



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

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## Statement from the Office of the State Engineer

The United States Department of Energy (DOE) has informed the State Engineer that it does not accept the terms of the State Engineer's letter of July 16, 2007. Since the DOE has rejected the terms of that letter, the State Engineer's order to cease and desist the use of water for the drilling of further bore holes at Yucca Mountain is reinstated, and the Department is expressly prohibited from the use of ground water for bore hole drilling or any other purpose other than those allowed under a June 2003 agreement entered into during the course of litigation on the DOE's water right applications.

As set forth in his July 16, 2007 letter, the State Engineer made it abundantly clear that he believes the Department deliberately violated the terms of the agreement of the parties that has been in place since June 2003. However, after carefully reviewing and considering all of the facts and controlling law, and with an eye toward likely future litigation over water at Yucca Mountain, the State Engineer determined that this intermediate step was advisable. The State Engineer stands by his Ruling 5307, which found that the use of water for the construction and operation of a nuclear dump at Yucca Mountain threatens to be detrimental to the public interest and cannot be allowed under Nevada water law, and he intends to vigorously defend that decision in court.

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U.S. Department of Justice  
Environment and Natural Resources Division

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July 20, 2007

**BY TELEFACSIMILE AND FIRST-CLASS MAIL**

Michael Wolz, Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Re: *United States of America v. State of Nevada, et al.* Civil No. CV-S-00-0268-  
DWH-LRL

Dear Mr. Wolz:

I am an Assistant Chief in the Natural Resources Section with supervisory responsibility for the above referenced case. As you know, the Government is represented in this case by Mr. Stephen G. Bartell, Trial Attorney for the U.S. Department of Justice, who is out of the country this week. I received a copy sent to Mr. Bartell of a letter dated July 16, 2007 from Nevada State Engineer Tracy Taylor to Acting Director Scott A. Wade, Yucca Mountain Site Operations Office, U.S. Department of Energy ("DOE") ("State Engineer's July 16 letter"). In light of that letter's demand for a response from DOE by today, July 20, I am responding on Mr. Bartell's behalf.

The State Engineer's July 16 letter provides, in pertinent part, "... 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." State Engineer's July 16 letter at 2. While the letter states that this time is allowed only for DOE to "wrap up" its program, the authorization implicitly recognizes that DOE's continued water use for its bore hole drilling program is an integral part of DOE's preparation of a license application, to the Nuclear Regulatory Commission, for authorization to construct a repository at Yucca Mountain, in implementation of congressional mandates under the Nuclear Waste Policy Act and the Yucca Mountain Development Act. Unfortunately, the State Engineer's time-limited agreement would provide insufficient water to properly complete the drilling program and would impose other limits and conditions on DOE's ability to implement congressional mandates. These, and other aspects of the State Engineer's July 16 letter, are unacceptable.

The United States objects to the State Engineer's reaffirmation of State Engineer Ruling on Remand No. 5307. See id. As you know, the United States years ago amended its complaint in this litigation to challenge the State Engineer's decision as contrary to law. However, the Nevada state defendants filed a motion to stay the case, which the Court granted, upon the State's "promis[e]" to "cooperate with the United States to ensure adequate water to meet" DOE's reasonable needs. See Order dated March 11, 2003 at 12.

Further, the United States rejects the State Engineer's assertion that use of water not included in the limited agreement conveyed by the State Engineer in his July 16 letter - including "the use of water for any bore hole drilling whatsoever" after August 15, 2007 - is "prohibited" and "not in the public interest." See State Engineer's July 16 letter at 2. These are issues that the United States contests and seeks to resolve in the federal court litigation that the Nevada state defendants moved to stay.

Most important, the United States categorically rejects the State Engineer's putative "condition[s]" of his agreement to lift the cease and desist order, conditions the State Engineer demands DOE accept in exchange for the State's agreement to DOE's limited use of water through August 15, 2007. See id. These "condition[s]" would require DOE to concede contested issues in this litigation and relinquish the Government's legal rights to use water for this Project. The State Engineer's demand is especially odious because it includes a threat to impose "penalties (\$10,000 per day per violation) and injunctive relief" in the event DOE refuses to accept the State Engineer's improper conditions.

The United States cannot accede to this improper attempt by the State Engineer to coerce the United States into giving up the rights the Government is asserting in this litigation - litigation that the State moved to stay. When the Court earlier granted Nevada's motion to stay this case, the Court found that "there is no undue prejudice to the parties by this stay provided that water is made available to meet reasonable and timely needs of Plaintiff during this hiatus." Order dated April 6, 2005 at 3. Acknowledging that the state defendants had failed to answer the Government's correspondence seeking relief with respect to its water needs, the Court directed the state defendants "to address these requests without delay and make reasonable efforts to accommodate all reasonable and appropriate [water] needs." Id. at 4. The Court further stated that "[i]f the matter [was] not satisfactorily resolved, or nearly so, the Court [would] consider intervening for that purpose, to ensure there is no undue prejudice by its stay. Recalcitrance, without good cause, on the part of either or both parties will not be tolerated." Id. at 4.

The State Engineer's threat to impose fines and penalties on the federal government, rather than returning to Court and allowing judicial resolution of these issues, is worse than "recalcitrance." To resolve this matter in an orderly and efficient manner, please call Mr. Bartell upon his return to the office on Monday, July 23, at (202) 305-0234.

Sincerely,

*Keith E. Saxe*  
Keith E. Saxe

cc: Maria Adams, Esq.