

**Humboldt River Basin Water Authority  
c/o Intertech Services Corporation  
P.O. Box 2008  
Carson City, Nevada 89702**

Elko County  
Eureka County  
Humboldt County  
Lander County  
Pershing County

Sent Via Email 8/8/16

**MEMORANDUM**

**TO:** Senator Pete Goicoechea, Chairman, Legislative Commission's Subcommittee to Study Water  
Members, Legislative Commission's Subcommittee to Study Water  
Alysa Keller, Legislative Counsel Bureau

**FROM:** Mike Baughman, Executive Director, Humboldt River Basin Water Authority

**DATE:** August 8, 2016

**SUBJECT:** REACTIONS TO SUGGESTIONS BY THE NEVADA STATE ENGINEER FOR WATER RESOURCE RELATED BILL DRAFT REQUESTS

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During its August 5, 2016 meeting, the Humboldt River Basin Water Authority (HRBWA) Board of Directors took the following positions regarding suggestions offered by the Nevada State Engineer in his April 19, 2016 Memorandum to the Legislative Commission's Subcommittee to Study Water for water related legislation.

**TOOLS FOR MANAGING OVER-APPROPRIATED GROUNDWATER BASINS**

In his April 19<sup>th</sup> memo, the Nevada State Engineer stated, "The State Engineer encourages this committee to consider legislation that continues to refine Nevada water law and provide flexibility in the development and acceptance of Groundwater Management Plans, whether in a Critical Management Area or not." (Page 2 of April 19, 2016 Memorandum)

**The Humboldt River Basin Water Authority Board of Directors voted during their August 5, 2016 meeting to support the Nevada State Engineer's call for legislation "that continues to refine Nevada water law and provide flexibility in the development and acceptance of Groundwater Management Plans" but only in Critical Management Areas. The Authority does not support said flexibility in areas outside of Critical Management Areas.**

The Authority believes Nevada has one of the strongest and most effective water laws in the western United States and believes that strict adherence to said laws by former Nevada State

Engineers would have likely avoided the over-appropriation of groundwater basins which has occurred in so many areas of Nevada. Until such time as a hydrographic basin is designated as a Critical Management Area, such a basin should be managed strictly according to existing Nevada water law.

## **CONJUNCTIVE WATER MANAGEMENT**

The Nevada State Engineer's April 19, 2016 memorandum to the Subcommittee included the following statements, "The State Engineer believes that legislation addressing conjunctive water management is imperative to Nevada's future. It is also important to recognize that the Legislature has declared that it is the policy of this State to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface-water and groundwater resources in Nevada. NRS 533.024. Therefore, before any conjunctive water management would be implemented, significant scientific work must precede it. While the State Engineer believes the Prior Appropriation Doctrine already provides the authority to consider whether the use of groundwater is impacting a senior water right on a surface-water source, what is lacking is a statutory acknowledgment that the two water sources can be hydrologically connected; and therefore, the State Engineer seeks guidance from the Legislature on tools that can be used to address this connectivity problem that are more balanced and equitable for all, rather than just completely prohibiting the use of water by the junior groundwater users." (Page 4 of April 19, 2016 Memorandum)

On Page 7 of the April 19, 2016 Memorandum the Nevada State Engineer states, "The goal for Nevada would hopefully be one that would allow continued groundwater use while addressing ways to make the senior surface-water right holders whole. Any such program must be individually tailored to the stream system and groundwater resources involved. Tools that might be considered are aquifer storage and recovery programs, State-approved augmentation programs, forbearance agreements, direct financial compensation, and water banking programs.

The State Engineer encourages this committee to consider legislation to address conjunctive water management of Nevada's surface-water and groundwater resources." (Page 7 of April 19, 2016 Memorandum)

**The Board of Directors of the Humboldt River Basin Water Authority concur with the Nevada State Engineer's call for legislation to address conjunctive water management of Nevada's surface-water and groundwater resources.**

## **ADAPTIVE WATER MANAGEMENT**

In his April 19, 2016 Memorandum, the Nevada State Engineer stated, "The State Engineer encourages this committee to consider legislation to clarify that adaptive water management is a tool that can be employed in the appropriation, development and use of Nevada's waters. Additionally, prior to issuing a water right permit, NRS 533.370(2) requires the State Engineer make a determination that the proposed water right will not conflict with existing rights. As part of the adaptive management process, the State Engineer encourages this committee to consider legislation that allows *mitigation* of a potential conflict to avoid the conflict, thereby allowing the

full development of the available water resources in the state.” (Pages 8-9 of April 19, 2016 Memorandum)

**During their August 5, 2016 meeting, the Board of Directors of the Humboldt River Basin Water Authority voted to oppose the Nevada State Engineers recommendation that the Subcommittee to Study Water “consider legislation to clarify that adaptive water management is a tool that can be employed in the appropriation, development and use of Nevada’s waters” and “consider legislation that allows *mitigation* of a potential conflict to avoid the conflict, thereby allowing the full development of the available water resources in the state.”**

The Authority Directors further voted to adopt the document entitled, “ Eureka County Input on Mitigation of Conflicts and Adaptive Management” submitted to the Subcommittee during its June 7, 2016 meeting in Dyer as their reasons and basis for opposing the Nevada State Engineer’s call for legislation to clarify that adaptive water management is a tool that can be employed in the appropriation, development and use of Nevada’s waters and that allows *mitigation* of a potential conflict to avoid the conflict, thereby allowing the full development of the available water resources in the state.

## **DOMESTIC WELLS**

Page 9 of the Nevada State Engineer’s April 19, 2016 Memorandum to the Subcommittee includes the following recommendation, “The State Engineer encourages this committee to consider legislation to provide an exception to the current law that would require complete curtailment of junior priority domestic wells if curtailment by priority was required in a groundwater basin.”

On Page 10 of said memorandum the Nevada State Engineer states with regard to NRS 534.110(6), “This statute requires that, in times of curtailment, the State Engineer is required to regulate water use by priority including domestic well use. The State Engineer believes that it would be held unthinkable to restrict people from water use inside their homes and therefore would like to see this provision amended to restrict outdoor use only in times of curtailment.”

**During its August 5, 2016 meeting, the Board of Directors of the Humboldt River Basin Water Authority voted to support the Nevada State Engineer’s recommendation for the Subcommittee “to consider legislation to provide an exception to the current law that would require complete curtailment of junior priority domestic wells if curtailment by priority was required in a groundwater basin.”**

Please feel free to contact me should you have questions regarding the positions of the Humboldt River Basin Water Authority put forth in this memorandum. Please note that due to prior commitments I will be unable to attend the Legislative Commission’s Subcommittee to Study Water work session to be held August 26, 2016 but would likely be available by cell phone (775) 315-2544 to respond to Subcommittee questions on the positions put forth in this memorandum.