



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

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October 18, 2010

SECOND

**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 advanced and revised information regarding the State Engineer's plans for re-publishing and re-hearing the protested applications held by the Southern Nevada Water Authority (SNWA) in Spring, Cave, Dry Lake, and Delamar Valleys and to provide additional information in light of questions and comments that have been posed regarding the first Informational Statement.

Please note that the above-referenced 1989 SNWA applications filed in Spring, Cave, Dry Lake and Delamar Valleys are the only 1989 SNWA applications that are being addressed at this time. Issues as to other applications in other basins can be raised at the time those applications are considered. It is not known when the applications in other basins will be re-noticed, but their consideration will be staggered over a number of years. As you may know, by letter dated August 26, 2010, the State Engineer indicated that the Snake Valley hearing has been postponed indefinitely.

Scope of Nevada Supreme Court's Decision in *Great Basin Water Network v. State Engineer and Southern Nevada Water Authority*. The State Engineer respectfully disagrees with statements that have been made as to which of the 1989 SNWA applications need to be re-published. The Nevada Supreme Court had no jurisdiction over the 1989 SNWA applications in Coyote Spring, Three Lakes, Tikapoo, Garnet, Hidden Valleys or California Wash. When the 1989 SNWA applications in these basins were acted on, there were no requests to re-open the

protest period in those proceedings. Therefore, it is the State Engineer's position that the 1989 applications in Coyote Spring Valley, which are part of an ongoing study, and those in Garnet Valley, Hidden, Three Lakes, Tikapoo Valleys and California Wash, which have already been permitted and for which there were no appeals, are final decisions and 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, are protested and are still before the State Engineer for action, will be re-published and the protest period re-opened at some future date, as well as other 1989 SNWA applications that have not been acted on to date such as those in Snake Valley, Railroad Valley and Virgin River Valley. There are no 1989 SNWA applications in Indian Springs Valley.

1989 and 2010 Protests. 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 the State Engineer has the authority or discretion to accomplish this transfer. This office recognizes the duplication required in filing protests for the re-noticed applications when similar protests have recently been filed on the new applications; however, 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 the State Engineer that authority. Those rules are procedural, not substantive and the State Engineer's authority is statutory not equitable. This interpretation has been confirmed by legal counsel. In light of the legal issues surrounding these applications, it is our goal that they not be remanded 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. It has been noticed that many of the protests that were filed to the 2010 applications all assert the same protest grounds. Nothing prevents these Protestants 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.

The protests to the 2010 applications are not invalid. They are valid as to the specific application against which they were filed, the 2010 applications, but they are not applicable to the 1989 applications. The 2010 applications remain on file as applications with priority dates junior to the 1989 applications and the protests to those applications remain on file. The 2010 applications are not as asserted merely duplicative; they are distinctively different with priorities junior in priority to other pending applications not held by the SNWA.

REVISED ANTICIPATED TIMELINE FOR FURTHER ACTION

Republication - February 2011. 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 State Engineer does not control when the newspaper will actually publish an application, but is now intending to submit the applications to the newspapers for republication in late January 2011, anticipating

publication in February 2011. 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. The State Engineer has no statutory authority for publication in Utah; however, this informational statement will be sent to newspapers in Nevada and Utah. Any person may also find the date any application is sent for publication on the Division of Water Resources website at <http://water.nv.gov>.

Protest period - closing anticipated late March 2011. 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 will be during March 2011. 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 re-file their protests, unless they want to change the grounds of the protest, but no amended protest will be accepted after the close of the protest period. There is no additional filing fee for the original Protestants who timely file an amended protest during the new protest period.

Formal Notice to Applicant and Protestants. Please be informed that formal notice will be provided at a later date to the Applicant and all Protestants. However, until re-publication is complete and the protest period closed as to the 1989 applications, the State Engineer is unable to compile a complete service list. This informational statement does not and will not take the place of the formal notice of hearing. It is being issued merely as a courtesy for advance general public notice of intended action. 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 **April 29, 2011**. There will possibly be a pre-hearing conference around this same date.

Anticipated evidentiary exchanges dates.

First evidentiary exchange is now anticipated to be **July 1, 2011**.

Rebuttal evidentiary exchange is now anticipated to be **August 26, 2011**.

Administrative hearing - September, October and November 2011. The State Engineer is planning on holding several weeks of hearing, recessing for two 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. Anyone is invited to provide suggestions to the State Engineer as to other areas or subjects that may be considered general in nature.

A hearing of this magnitude requires a unique hearing space, which is often difficult to find or reserve particularly for an extended period of time. Therefore, the State Engineer has reserved the large hearing room at the Nevada Legislature for **Monday through Friday, September 26-30, October 3-7, October 10-14, recess through October 28, and reconvene for hearing October 31 - November 4, Monday through Thursday November 7 through 10, and November 14-18, 2011.** While this space for a hearing of this size is still not ideal, it is what is available for our use and has an internet feed.

One-year Timeframe for 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. This is the very statute that was litigated in the *Great Basin Water Network* case. Currently another provisions of the water law found in NRS § 533.365(5) 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 if this provision has validity after the Supreme Court's decision and it now appears the statutes addressing the timing provisions in the 1989 version of NRS § 533.370(2) and 533.365(5) are in conflict. Therefore, it is the State Engineer's intention to act within the 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 at the hearing. 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 after the close of the hearing. Please 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.

NRS § 533.364 Inventory. The State Engineer has rescinded the order directing the SNWA to conduct the required inventory and will have the work completed by staff of the Division of Water Resources with the cost to be paid by the SNWA. Please 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 the ruling. However, it is the State Engineer's 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.

Successor in interest Protestants or original Protestants with inadequate addresses. 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 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.

By Notice dated October 26, 2005, the State Engineer sent notice to Applicant and Protestants to the 1989 SNWA applications filed in Spring Valley, Cave Valley, Dry Lake Valley, Delamar Valley and Snake Valley at their addresses of record in the Office of the State Engineer. For many of the Protestants, the State Engineer found their address of record in the Office of the State Engineer is no longer current. As was set forth in the State Engineer’s Ruling No. 5726, the State Engineer either received no response from said Protestant or information was received from the U.S. Postal Service as to its ability to deliver the notice. The State Engineer would appreciate if anyone has a current address for any of those persons identified in Ruling No. 5726 that they provide that address to the Hearing Section of the Division of Water Resources.

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