



SOUTHERN NEVADA WATER AUTHORITY

1001 South Valley View Boulevard • Las Vegas, NV 89153
(702) 258-3939 • snwa.com

August 27, 2007

Tracy Taylor, P.E.
State Engineer, State of Nevada
Department of Conservation and Natural Resources
Division of Water Resources
901 South Stewart St., Suite 2002
Carson City, NV 89701

Re: *In The Matter of Application Nos. 53987 through 53992 Filed To Appropriate Underground Waters of Cave (180), Dry Lake (181), and Delamar (182) Valleys*

Dear Mr. Taylor:

The Southern Nevada Water Authority (SNWA) has requested that the State Engineer schedule a hearing to consider the above-referenced applications (DDC Applications). SNWA believes that the time of the State Engineer, the applicant and the protestants will be most efficiently utilized if the State Engineer issues an interim ruling, based solely upon prior rulings and hearings, that SNWA has met certain statutory criteria regarding the DDC applications, and that certain protest issues against the DDC Applications are dismissed.

The DDC Applications are part of a set of applications originally filed by the Las Vegas Valley Water District (LVVWD) in October of 1989 (1989 Applications). The State Engineer has previously considered and granted several applications included in the 1989 Applications. Those rulings include the Spring Valley Ruling (5726), the Interim Spring Valley Order No. 4, the Tikapoo and Three Lakes Valley Rulings (5465 and 5621), the California Wash Ruling (5115) and the Garnet and Hidden Valleys Ruling (5008). In those rulings, the State Engineer addressed and conclusively ruled upon some of the same statutory criteria and protest issues that are raised in the consideration of the DDC Applications. SNWA requests that the State Engineer rule that certain statutory criteria and protest issues have been previously determined in order to avoid the expenditure of time and resources of once again addressing these issues at the hearing, or during the preparation of a ruling on the DDC Applications.

When considering the DDC Applications, the State Engineer must review whether SNWA has satisfied NRS 533.370(1), which generally provides that the State Engineer *shall approve* an application submitted in proper form which contemplates the application of water to beneficial use if:

- (1) the application is accompanied by the prescribed fees; and
- (2) the applicant establishes, in good faith, that it will construct the necessary infrastructure to put the water to beneficial use and it has the financial ability to do so.

Also, NRS 533.370(5) provides that the State Engineer make the following determinations before granting the DDC Applications:

- (1) there is unappropriated water in the proposed source;
- (2) the proposed use does not conflict with existing rights;
- (3) the proposed use does not conflict with protectible interests in existing domestic wells as set forth in NRS 533.024; and
- (4) the proposed use does not threaten to prove detrimental to the public interest.

Further, since the DDC Applications involve an interbasin transfer of water, the State Engineer must consider the factors outlined in NRS 533.370(6). Those factors are:

- (1) whether the applicant has justified the need to import the water from another basin;
- (2) whether any required conservation plan has been adopted and effectively implemented by the applicant;
- (3) whether the proposed action is environmentally sound as it relates to the basin from which the water is being exported;
- (4) whether the proposed action is an appropriate long-term use that will not unduly limit growth and development in the transferring basin; and
- (5) other factors that the State Engineer determines are relevant.

STATUTORY CRITERIA PREVIOUSLY DECIDED. The following statutory criteria were conclusively determined in prior rulings involving the 1989 Applications.

Proof of Good Faith and Reasonable Diligence. (NRS 533.370(1)(c)) - This criterion was reviewed by the State Engineer in the Spring Valley Ruling and the State Engineer conclusively determined that SNWA had proceeded in good faith and with reasonable diligence toward the development of water rights for use in the same groundwater development project that will develop any water rights granted pursuant to the DDC Applications. Spring Valley Ruling 5726 at 25.

Good Faith Intent to Construct, Financial Ability and Reasonable Expectation to Perfect. (NRS 533.370(1)(c)) - This statutory criterion was conclusively determined regarding other 1989 Applications in Spring Valley and in Tikapoo and Three Lakes Valleys. Spring Valley Ruling 5726 at 26; Tikapoo and Three Lakes Ruling 5465 at 15.

Justified Need to Import Water. (NRS 533.370(6)(a)) - The State Engineer reviewed this criterion in numerous rulings involving the 1989 Applications. Specifically, in the rulings for Spring Valley applications and Tikapoo and Three Lakes Valleys applications, the State Engineer determined that SNWA has established the need to import water to the Las Vegas Valley. Spring Valley Ruling 5726 at 44; Tikapoo and Three Lakes Ruling 5465 at 27, 53.

Conservation Plans in Importing Basin. (NRS 533.370(6)(b)) - The State Engineer has on several occasions determined that SNWA and its purveyor agencies have implemented adequate conservation plans in southern Nevada. Accordingly, this issue has been conclusively determined and should not be readdressed in the hearing and ruling on the DDC Applications. Spring Valley Ruling 5726 at 44; Spring Valley Intermediate Order No. 4 at 10-11; Tikapoo and Three Lakes Ruling 5465 at 18, 22, 54; Tikapoo and Three Lakes Ruling 5621 at 26; Garnet and Hidden Valleys Ruling 5008 at 26-27; California Wash Ruling 5115 at 27-28.

PROTEST ISSUES PREVIOUSLY DECIDED. As the State Engineer is aware, many of the protests against the 1989 Applications were similar. Some of these protest issues have already been conclusively ruled upon in previous hearings for other 1989 Applications. Since many of the same protest issues were raised against the DDC Applications, they can be summarily dismissed now based on the reasoning in the previously issued rulings for other 1989 Applications.

Inadequacy of Applications - The protests allege that the DDC Applications did not adequately describe the project works and cost of the works, the time to construct the works and put the water to beneficial use, or the approximate number of persons to be served by the water rights requested in the applications. This issue was dismissed previously and should be dismissed summarily now as well. Spring Valley Ruling 5726 at 18-19; Spring Valley Intermediate Order No. 4 at 8; Tikapoo and Three Lakes Ruling 5465 at 27; Tikapoo and Three Lakes Ruling 5621 at 14; Garnet and Hidden Valleys Ruling 5008 at 28; California Wash Ruling 5115 at 28-29.

Need for Water - The protests included a claim that the applications should be rejected because Las Vegas does not need the water, population projections have been overestimated, and the rates for water in Las Vegas will increase so demand for water will decrease and the water will not be needed. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 19-20; Spring Valley Intermediate Order No. 4 at 11; Tikapoo and Three Lakes Ruling 5465 at 14, 19, 21-22, 53; Garnet and Hidden Valleys Ruling 5008 at 28, 34; California Wash Ruling 5115 at 29, 34.

Las Vegas is Big Enough - The protests included a claim that the applications should be rejected because Las Vegas is big enough and growth controls should be established. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 21; Tikapoo and Three Lakes Ruling 5465 at 27-28; Tikapoo and Three Lakes Ruling 5621 at 26.

Failed to Provide Relevant Information - The protests included a claim that relevant information regarding the 1989 Applications had not been provided to the public. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 21; Spring Valley Intermediate Order No. 4 at 9; Tikapoo and Three Lakes Ruling 5465 at 14; Garnet and Hidden Valleys Ruling 5008 at 28.

Air Pollution - The protests raised a claim that granting the applications would lead to degraded air quality. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 21-22; Spring Valley Intermediate Order No. 4 at 6; Tikapoo and Three Lakes Ruling 5465 at 15, 20-21, 28-29; Garnet and Hidden Valleys Ruling 5008 at 34; California Wash Ruling 5115 at 34.

Subdivision Maps - The protests included a claim that the applications should be rejected because they will cause the State Engineer to approve subdivision maps. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 22; Spring Valley Intermediate Order No. 4 at 11; Tikapoo and Three Lakes Ruling 5465 at 29.

Need for Comprehensive Planning - The protests included a claim that the applications should be rejected because comprehensive planning should occur before they are considered. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 23; Spring Valley Intermediate Order No. 4 at 8; Tikapoo and Three Lakes Ruling 5465 at 20; Garnet and Hidden Valleys Ruling 5008 at 26; California Wash Ruling 5115 at 27.

Lock-up Resources and Overstate Future Demand - This protest issue was raised to challenge whether the applications were locking-up resources and overstating the demand for water in the Las Vegas Valley. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 23-24; Tikapoo and Three Lakes Ruling 5465 at 19; Garnet and Hidden Valleys Ruling 5008 at 28-31; California Wash Ruling 5115 at 29-31.

Further Study/Inadequate Scientific Information - The protests included a claim that the applications should not be granted until additional information and studies were completed. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Ruling 5726 at 54; Spring Valley Intermediate Order No. 4 at 8; Garnet and Hidden Valleys Ruling 5008 at 31; California Wash Ruling 5115 at 29, 32-33.

Letter to Tracy Taylor

August 27, 2007

Page 5

Lack of Right-of-Way Across Federal Land - The protests included a claim that the applications should be rejected because the applicant could not establish rights-of-way across federal land. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Intermediate Order No. 4 at 7; Tikapoo and Three Lakes Ruling 5465 at 17-18; Garnet and Hidden Valleys Ruling 5008 at 27; California Wash Ruling 5115 at 28.

Incorporate by Reference Other Protest Issues - The protests included a claim that all other protests and their protest issues were incorporated by reference. This claim was dismissed previously and should be dismissed summarily now. Spring Valley Intermediate Order No. 4 at 11.

Right to Amend Protests - The protests included a claim that the protests could be amended. This issue was dismissed previously and should be dismissed summarily now. Spring Valley Intermediate Order No. 4 at 11.

SNWA believes there may be additional protest issues related to the DDC Applications that should be dismissed; however, the points presented here should be summarily dismissed at this time based solely upon previous rulings of the State Engineer. Thank you for your consideration of this matter and please contact me with any questions.

Sincerely,



John J. Entsminger
Deputy General Counsel

cc: Mr. George N. Benesch, Esq., George N. Benesch Law Office
Mr. Peter Fahmy, Esq., U.S. Department of Interior Office of the Solicitor
Mr. Matt Kenna, Esq., Western Environmental Law Center
Mr. Steve Palmer, Esq., U.S. Department of Interior Office of the Solicitor