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STATE ENGINEERING OFFICE



P.O. Box 75 Baker, Nevada 89311
(775) 881-8304

**GREAT BASIN
WATER NETWORK**

info4gbwn@gmail.com
GreatBasinWaterNetwork.org

November 27, 2020

Tim Wilson, P.E., State Engineer
Nevada Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, Nevada 89701

Re: Proposed Designation of 58 Groundwater Basins

Dear Mr. Wilson:

We appreciate the opportunity to offer comments on the proposed designations of 58 groundwater basins put forth by the Division of Water Resources (DWR). The Great Basin Water Network (GBWN) represents water users across the state in a number of the basins selected by DWR in its proposed designation orders that were the subject of hearings throughout the state in mid-October. We offer these comments to address the sum of the proposed designations. Thank you for your consideration.

INTRODUCTION:

With more than half of Nevada's groundwater basins either fully appropriated or over-allocated, we believe that the designation process is one that can help water managers find balance. We are aware of success stories throughout the state that have begun with designations. Those past achievements, however, do not preempt the shortcomings in the aggregate of DWR's proposals. The overarching process undertaken by DWR in issuing the proposed orders fails to comply with the law.

We share a sweeping sentiment with others: These proposals should be withdrawn. Then we expect DWR to conduct a process that lives up to the letter and spirit of the law. Additionally, as GBWN said in its public comments in Ely on October 13, there is a major "trust" issue in many of the regions in which these designations were proposed. We believe hitting the proverbial reset button will give DWR an opportunity to work with Nevada water users in a more equitable and inclusive fashion. As DWR has witnessed with past designations, a little community buy-in will go a long way.

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TIMING, NATURE AND NOTICE OF PROPOSALS

As the COVID-19 pandemic continued to warrant the closing of DWR's offices to the public, officials issued designation proposals for 58 basins and shortly thereafter scheduled 12 in-person meetings for dates ranging from October 12 through 26. Despite Governor Sisolak's warnings of caution and concern about travel and social distancing, DWR made haste to meet whatever threshold it thought necessary to fulfill its obligations. The reasoning for the expedience, however, was not apparent in the proposals or any correspondence with local officials in the counties where the hearings were held.

In fact, we believe the way DWR initiated this process does not meet the spirit of NRS 534.030(2) nor does it uphold the due process protections for property owners afforded by the Nevada and United States constitutions. DWR's alacrity deprived water users and the public at large an opportunity to provide meaningful input. For example, local officials and water users were caught off guard. Local newspapers were sporadically operating due to the pandemic. And residents in the targeted regions are not necessarily in the habit of checking DWR's website for daily news.

DWR had a duty to mail individualized notice to all water rights users in the basins proposed for designation – especially in the basins requiring additional management beyond a designation listing. In their correspondence to you regarding this matter, Lincoln County and the Central Nevada Regional Water Authority cited due process precedents that substantiate our concerns as it relates to notification of water rights holders.

DUE INVESTIGATION

The draft orders and the information presented at the in-person hearings left much to be desired. In fact, the dearth of information offered to the public is a likely reflection of the haste by which DWR proceeded on this matter. The "due investigation" requirements of NRS 534.030(2) can hardly be met with maps and footnotes to the basic hydrographic basin summaries that are always publicly available online. We believe that exhaustive lists of pumping rates, water table analyses, crop surveys, existing permits, pending applications and any other existing research, from the USGS for example, should be included as an exhibit as well as a report to codify the variety of data.

From what we've seen, this process has cost members of the public, organizations and local governments time and effort because they wound up doing work that should have been completed by the state. Furthermore, comments from Eureka County and the Central Nevada Regional Water Authority aptly highlighted that information DWR provided as evidence either painted an incomplete or inaccurate picture of the on-the-ground situation. Moreover, CNRWA's review of Order 1316 for Dry Valley compared to what was put forth for the 58 basins highlights the stark contrast of a thorough review for a designation and a slapdash one.

Water users rely on state officials to provide impartial, complete data in order to manage their property. The dearth of evidence in the proposals could further harm the due process rights of

water rights users and other residents of the targeted regions. Further, it raises the specter of future litigation that would inevitably come at the public's expense. DWR has not offered any meaningful factual basis that meets the requirements of the law.

UNPRECEDENTED EFFORT TO ELICIT MAJOR SHIFT IN GROUNDWATER MANAGEMENT

Of Nevada's 256 groundwater basins, the collective 58 designations amount to an effort to change management practices in nearly a quarter of the state's basins. The proposal is a shift that requires prudent research, outreach and discretion. This process has not met that standard.

The preferred use provisions in many of the 58 proposals — without accompanying investigations — read like more of a policy desire of DWR rather than an effort that jibes with Nevada water law. NRS 534.120 gives the state engineer the ability to designate on his/her own accord when it can be proved that "groundwater is being depleted." As was mentioned above, the exhibits offered by DWR do not meet the "due investigation" requirements under the statute.

With that in mind, we believe a fatal flaw of this effort is that DWR and the State Engineer failed to provide any evidence of depletion in the orders and during the public hearings. Without empirical evidence to back the claims of depletion, many of the proposals appear arbitrary as it relates to the prohibition of new irrigation rights being put to beneficial use.

Prominently, a number of DWR's designations propose the prohibition of change applications for irrigation.

NRS 534.120(2) is clear: The State Engineer can only designate preferred uses when water is being depleted on applications to appropriate — not for change applications. In an over-appropriated basin new irrigation should not be permitted. But prohibiting change applications will not revive an aquifer in decline and will likely result in a judicial review due to the taking of senior water rights. However, as Eureka County properly noted, GBWN recognizes the State Engineer's ability to weigh and reject change applications under NRS 533.370(2).

CONCLUSION

We hope that a "reset" will offer DWR the opportunity to work in a capacity with water users in the regions where officials believe that groundwater is being depleted. We hope that due process and due investigation standards under the law are met with care. And we hope that matters dealing with irrigation waters are handled in a way that protects senior rights holders.

Thank you for your consideration.

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Kyle Roerink
Executive Director
Great Basin Water Network
702-324-9662
Kyle4gbwn@gmail.com

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