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NOTICE OF WORKSHOP

On January 28, 2010, the Nevada Supreme Court issued its opinion in the matter of *Great Basin Water Network, et al. v. State Engineer and Southern Nevada Water Authority*, 126 Nev., Advance Opinion 2. The Court's decision has raised many questions as to the status of applications that are on file with the Nevada Division of Water Resources filed prior to the 2003 legislative amendments to NRS § 533.370(2)(b) and (4) and the status of water right permits and certificates that were issued more than one year after the date for filing a protest.

Nevada Revised Statute § 533.370(2) provides that the State Engineer shall approve or reject an application within 1 year after the final date for filing a protest. The statute provides exceptions to that one-year deadline. The portion relevant to the Court's opinion provides that the State Engineer may postpone action on municipal applications. NRS § 533.370(2)(b). However, subsection (4) provides that "If the State Engineer does not act upon an application within 1 year after the final date for filing a protest, the application remains active until acted upon by the State Engineer." The Nevada Supreme Court held that "We conclude that "pending" applications are those that were filed within one year prior to the enactment of the 2003 amendment." This decision calls into question the validity of subsection (4) as it applies to those applications that pre-date the 2003 legislative amendments.

During the 26th Special Session of the Nevada Legislature, a Motion to Express Legislative Intent was entered into the Journal. This motion indicates that resolution of the issues raised by the *Great Basin Water Network* decision is of critical importance. The Legislature urged the State Engineer to hold a hearing on potential resolutions of the issues presented by the *Great Basin Water Network* decision. Because there is no statutory basis for a formal hearing on this matter, the State Engineer has elected to hold a workshop. At this workshop, the State Engineer will consider, at a minimum, the

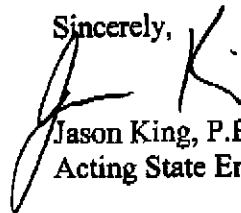
following issues: protection of existing water rights, the status of pending applications, preservation of priorities, and application of the protest period provisions. The State Engineer was encouraged to commence such immediately and make every effort to conclude work on this matter as quickly as possible.

Therefore, please take notice; the State Engineer is hereby convening a workshop to consider the matter raised by the Legislature's Motion to Express Legislative Intent. Accordingly, the workshop will convene at **12:30 p.m., Tuesday, March 16, 2010, at the Nevada Legislature, Room 1214, 401 South Carson Street, Carson City, Nevada, and will be teleconferenced to Room 4406 in the Grant Sawyer Office Building, 555 E. Washington, Las Vegas, Nevada.**

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the workshop. If special arrangements for the workshop are necessary, please notify me at the Nevada Division of Water Resources, 901 South Stewart, Second Floor, Carson City, Nevada, 89701, or by calling (775) 684-2800.

If you have any questions on this matter, feel free to call me.

Sincerely,



Jason King, P.E.  
Acting State Engineer

## **MOTION TO EXPRESS LEGISLATIVE INTENT AND TO BE ENTERED INTO THE JOURNAL**

In January 2010, the Nevada Supreme Court issued its decision in *Great Basin Water Network v. Taylor* regarding the interpretation and application of Nevada Revised Statutes 533.370; specifically the effect of the requirement that the State Engineer act upon applications within one year unless certain criteria are met. At this time, the decision of the Nevada Supreme Court is to remand the matter to the District Court for consideration of the proper remedy for the failure of the State Engineer to act on applications within one year.

After calling the 26<sup>th</sup> Special Session, the Governor amended the original proclamation to include the subject of water law as it relates to the *Great Basin Water Network* decision. Two bill draft requests have been heard; one by the Senate on February 27<sup>th</sup> and one by the Assembly on February 28<sup>th</sup>.

After several hours of testimony, it is the sense of the Legislature that resolution of the issues raised by the *Great Basin Water Network* decision is of critical importance and that the Legislature should attempt to resolve these complex policy issues. However, the testimony has made clear that many of the parties potentially affected by the resolution of these issues will not be able to be heard in the remaining hours of the 26<sup>th</sup> Special Session.

It is essential that the Legislature's resolution of these issues strikes a fair and equitable balance between the rights of applicants and the rights of protestants. The Legislature recognizes that voiding the Southern Nevada Water Authority's applications and taking away its priorities because of the State Engineer's failure to act would be inequitable to the Water Authority and all other similarly situated applicants. At the same time, the Legislature recognizes that it would be inequitable to the protestants to deny them due process and a meaningful opportunity to be heard.

In order to strike the proper balance between these equally important interests, the Legislature must provide a forum where the affected parties can thoroughly discuss the impact of the case and craft the most constitutionally defensible remedies that take into account due process, fundamental fairness and the separation of powers. Hastily passing legislation during the waning hours of this special session, without sufficient deliberation, will only raise more issues than it solves and will likely cause unintended and potentially harmful consequences.

Therefore, in order to provide for public input, adequate notice, and due consideration of the complex questions presented, the Legislature hereby strongly urges the State Engineer to hold hearings on potential resolutions of the issues presented by the *Great Basin Water Network* decision. The State Engineer is urged to work with the interested parties who testified before the Legislature and to provide an opportunity for input from other parties who may be affected, directly and indirectly, by resolution of the issues presented.

The Legislature urges the State Engineer to consider, at a minimum, the following issues: protection of existing water rights, the status of pending applications, preservation of priorities, and application of the protest period provisions. Because time is of the essence due to the pendency of the litigation, the State Engineer is urged to commence such hearings immediately, and make every reasonable effort to conclude his work as quickly as possible.

Finally, the Legislature urges the State Engineer to take all appropriate steps to implement recommendations arising out of such hearings which may include but not be limited to: requesting the Governor to convene a special session or requesting a bill draft for consideration in the 2011 Legislative Session.