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ROBERT O. VAUGHAN

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PARALEGAL
WALTER I. LEBERSKI

July 24, 2006

VIA U.S. MAIL AND FACSIMILE (775) 888-7105
Jeffrey Fontaine, Director
Nevada Department of Transportation
1263 South Stewart Street
Carson City, Nevada 89712

Re: Bishop Creek Reservoir Project

Dear Mr. Fontaine:

This letter is written on behalf of the City of Wells, Metropolis Water Irrigation District and Pacific Reclamation Water. Last week, a number of people informed me that you have expressed reservations about committing NDOT grant money for the construction of a road linking Highway 93 to the Bishop Creek Reservoir because of a pending lawsuit filed by Mike and Cherie Howell. Although the information I have received is third-hand, I believe the issue is significant enough to warrant an explanation as to the nature of the Howells' lawsuit and its relationship to the Bishop Creek Reservoir. It is my purpose to allay any concerns you might have about the relationship between the lawsuit and the future viability of the reservoir.

There are two completely different types of water rights in the Bishop Creek area – one kind, known as an appropriated, vested or decreed water right, is being challenged in the Howells' lawsuit; the other, known as a Carey Act water right, is not. The Carey Act water right is the one that provides the legal basis for storing water in the Bishop Creek Reservoir (among other things). For that reason, you will often hear it referred to as a "storage right."

The area around Metropolis is unique in that it contains the only successful

Carey Act project in the State of Nevada. By way of background, the Carey Act, which was enacted in 1894 as an amendment to the Desert Lands Act, allowed private companies to erect irrigation systems in the western, semi-arid states, and profit from the sales of water. Through advertising, these companies attracted farmers (referred to as "settlers"), who developed agricultural communities (such as Metropolis) with Carey Act water. As described in 43 C.F.R. Part 2610 and NRS Chapter 324, the Carey Act gave the Secretary of the Interior the authority to enter into contracts with certain states, including Nevada, in which the Federal Government agreed to grant and patent Federal lands to the states, provided the land was "reclaimed" through irrigation for a certain period of time and subject to various other conditions. Once reclaimed, the lands would be patented to the state or to the actual settlers who were assignees of the state.

The town of Metropolis came about as a result of a Carey Act project and water rights obtained largely under the Carey Act, which, as indicated, are unlike any other type of water right in the state. On December 28, 1910, the State of Nevada and Pacific Reclamation Company, a predecessor to Pacific Reclamation Water Company, entered into a Carey Act contract for the purpose of supplying water to the Bishop Creek Reservoir, which was constructed shortly after that. These Carey Act water rights were later transferred to Pacific Reclamation Water Company, which incorporated on April 8, 1911 to administer water for the benefit of its shareholders in the vicinity of Metropolis, Nevada Although the reservoir subsequently went into disuse many years later, the Carey Act water rights remain viable to this very day and will be transferred to the newly-formed Metropolis Water Irrigation District.

In addition to the Carey Act water rights, Pacific Reclamation Water Company also acquired appropriated water rights, which are the water rights that we most commonly see in Nevada. Included among the appropriated water rights were 116.43 acres of water rights that were adjudicated under Proof Number 00608 of the Humboldt Decree, which were acquired by Pacific Reclamation Water Company in 1945 from a predecessor in title to land now owned by Mike and Cherie Howell. These are the water rights that Mike and Cherie Howell have been challenging and continue to challenge in court, and which you may be concerned about with respect to the future viability of the Bishop Creek Reservoir. However, these water rights are for irrigation and domestic use downstream from the reservoir and are not used to fill the reservoir. Simply put, the Howell lawsuit will not affect Pacific Reclamation Water Company's Carey Act storage water rights. Therefore, even if the Howells were to be successful in obtaining title to

the challenged appropriated water rights from Pacific Reclamation Water Company and/or Metropolis Water Irrigation District, Bishop Creek Reservoir would still have the necessary storage rights

I sincerely hope that NDOT does not withhold grant money for construction of the road to the Bishop Creek Reservoir because of the Howells' lawsuit. Such a result would, in my opinion, represent an unfortunate and unjustified lost opportunity to complete a project that is of great importance to the people of Elko County and the State of Nevada. However, if you remain concerned about the Howells' lawsuit in terms of its impact on the Bishop Creek Reservoir, I can provide you with additional documentation and any further explanations that you might need.

Sincerely,

DAVID M. STANTON

DMS:

Cc. Lieutenant Governor Lorraine T. Hunt
Senator Dean Rhoads
Assemblyman John Carpenter
Jolene Supp, Wells City Manager
Vernon Dalton, Metropolis Water Irrigation District
David Sorrels, Case Manager, NDOT