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October 15, 2010

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Re: Applications 53987 through 53992, 54003 through 54021 (Spring, Cave, Dry Lake and Delamar Valleys)

October 15, 2010

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Ladies and Gentlemen:

Thank you for your letters and emails in response to the Informational Statement I posted to the Nevada Division of Water Resources website regarding my plans to address the Nevada Supreme Court's decision in *Great Basin Water Network v. State Engineer and Southern Nevada Water Authority*. Through this one letter, I am attempting to consolidate answers, address some of the concerns raised, and also respond to some of the statements submitted by all of you in your many letters and emails. Please be informed that I will also be posting a second Informational Statement on the Division of Water Resources website in very short order. In the future, please be informed that emails are not considered official records filed in the Office of the State Engineer. Letters that anyone wants to make part of the record in this matter, should be sent to my office in Carson City by the U.S. Postal Service to be officially time stamped in and made part of the record.

Several of you took issue with placing the Informational Statement on the Division of Water Resources (DWR) website as opposed to direct notification and asserted the statement did not comply with the law. When I have a specific service list for a specific proceeding, the Applicant and any formal protestant will be served with direct notification by mail of any action taken as to those specific applications. The Informational Statement on the DWR website was merely a courtesy notice to the public far in advance of any formal action on specific applications. For your information, the Informational Statement was also sent to newspapers in Nevada and Salt Lake City. There is no change in any processes for formally serving notice and I have not exercised any authority changing any process. I was merely trying to be publically transparent in my thoughts regarding moving forward with this matter in general. When the time comes for formal notice, I assure you that formal notice will be served.

The applications in Spring, Cave, Dry Lake and Delamar Valleys have already been reverted to application status as can be verified by examination of the public records on file in the Office of the State Engineer or by accessing the DWR water rights database through our public website at <http://water.nv.gov>. You will see in the database that their status is "RFP" which means the application is ready-for-action but protested.

I respectfully disagree with your statements as to which applications need to be re-published. The Nevada Supreme Court had no jurisdiction over the applications in Coyote Spring, Three Lakes, Tikapoo, Garnet, Hidden Valleys or California Wash. When the applications in these basins were acted on, there were no requests to re-open the protest period in those proceedings. Therefore, it is my position that the applications in Coyote Spring Valley, which are part of an ongoing study, and those in Garnet Valley, Hidden Valley, California Wash, Three Lakes and Tikapoo Basins, which have already been permitted and for which there were no appeals, are not subject to the Supreme Court's decision. However, Applications 53947, 53949 (Tikapoo North), 53952 (Tikapoo South), 54061 (Three Lakes North), 54063, 54065, 54106 (Three Lakes South), which were not previously acted on and are still before the State Engineer for action, will be re-published and the protest period re-opened, as well as other 1989 SNWA applications which have not been acted on to date such as those in Snake Valley, Railroad Valley and Virgin River Valley. There are no 1989 Southern Nevada Water Authority (SNWA) applications in Indian Springs.

An issue for which much criticism is being levied is that of the transfer of the 2010 protests to the 1989 applications once the 1989 applications are re-noticed. The criticism suggests that I have the authority or discretion to accomplish this transfer. I am on the record as stating that while I would like to be able to make this transfer occur, there is no statutory authority that allows a protest from one application to be applied to another application, nor do the rules pertaining to the practice and procedure in hearings on protested applications grant me that authority. Those rules are procedural, not substantive and the State Engineer's authority is statutory not equitable. This interpretation has been confirmed by my legal counsel. In light of how we got to where we are with these hearings, I hope you understand that these hearings are too important to have them potentially remanded, yet again, over a decision that is not founded in any statute or regulation. Therefore, protests are required for both the 1989 and 2010 applications. However, if a person has already filed a protest to a 1989 application, they may file an amended protest during the new protest period without having to pay an additional protest fee. Additionally, I have noticed that many of the protests that were filed to the 2010 applications assert the same protest grounds. Nothing prevents these Protestants with like protest grounds from joining together to file one protest to the re-noticing of the 1989 filings; however, let it be clear that they will only be permitted to present one single case by a single representative of the group.

As to the one-year provision, the statute does not say one year to go to hearing, it says one year to issue a decision. Nevada Revised Statute § 533.370(2) provides that the State Engineer shall approve or reject each application within 1 year after the final date for filing a protest; therefore, the one-year time period to issue a decision runs from the last date for filing a protest. I am not taking an "extreme interpretation with regards to the statutory 1-year rule." This is the very statute that was litigated in the *Great Basin Water Network* case.

I publically proposed a hearing date well in advance because of the tight timeline. I tried in the best way I knew how to inform anyone interested in this matter of the plans for re-publishing and re-hearing the applications in these four basins. Since issuing that tentative schedule, I have received your numerous letters whereby concerns were voiced about the hearing dates. I have weighed those concerns and decided to move the anticipated hearing schedule back a couple of months. In short order, a second Informational Statement will be issued that sets forth a new hearing date. Again, this is only a public informational statement. I will issue a formal notice at a later date setting forth the exact hearing dates. I do not agree with the statement that people are being excluded from being heard on procedures. You in fact are doing that right now. Giving general public notice a full year in advance of the actual hearing date is more than fair to all involved.

I do not agree that the basin inventory falls under the provision of NRS § 533.368 study, which allows for postponement beyond the one-year timeframe. Nevada Revised Statute § 533.364 is a separate and distinct provision from NRS § 533.368, and is not included in the reasons for postponement found in the 1989 version of NRS § 533.370, which is the section of the water law the Supreme Court found the State Engineer needed to address if postponing the SNWA applications. It is also not included in the current version of NRS § 533.370.

By letter dated October 6, 2010, I rescinded my August 19, 2010, letter ordering the SNWA to conduct the inventory. I have decided to have staff from the Division of Water Resources perform the inventory with the cost to be paid by the SNWA. I specifically note that the statute does not require the inventory to be completed prior to any hearing, but rather only requires that it be completed prior to my making a decision. However, it is our goal to have the inventory completed prior to the first evidentiary exchange. There is no provision in the water law for the Protestants participation in developing or reviewing an inventory; however, nothing prevents the Protestants from providing their own evidence on the existence of water rights in these particular basins, an estimate of the water available for appropriation or whether the use of the water as proposed will adversely impact those water rights. Please note that NRS § 533.364 does not require that unadjudicated vested water rights or claimed federal reserved water rights be included in the inventory. Nevada Revised Statute § 533.364 provides that the inventory must include decreed, certificated and permitted water rights and specifically provides that the inventory is not a basin adjudication or that it requires quantification of vested water right claims.

One of you proposed invoking the provision of NRS § 533.365(5), which provides that if a hearing is held, the State Engineer has 240 days after the date of receipt of the transcripts to issue a ruling. It is unclear to me if this provision has validity after the Supreme Court's decision. I believe that due to the Supreme Court's decision we have statutes that appear to be in conflict, those being the timing provisions in the 1989 version of NRS § 533.370(2) and 533.365(5).

One of you asked that I postpone action on the applications before even opening the protest period; one of you expressed concern about protests being published during Thanksgiving, Christmas and New Year's holiday period; and many of you expressed concern about hearings being held during the summer months due to farming activities. Even though I am postponing the re-publication process for a few months, the new hearing schedule goes into the holiday season. I can only respond that everyone has some reason why some action should not be taken during some time of the year and I do not believe that I will ever make all parties happy with any proposed schedule. The Nevada Supreme Court's decision was first issued in January 2010 and then re-issued in June 2010. I am now intending to re-publish the applications in Spring, Cave, Dry Lake and Delamar Valleys in February 2011, which is eight months after the latest Supreme Court decision. I am responding to your request for some postponement, but I also have a responsibility to move forward with the hearing on these applications.

Please note that the above-referenced 1989 SNWA applications filed in Spring, Cave, Dry Lake and Delamar Valleys are the only applications I am considering at this time, and issues related to other applications in these or other basins can be raised at the time those applications are considered. I do not know when the applications in other basins will be re-noticed, but know they will be staggered over a number of years. As you may know, by letter dated August 26, 2010, I indicated that the Snake Valley hearing has been postponed indefinitely. The only applications I am intending to re-publish for reconsideration at the present time are the 1989 SNWA applications in Spring, Cave, Dry Lake and Delamar Valleys.

Some of you expressed concern about addressing all four valleys in one hearing. I do not agree that having the four basins in one hearing will be confusing. As I have previously indicated, I am intending to address general issues first, and then move to Spring Valley and then follow-up with Cave, Dry Lake and Delamar Valleys. The last hearing addressed the applications in Cave, Dry Lake and Delamar Valleys together and it was not confusing.

I have given serious consideration to the concerns raised about holding a pre-hearing conference. Frankly, based on experience, I question whether a pre-hearing conference with several hundred participants, all with different issues as to time, scheduling, etc., will be very productive. If I find a pre-hearing conference is absolutely necessary, I will schedule one; however, I cannot schedule one until after the applications are re-published and the protest period closed. It is only then will I know who all the parties are to the proceeding. After the close of the protest period, I intend to serve notice by certified mail on all parties to the proceeding of how the process will move forward.

Please note, that in the Informational Statement I did not "require" consolidation of protestant's cases and expert witnesses, but rather only encouraged the parties to confer and attempt to consolidate their cases or witnesses in an effort to reduce costs for Protestants and to streamline the hearing process.

I hesitate to say that there will be nothing incorporated from the previous hearing into the new hearing as perhaps there is evidence or testimony out there that all parties can agree upon for incorporation. However, having said that, and given the apparent push for a completely new hearing, that is in essence what I intend to do. If you believe that a portion of the previous hearings can be incorporated into this hearing, Protestants should present that matter to the Applicant, and if there is an agreement, present it to my office for consideration prior to any administrative hearing.

As to the questions about whether hydrologic models will be required, I anticipate ordering the Applicant to provide a groundwater flow model with results that show the effects of pumping groundwater under the applications. The order for this model will be addressed in the notice that sets these specific applications for hearing.

I am not sure how I can be much clearer than the specific statutory sections identified in the Informational Statement as being general in nature. These sections of the water law are applicable to the applications in all four basins as they address the good faith intent to build the project, the financial ability to actually construct the project, whether the Applicant has justified the need to import the water and if a conservation plan is being effectively carried out. I invite you to provide me with suggestions on any other subjects that you believe are general in nature that could be addressed during the early part of the hearing and applicable to all four basins.

As to internet broadcast, the Informational Statement did not say there would be no internet feed; it states there are no funds to provide for cameramen. When holding hearings at the Nevada Legislative building, the legislative staff can fix the camera either on the dais or the witness, but without cameramen there is no ability to move the camera around showing the different people or to switch from location to location throughout the state. While I appreciate that people like this feature, I still must work within the confines of the budget and there are no funds available for cameramen. The public will be able to see and hear the hearing over the

internet, there just won't be a cameraman to change views. As was previously done, the public will be provided an opportunity to submit written public comment if they are unable to be in Carson City for the actual hearing.

The parties to the proceeding are the Applicant, the Protestants who filed protests in 1989 and those who will file protests to the above-referenced applications when they are re-published. If a Protestant filed a protest in 1989, they will be contacted of any action taken, but they must have an accurate address on file with the Division of Water Resources. The Protestants need to assure they have a current address in the file for the specific application(s) they protested. Only after the re-publication period and the close of the protest period will a current service list of parties to the proceeding be compiled.

One of you indicates that I should find those 1989 Protestants for which we have no current addresses. I am not sure what you think I should do. This matter has been in every newspaper in Nevada and many in Utah for the last several years and talked about by many, many people all over both states. If there are Protestants out there for which the DWR has no current address, they have had lots of general public notice of the proceedings. It is their responsibility to inform the DWR of a current address. Having said that, I listed all the Protestants for the above-referenced applications for whom the DWR did not have current addresses in State Engineer's Ruling No. 5726. If any of you are able to assist the DWR by providing current addresses for any of those people, it would be greatly appreciated. My Informational Statement also indicated that people need to provide current addresses to the DWR and the Informational Statement was forwarded to newspapers in both Nevada and Utah. Additionally, when a certified mailing is returned by the U.S. Postal Service, office policy is that the mailing be re-sent by regular mail if it appears the address may be correct.

The parties are generally admitted to the administrative hearing when they make an appearance at the hearing. In order to gather information on who intends to put on a formal case-in-chief, I intend to gather that information later in the process. It is my experience that while some people may file a protest, they do not intend to put on a full case-in-chief as some others may do. In the first Informational Statement, I indicated that parties should be prepared to provide information by a certain date regarding the number of witnesses they anticipate and an estimate of time needed to put on their case. I anticipated this was the way to gather information as to who intended to put on a case-in-chief and again was another reason for the Informational Statement in that it informs people to be prepared to answer these questions in a short timeframe. Actual appearances are taken during the opening day of the hearing or any time prior to that date. Since I am moving the hearing date, the date mentioned in the first Informational State will also change.

In summary, the informational statements are nothing more than general public notices to get information out far in advance of any specific action. At a future date, I intend to send out a formal notice that sets forth the specifics of the hearing process, but I cannot do that until I have a formal service list of the actual Protestants. The Informational Statement was nothing more than a proposed plan of action. No matter when I publish the applications, the one-year timeframe is very difficult to work with, but I am constrained by the Supreme Court's decision.

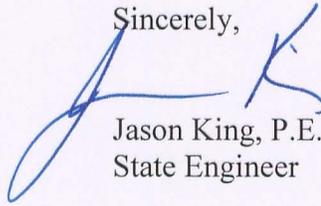
Re: Applications 53987 through 53992, 54003 through 54021

October 15, 2010

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I hope I have adequately addressed the issues raised in your letters and emails.

Sincerely,

A handwritten signature in blue ink, appearing to be 'JK' with a large loop on the left side.

Jason King, P.E.  
State Engineer

cc: John Entsminger, Southern Nevada Water Authority