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JIM GIBSON
Governor

STATE OF NEVADA

ALLEN WAGE
DirectorTRACY TAYLOR, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

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July 16, 2007

Scott A. Wade, Acting Director
Yucca Mountain Site Operations Office
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
155 Hillshire Drive
Las Vegas, NV 89134-6321

Re: *United States v. State, et al.* Case No. CV-S-00-0268-DWH-LRL

Dear Mr. Wade:

As you are aware, the Nevada Division of Water Resources issued a cease and desist order to the U.S. Department of Energy (DOE) on June 1, 2007, demanding that it stop the use of water for the second phase of the bore hole drilling project described in Mathew Urie's Letter of February 14, 2007. A meeting was held between DOE and me, including our counsel, on June 12, 2007. It was agreed at that meeting that I would stay the June 1, 2007, cease and desist order while I considered information provided by the DOE. I have carefully considered that information, and provide the following response.

First, it is clear that DOE has violated the agreement of the parties set forth in the letter of June 25, 2003, for the use of water at the Yucca Mountain site. That letter stated:

"At this time, we have not reached an agreement as to the additional 300,000 gallons of water you assert is needed for the bore hole drilling for the seismic investigation at the north portal pad that is tentatively scheduled for October. The parties intend to continue discussing the use of this additional water, and if an agreement is reached in the near future, any such agreement will be included in the new stipulation."

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DOE did not disagree or object to the terms and conditions set forth in the June 25, 2003 letter. DOE nonetheless began to use water for its bore hole drilling program, which had greatly expanded in scope from the discussions that had taken place in June of 2003.

Second, DOE's actions in proceeding with its bore hole drilling project without a permit or an agreement appear to have been deliberate. Although DOE's actions have been characterized as arising from mere "misunderstanding", this appears unlikely given the nature of the past negotiations that the obligations of the parties were clearly set forth in the June 25, 2003 letter. It is noteworthy that all negotiations between the parties on this matter had occurred between counsels, but that DOE decided to proceed with its bore hole drilling program without communicating with counsel or giving clear notice to the State Engineer that it was using water for purposes that were in dispute.

Third, I am concerned that "Phase 2" of the bore hole drilling project is not, in spite of express representations made at the meeting of June 12, 2007, the final phase of bore hole drilling at the Yucca Mountain site. For reference, the scope of both Phase 1 and Phase 2, as provided previously to us by DOE, is attached to and made a part of this letter. Available public information would indicate that DOE intends to perform additional bore hole drilling that will require additional water for which DOE has no permit. DOE is not being forthcoming about its intentions to use water in the future.

Fourth, the Federal District Court, in an order dated April 11, 2005, maintained, with limited exceptions, the stay of the pending litigation, including action on the DOE's permanent water permit applications. The court noted that without critical components including an "indispensable" radiation standard and a license to construct from the Nuclear Regulatory Commission, "the basis for the water permits would no longer exist." Because site characterization ended in 2002, the DOE has no authority to continue with site investigation. For these reasons, and for the reasons set forth in State Water Engineer Ruling #5307, I find that the DOE's use of water for the bore hole drilling project is not in the public interest.

Notwithstanding the foregoing, I recognize your concern that sudden cessation of the Phase 1 and 2 bore hole drilling programs may result in the waste of significant financial resources. In order to allow the DOE a reasonable amount of time to wrap up its bore hole drilling program, I therefore agree that DOE may make use of water in order to conduct work on "Phase 1" and "Phase 2" (as outlined in the attachment to this letter) of its bore hole drilling program until thirty (30) calendar days from the date of this letter, and I hereby lift the cease and desist order of June 1, 2007, to that extent only. However, the lifting of the cease and desist order is conditional. No water may be used for additional phases of the bore hole drilling project, or for any expansions or changes to Phase 1 or Phase 2 (as outlined in the attachment to this letter), or for any other studies or work that were not yet commenced as of June 25, 2003, when our previous stipulation was entered into. The intention of that agreement was to maintain the status quo as of that date, and maintenance of the status quo does not include the commencement of new work or studies that requires the use of additional water. Furthermore, the use of water for any bore hole drilling whatsoever is prohibited after thirty (30) calendar days of the date of this letter.

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In addition, all future reports regarding the use of water must be supplied to counsel as well as to the Office of the State Engineer. All uses of water beyond those set forth in the letter of June 25, 2003 and this letter must be by express permission of the Office of the State Engineer. Finally, the DOE shall submit to periodic inspections of well heads, drill sites and water storage facilities in order to ensure compliance with the terms of this order.

Be advised that Governor Gibbons has signed into law Senate Bill 274 of the 2007 session of the Nevada Legislature which amended Nevada Revised Statutes 534, 535 and 536 to allow for penalties (\$10,000 per day per violation) and injunctive relief for violation of Nevada Water Law. The State Engineer shall use the above mentioned authorities to their fullest extent in the event of further violations by DOE.

Please respond in writing by July 20, 2007, if these conditions are not acceptable to you. If the conditions are not acceptable, the cease and desist order of June 1, 2007, is hereby re-instated and the stay of that order entered June 12, 2007, is lifted, and no water may be used for any bore hole drilling projects currently underway.

Sincerely,



for
Tracy Taylor, P.E.
Nevada State Engineer

TT/ml

cc: Stephen Bartell
George Hallstrom
Robert Loux
Marta Adams
Michael Wolz
Josh Hicks