State Engineer concerning a matter subject to a protest hearing must title the request as a motion and submit the motion in writing before the hearing in accordance with subsection 5. The State Engineer finds these rules only apply to a hearing on protested applications. Conversely, the rules do not apply to water right applications that were decided and permitted long ago.

The State Engineer finds that Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 are not subject to the provisions of NAC chapter 533 as they are permitted water rights, not protested applications, and the Motion for Declaratory Order is not proper under the provisions of NAC chapter 533 as to these Permits and that portion of the Motion is denied.

III.

In *GBWN v. Taylor II*, the Nevada Supreme Court specifically indicated that "[t]his appeal concerns 34 of SNWA's remaining 1989 groundwater applications in the Spring, Snake, Cave, Dry Lake and Delamar Valleys." *GBWN v. Taylor*, 234 P.3d 912, 915 (Nev. 2010). Those were the only applications/permits that were before the Court and that was the "case at hand."

By letter dated January 10, 2011, NV Energy informed the State Engineer regarding its interest in Permits 54073 and 54074 indicating that it has leased a portion of these water rights from the Las Vegas Valley Water District until 2054 and in reliance on the issuance of those permits NV Energy has spent over 1.4 billion dollars in the acquisition, construction and operation of power plants that utilize this water. It argues that once the permits were issued, the right to use the water beneficially is regarded and protected as real property citing to *In re Filippini*, 66 Nev. 17, 21-22 (1949) and argues that NV Energy's right to use the water under its

lease vests it with a protectable property interest in the water of which it cannot be arbitrarily deprived, particularly without due process of law.

Many courts, including the United States Supreme Court, have recognized the importance of the conclusiveness of judgments regarding water rights. *See, Nevada v. United States*, 463 U.S. 110, 120 & n.10, 103, S.Ct, 2906, 2918 n.10 (1983) (noting that policies regarding the conclusiveness of court judgments are "at their zenith in cases concerning real property, land and water.") If the State Engineer were to reopen the decisions on permits issued long before the GBWN's request to reopen the protest period as to the 34 applications that were at issue in *GBWN v. Taylor II*, it would create a constant threat of litigation over every water right permit and jeopardize the investment-backed expectations that arise in those projects created from the granting of a water right.

The permits in dispute are Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074. Application 53948 (Tikapoo Valley-Northern Part), Applications 53950 and 53951 (Tikapoo Valley-Southern Part), Applications 54062 and 54066 (Three Lakes Valley-Southern Part) and Applications 54068 and 54069 (Three Lakes Valley-Northern Part) were granted pursuant to State Engineer's Ruling No. 5465 issued on January 4, 2005, which is more than one year prior to the GBWN requesting the State Engineer republish and reopen the protest period on the 34 applications specifically addressed in *GBWN v. Taylor II*. No appeal was taken from that ruling and it is now final.

Application 54060 was granted by State Engineer's Ruling No. 5533 issued on September 26, 2005, again well before the GBWN's motion in the case of the 34 applications. No appeal was taken from that ruling and it is now final.

Applications 54073 (Garnet Valley) and 54074 (Hidden Valley) were granted by State Engineer's Ruling No. 5008 issued on March 20, 2001. Ruling No. 5008 was appealed, but resolved by Ruling on Remand No. 5143 issued on July 22, 2002.[2] No appeal was taken from the Ruling on Remand and it is now final.

On January 5, 2006, the State Engineer held a pre-hearing conference in the matter of 34 water right applications now held by the SNWA in Snake, Spring, Cave, Dry Lake and Delamar Valleys. The applications noticed for that pre-hearing conference were Applications 53987,

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[2] The State Engineer notes that State Engineer's Ruling on Remand No. 5143 specifically addressed why the State Engineer had not acted within the one-year time period found in NRS § 533.370(2).

53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021, 54022, 54023, 54024, 54025, 54026, 54027, 54028, 54029 and 54030.[3] At the pre-hearing conference, various persons requested the State Engineer republish notice of these 34 water right applications and reopen the period for filing a protest. On March 8, 2006, the State Engineer issued an intermediate order holding he was not authorized by statute to republish or reopen the protest period and denied the request.

On July 6, 2006, the GBWN, et al. filed a Petition for Declaratory Order to Re-notice 16 Year Old Groundwater Applications in the Delamar Valley, Dry Lake Valley, Cave Valley, Spring Valley, and Snake Valley pursuant to which they requested the State Engineer re-notice only the 34 applications that were under consideration at that pre-hearing conference, those being the applications in Snake, Spring, Cave, Dry Lake and Delamar Valleys (Applications 53987 through 53992 and 54003 through 54030). The State Engineer denied this request by intermediate order dated July 27, 2006, again holding he was not authorized by statute to republish or reopen the protest period. On August 22, 2006, the GBWN, et al. filed a petition for judicial review challenging the State Engineer's denial of its request to republish and reopen the protest period as to 34 water right applications at issue. It was this appeal that resulted in the Nevada Supreme Court's decision in *GBWN v. Taylor II.*

The GBWN argues that the Nevada Supreme Court's decision in *GBWN v. Taylor II* should be interpreted broadly and is applicable to those water right applications that were granted by Ruling No. 5008, issued on March 20, 2001, Ruling No. 5143, issued on July 22, 2002, Ruling No. 5465 issued on January 4, 2005, and Ruling No. 5533 issued on September 26, 2005. These rulings were issued before the request to reopen the protest period in the matter of the 34 SNWA applications in Snake, Spring, Cave, Dry Lake and Delamar Valleys and were not before the courts in the "case at hand."

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[3] The State Engineer notes that the original notice for the pre-hearing conference left off 54030, but this was later corrected.

In the State Engineer's request for reconsideration to the Nevada Supreme Court in *GBWN v Taylor I*, the State Engineer asked the Court to clearly limit its opinion to apply only to protested applications and hold that it will not apply to existing permitted and certificated water rights or to applications to which no protests have been raised. The State Engineer also asked the Court to limit its holding as to the 34 applications that were before the Court. In *GBWN v. Taylor II*, the Court said that it was granting the State Engineer's petition for rehearing in part with respect to the State Engineer's request to clarify that its opinion applies only to protested applications. *GBWN v. Taylor II*, 234 P.2d at 913.

NV Energy argues that the Nevada Supreme Court's use of the term "SNWA's 1989 applications" is obviously only meant to refer to the 34 applications subject to the appeal before the Court. "Otherwise, the Court would have over-stepped its jurisdictional bounds by issuing an advisory opinion as to any other SNWA 1989 applications that had been **previously** permitted where no case or controversy over those particular permits was pending before the Court. *See* Nev. Const. art. 6 § 4; *City of North Las Vegas v. Cluff*, 85 Nev. 200, 452 P.2d 617 (1969)."[4]

The State Engineer finds the Nevada Supreme Court did not intend its decision to reopen permitted water rights that were not before it and over which it had no jurisdiction, particularly when it clearly stated that it was granting the State Engineer's petition in part and clarified that its opinion only applies to protested applications. The decisions on Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 were final and no appeals were pending. The decision in *GBWN v. Taylor II* does not apply to previously permitted water rights, except those in Spring Valley (Permits 54003-54021), which were part of the 34 applications/permits that were specifically before the Court.[5] The State Engineer finds that Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 are not subject to the Nevada Supreme Court's decision in *GBWN v. Taylor II.*

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[4] Letter dated January 10, 2011, from Frank Flaherty, legal counsel to NV Energy, to State Engineer, official records in the Office of the State Engineer.

[5] The decision on Permits 53987, 53988 (Cave Valley), 53989, 53990 (Dry Lake Valley), 53991, 53992 (Delamar Valley) had been reversed by the State District Court.

IV.

While the State Engineer recognizes the Nevada Supreme Court's decision in *GBWN v. Taylor II* is really only applicable to the 34 applications/permits that were before the Nevada Supreme Court, the State Engineer has interpreted the decision as having broader implications than just the 34 applications that were before the Court. There appears to be no dispute between the GBWN and the SNWA that there are certain protested applications beyond the 34 that require republication pursuant to the Nevada Supreme Court's decision prior to the State Engineer taking action on them.

The State Engineer finds the decision in *GBWN v. Taylor II* is applicable to applications filed after March 31, 1947, and protested prior to July 1, 2002, that have not been acted on to date and do not fall within the exceptions for action found in NRS § 533.370. Those applications will be republished pursuant to NRS § 533.360, and in fact, the State Engineer has already sent out more than 70 letters to applicants indicating that their applications will need to be republished.

The State Engineer finds that the Nevada Supreme Court's decision in *GBWN v. Taylor II* requires the republication and reopening of the protest period as to Applications 53947, 53949, 53952, 53965, 53966, 53967, 53968, 53969, 53970, 53971, 53972, 53973, 53974, 53975, 53976, 53977, 53978, 53979, 53980, 53981, 53982, 53983, 53985, 53986, 53987, 53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021, 54022, 54023, 54024, 54025, 54026, 54027, 54028, 54029, 54030, 54061, 54063, 54064 and 54065.

V.

Permits 54073 and 54074 and Applications 54055, 54056, 54057, 54058, 54059 are held by the Las Vegas Valley Water District in the records of the Office of the State Engineer. NV Energy asserts a right to use the water under Permits 54073 and 54074 through a long-term lease. The Las Vegas Valley Water District was not served with the Motion nor was it a party to the case of *GBWN v. Taylor*. In its Reply, the GBWN argues that its Motion only applies to applications and permits held by the SNWA and has not "asked the State Engineer to consider

any matter extending beyond the matters at issue in *GBWN v. Taylor II* on remand from the Supreme Court."[6] However, it has requested the State Engineer consider matters beyond those before the Nevada Supreme Court in that it has addressed its Motion to applications and permits held by the Las Vegas Valley Water District. It argues that the State Engineer should not require service of its Motion on the Las Vegas Valley Water District because there is a pervasive overlap of governance and management between the SNWA and the Las Vegas Valley Water District and for all practical purposes there is no distinction between the two entities with respect to the 1989 water right applications. The State Engineer does not agree. The SNWA and the Las Vegas Valley Water District are separate legal entities, as are other members of the SNWA such as Boulder City and the Big Bend Water District. A 1989 water right application held by the Las Vegas Valley Water District that is to be transferred into the name of the SNWA or anyone else requires a deed, which in itself shows the two are separate legal entities. The Las Vegas Valley Water District was not a party to the pre-hearing conference on the applications in Spring, Snake, Cave, Dry Lake and Delamar Valleys and was not a party to the litigation.

The State Engineer finds due process dictates that the GBWN's motion should have been served on the Las Vegas Valley Water District. The State Engineer finds that the Las Vegas Valley Water District as a water right applicant and permit holder certainly could claim an interest relating to the subject matter of the requested action. The State Engineer finds that the GBWN's failure to serve the Las Vegas Valley Water District is a failure to serve a necessary party who was not a party to the litigation and hereby dismisses the Motion as to Applications 54055, 54056, 54057, 54058, 54059, and Permits 54073 and 54074.

VI.

The GBWN also requests the State Engineer consolidate the proceedings on the original 1989 SNWA applications with the 2010 SNWA applications which duplicate the original 1989 applications. In the alternative, the GBWN requests the State Engineer declare the protests to the SNWA's duplicative 2010 applications be treated as valid and effective as to both the original underlying 1989 applications and the 2010 applications. The SNWA argues that the 2010 applications were a result of the uncertainty created by the Nevada Supreme Court's first

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[6] Reply to SNWA Response to Motion for Declaratory Order on Scope and Implementation of Remedy Ordered by Supreme Court, p. 2.

decision in *GBWN v. Taylor I*, which forced the SNWA to re-file nearly all its 1989 filings. In *GBWN v. Taylor II*, which is the Nevada Supreme Court's decision after petitions for reconsideration, the Court eliminated the uncertainty as to the validity of the 1989 applications.

The GBWN argues the State Engineer clearly has the authority to consolidate the proceedings on the 1989 and 2010 applications pursuant to NAC § 533.340, which provides that "[t]he state engineer may consolidate two or more proceedings if it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation." The GBWN asserts that since the 2010 applications duplicate the 1989 applications, the issues are substantially the same. This argument ignores the fact that the SNWA could withdraw the 2010 applications and then the matter would not be consolidated as there would be no applications to consolidate and the protests to the 2010 applications will be moot leaving those Protestants with no standing at the hearing on the 1989 applications.

The SNWA asserts that the 2010 applications were filed to safeguard the opportunity to pursue the "very same water rights," but this statement ignores the reality that there are other intervening applications that could significantly change the analysis as to water availability under the 2010 applications. For example, in Spring Valley, the SNWA has acquired applications for in-basin irrigation use that were filed in 2001, and Alan and Shelley Johnson, the Corporation of Church of Jesus Christ of Latter-Day Saints and others have applications senior to the 2010 applications that will require action before the 2010 applications will be addressed. Similarly, in Snake Valley, intervening applications have been filed by Baker Water and Sewer G.I.D., Tim MacLeod and Richard Bruckman and in Cave Valley Pamela Jensen, Paul Lewis, Bruce Jensen and Cave Valley Ranch, LLC have applications that will require action before the SNWA's 2010 applications will be addressed.

The GBWN pleads lack of financial resources as one of the reasons why the State Engineer should transfer the protests to the 2010 applications to the 1989 applications. While the State Engineer is sensitive to the cost of these proceedings on all parties, Nevada water law does not allow him to transfer the protests as requested. The filing of a protest is not a mere technical formality; rather, it is the statutorily authorized process by which a protestant obtains standing in the matter of the particular application it protests. The Nevada Supreme Court specifically held that the State Engineer must re-notice SNWA's 1989 applications and reopen the period during which appellants may file protests. *GBWN v. Taylor II*, 234 P.3d at 914.

The GBWN also argues that the rules that pertain to the practice and procedure in a hearing on a protested application allow him to transfer the protests from the 2010 applications to the 1989 applications. The State Engineer does not agree. Those rules were not meant to change the substantive provision of Nevada water law as it relates to the filing of a protest. The filing of a protest is not provided for under those regulations, but rather under Nevada Revised Statute § 533.365.

The State Engineer is very concerned about the precedent that would be set if the protest to one application is allowed to be considered against another application. First, it violates the water law. While the GBWN argues the situation in relation to the SNWA applications is out of the ordinary, and thus, the statutory process should be ignored, there are other proposals for large projects where others will likely argue that the State Engineer should "ignore the law for us." Second, in *GBWN v. Taylor*, the GBWN argued that the letter of the law must be followed, but now argues that the State Engineer can ignore the specific and unambiguous provisions of that law. The State Engineer believes that if he allows the statutory requirements to be bent or ignored here it will open the door for endless argument and litigation in this and other completely unrelated situations.

The State Engineer finds there is good cause not to consolidate the hearing on the 1989 applications with the 2010 applications and that he has no legal authority to transfer a protest from one application to another.

CONCLUSIONS

I.

The State Engineer concludes the Nevada Supreme Court's decision in *GBWN v. Taylor II* requires the republication and reopening of the protest period as to Applications 53947, 53949, 53952, 53965, 53966, 53967, 53968, 53969, 53970, 53971, 53972, 53973, 53974, 53975, 53976, 53977, 53978, 53979, 53980, 53981, 53982, 53983, 53985, 53986, 53987, 53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021, 54022, 54023, 54024, 54025, 54026, 54027, 54028, 54029, 54030, 54061, 54063, 54064 and 54065.

II.

The State Engineer concludes that Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 are not affected by the Nevada Supreme Court's decision in *GBWN v. Taylor II*. The State Engineer concludes the decisions as to Permits 53948, 53950,

53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 are final and not subject to the collateral attack attempted through this Motion. The State Engineer concludes the rules of practice and procedure on hearings of protested applications are not applicable to these permits.

III.

The State Engineer concludes that due process required the Las Vegas Valley Water District be served with notice of the GBWN's Motion and the opportunity to be heard on the Motion be afforded. The State Engineer concludes the GBWN's failure to provide notice to the Las Vegas Valley Water District of the Motion requires dismissal of the Motion as to Applications 54055, 54056, 54057, 54058, 54059 and Permits 54073 and 54074.

IV.

The State Engineer concludes he has no statutory authority to transfer the protests from the 2010 SNWA applications to the 1989 SNWA and there is good cause not to consolidate the hearing on the 1989 applications with the 2010 applications.

ORDER

The State Engineer denies the GBWN's Motion for Declaratory Order on Scope and Implementation of Remedy Ordered by Supreme Court as to Permits 53948, 53950, 53951, 54060, 54062, 54066, 54068, 54069, 54073 and 54074 on the grounds that a request for a declaratory order is improper as to these permits, the rules on the practice and procedure as to hearings on protested applications are also improperly used as to these permits, and the Nevada Supreme Court did not intend its decision in *GBWN v. Taylor II* to apply to permitted water rights that were not before it and over which it had no jurisdiction. The State Engineer grants the Motion for Declaratory Order as to protested Applications 53947, 53949, 53952, 53965, 53966, 53967, 53968, 53969, 53970, 53971, 53972, 53973, 53974, 53975, 53976, 53977, 53978, 53979, 53980, 53981, 53982, 53983, 53985, 53986, 53987, 53988, 53989, 53990, 53991, 53992, 54003, 54004, 54005, 54006, 54007, 54008, 54009, 54010, 54011, 54012, 54013, 54014, 54015, 54016, 54017, 54018, 54019, 54020, 54021, 54022, 54023, 54024, 54025, 54026, 54027, 54028, 54029, 54030, 54061, 54063, 54064 and 54065 and they will be republished and the protest period reopened. Republication will take place when the State Engineer is closer to taking action on these applications. Additionally, the Motion is dismissed as to Applications 54055, 54056, 54057, 54058, 54059 and Permits 54073 and 54074 on the grounds the holder of these water right applications and permits was not served with the Motion. The Motion is denied as to the

request to consolidate the hearing on the 2010 applications with the 1989 applications and as to the request to transfer the protests from the 2010 applications to the 1989 applications.

Respectfully submitted,

JASON KING, P.E.
State Engineer

Dated this 20th day of January, 2011.

CERTIFICATE OF SERVICE

I hereby certify that a copy of State Engineer's Interim Order in the Matter of *Great Basin Water Network v. Taylor*, 126 Nev. Adv. Op. 20 (June 17, 2010); Nev. S. Ct. Case No. 49718; Dist. Ct. Case No. CV-0608119 on Remand to the Nevada State Engineer. was served by U.S. mail, certified, postage prepaid, on January 20, 2011, on the following:

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