

**City of Carson City
Agenda Report**

Date Submitted: January 25, 2013

Agenda Date Requested: February 7, 2013
Time Requested: 5 minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: For Possible Action: Action to authorize the District Attorney's Office to join in filing an amicus brief in support of the State Engineer in *Eureka County, et al. v. State Engineer*, Case No. 61324. (Andrew Burnham/Randy Munn)

Staff Summary: A group of municipal water purveyors intend to file an amicus brief in support of the State Engineer and are asking Carson City to sign onto the amicus brief.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other

Does This Action Require A Business Impact Statement: ☐ Yes (X) No

Recommended Board Action: I move to to authorize the District Attorney's Office to join in filing an amicus brief in support of the State Engineer in *Eureka County, et al. v. State Engineer*, Case No. 61324.

Explanation for Recommended Board Action: The Nevada Supreme Court is currently hearing the case of *Eureka County, et al. v. State Engineer*, Case No. 61324. A group of municipal water purveyors intend to file an amicus brief in support of the State Engineer and are asking Carson City to sign onto the amicus brief. In the *Eureka County* case, the State Engineer found that certain existing rights would be impacted by approving a water application, and required the applicant to mitigate those impacts. The State Engineer has placed similar mitigation requirements on municipal groundwater projects in other parts of Nevada. Eureka County is arguing that the State Engineer cannot approve a water right application if it causes *any* impact to an existing water right, even if that impact is small and can be easily mitigated by deepening a well, supplying alternative water or providing financial compensation. Municipal water providers have a significant interest in the outcome of this case. If the appellants are successful, the State Engineer's authority to grant new applications and change applications for municipal groundwater projects will be severely limited. Nevada is the driest state in the United States and its groundwater resources are becoming ever more developed and scarce, particularly in municipal areas. Even where water is available, there is a high probability that pumping could impact some existing water right. If Eureka County prevails, approval of such an application will be prohibited, even if mitigation is reasonable. In this matter, Eureka County and others appealed the State Engineer's decision to grant water applications for the Mount Hope Mine Project. The Seventh Judicial District Court denied Eureka County's arguments and upheld the State Engineer's decision. Eureka County and others appealed to the Nevada Supreme Court. An amicus brief in support of the State Engineer's position is due on or before February 11, 2013. The Nevada Supreme Court should be fully informed how this case can impact municipal water development in our entire State, and our ability to continue delivering water to Nevada residents. For Carson City any Carson River, Ash Canyon, Kings Canyon, or Clear Creek right will predate every one of our groundwater rights (except the 40 acre feet of Schulz water we just bought). An adverse decision could allow a water right holder of a surface

right (river, creek, spring, or even a claim of vested right) to seriously affect an application for new water or an application to change.

Applicable Statue, Code, Policy, Rule or Regulation: NA

Fiscal Impact: N/A

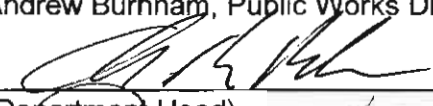
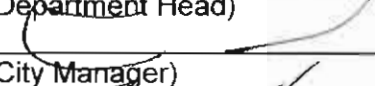
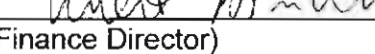
Explanation of Impact: N/A

Funding Source: N/A

Alternatives: N/A

Supporting Material: N/A

Prepared By: Andrew Burnham, Public Works Director

Reviewed By:  Date: 1-29-13
(Department Head)
 Date: 1/28/13
(City Manager)
 Date: 1/29/13
(District Attorney)
 Date: 1/29/13
(Finance Director)

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)