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Governor

STATE OF NEVADA



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Director

TRACY TAYLOR, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

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June 28, 2007

Mr. Simeon Herskovits
Advocates for Community and Environment
129-C Kit Carson Rd
Taos, New Mexico 87571

Mr. Matt Kenna
Western Environmental Law Center
679 E. 2nd Ave., Ste 11B
Durango, Colorado 81301

Brent Eldridge
White Pine County
Board of County Commissioners
801 Clark Street, Ste. 4
Ely, Nevada 89301

Re: Request to participate in the implementation of State Engineer's Ruling No. 5726

Dear Mr. Herskovits, Mr. Kenna and Mr. Eldridge:

I am in receipt of your letters dated May 2, 2007, and May 23, 2007. Pursuant to White Pine County's May 2nd letter, the County requested that it be included as a participant in the review of the monitoring and mitigation plan and the proposed plan for the collection of biological and hydrological baseline data. Pursuant to Mr. Herskovits' and Mr. Kenna's May 23rd letter, sent on behalf of Abigail Johnson, Katherine and William Rountree, The Toiyabe Chapter of the Sierra Club, John Tryon and White Pine County, various requests were made to also participate in the implementation of Ruling No. 5726.

In summary, the Protestants requested to participate in the studies and plans required by the Ruling and more specifically summarized as follows:

Simeon Herskovits
Matt Kenna
Brent Eldridge
June 28, 2007

- The Protestants should be given an opportunity to participate in designing and planning for the conduct of the hydrological and biological baseline inventory and the reports to be filed concerning that study with the State Engineer;
- The Protestants should be given an opportunity to participate in designing and planning for the implementation of the monitoring and mitigation program (Plan).
- The Protestants should be given an opportunity to participate in designing the ground-water model to be used in evaluating baseline and test-pumping data and predicting potential impacts;
- The Protestants should be given an opportunity to participate in designing and planning for the implementation of the 10-year test-pumping program and the reports to be filed concerning that program with the State Engineer; and
- The proposed monitor mitigation program, ground-water model, baseline inventory, proposed test-pumping program and State Engineer's proposed decision regarding whether to curtail pumping, allow the continuance of pumping or increase in pumping, along with any supporting data, be posted on the State Engineer's web site, with copies sent to persons who have requested them, with a 60-day review and comment period prior to the State Engineer's final decision.

The protests to Applications 54003 through 54021 were filed under the provision of Nevada Revised Statute (NRS) §533.365. As allowed for in NRS § 533.365, a hearing was conducted regarding said Applications with participation by the Protestants. State Engineer's Ruling No. 5726 upheld in part the protests to Applications 54016, 54017, 54018 and 54021, and these Applications were denied. Additionally, Ruling No. 5726 overruled in part the protests regarding Applications 54003 through 54015, 54019 and 54020.

The issuance of Ruling No. 5726 addressed the protest issues and with the issuance of the permits, the application review process will be complete. With the completion of that process, the requirements imposed on the Applicant through the approval and implementation of the monitor mitigation plan, ground-water model, hydrologic and biologic baseline inventory and test-pump plan are the responsibility of the State Engineer.

While I am receptive to permitting the submittal of information outlining potential areas of concern or ideas you may have for inclusion in the various plans for data collection, monitoring or the ground-water model, I do not believe that direct participation in the development process is appropriate. Like the Federal Agencies, as Protestants, you had the opportunity to negotiate with the Applicant this type of participation prior to the administrative hearing. However, since the issuance of the Ruling, implementation of the requirements set forth in that Ruling is the responsibility of the State Engineer. While I appreciate the desire to make this process collaborative, I do not believe a review board is warranted. In my experience, a review board is much too cumbersome and not truly effective. As noted, however, I am receptive to the allowing the submission of information. These documents can be submitted for my review and

Simeon Herskovits
Matt Kenna
Brent Eldridge
June 28, 2007

consideration at any time during the process; however, no formal response will be provided regarding said submittals.

With regards to the availability of documents, I will attempt to make documents accessible on the Division of Water Resources web site. Of course, any documents submitted in furtherance of the requirements of the Ruling are public records available for review at the Division of Water Resources office in Carson City. Additionally, copies of these documents will be made available upon request in accordance with NRS § 533.435.

The mission of the Division of Water Resources is to conserve, protect, manage and enhance Nevada's valuable water resources for all the public. In furtherance of that mission, your interest in this matter is appreciated.

Respectfully submitted,



Tracy Taylor, P.E.
State Engineer

Cc: Ken Albright, Las Vegas Valley Water District
George Benesch
John Entsminger, Southern Nevada Water Authority
Peter Fahmy, U.S. Dept. of the Interior, Office of the Solicitor
Abigail C. Johnson
Dr. Dan A. Love, c/o L. David Love
Moriah Ranches Inc.
Steve Palmer, U.S. Dept. of the Interior, Office of the Solicitor
Panaca Irrigation Co.
William and Katherine Rountree, DX Ranch
Paul Taggart, Taggart & Taggart
Toiyabe Chapter of the Sierra Club ✓
John G Tryon
Michael Van Zandt, McQuaid, Bedford & Van Zandt LLP
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Allen Biaggi, Director Dept. of Conservation and Natural Resources