

IN THE OFFICE OF THE STATE ENGINEER  
OF THE STATE OF NEVADA

IN THE MATTER OF TRANSFER )  
APPLICATIONS: )  
47809 et al. (Group 3) )  
47861 et al. (Group 4) )  
49116 et al. (Group 5) )  
51006 et al. (Group 6) )  
51383 et al. (Group 7) )

INTERIM RULING

**# 4323**

The State Engineer held a hearing on Applications 47809, 47840, 48422, 48423, 48424, 48465, 48466, 48467, 48468, 48470, 48471, 48647, 48665, 48666, 48667, 48668, 48669, 48672, 48673, 48767, 48825, 48827, 48828, 48865, 48866 (25 applications in total<sup>1</sup>) (Group 3) on June 24, 1985. These applications were known as the "original twenty-five" and were the subject of State Engineer Ruling No. 3241 dated September 30, 1985. Several permits granted on the original twenty-five water right applications are no longer in existence and for that reason are excluded from further consideration. Permit 48422 has been cancelled, Permits 48470 and 48827 have been withdrawn by the applicants, and portions of Permits 48465, 48667, 48669, 48673, 48828, 48865, 48866 have been withdrawn by the applicants leaving twenty-two (22) change applications in Group 3 that are subject to the remand Order described below.

The State Engineer held a hearing on Applications 47861, 48670, 48826, 49108, 49109, 49110, 49111, 49112, 49113, 49114, 49115, 49117, 49118, 49119, 49120, 49121, 49122, 49224, 49282, 49283, 49285, 49286, 49287, 49288 (24 applications in total) (Group 4) on January 16, 1986. These applications are part of what is described as the "190" change applications and were the subject of State Engineer Ruling No. 3412 dated February 12, 1987. Permit 48826 was withdrawn by the applicant and portions of Permits 48670,

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<sup>1</sup>Ruling No. 3241 included 27 change applications; however, two were not protested by the PLPT on the basis of lack of perfection, forfeiture or abandonment resulting in the "original twenty-five".

49118 and 49282 have been withdrawn by the applicants leaving twenty-three (23) change applications in Group 4 that are subject to the remand Order described below.

The State Engineer held a hearing on Applications 49116, 49208, 49284, 49393, 49394, 49395, 49396, 49397, 49398, 49563, 49564, 49565, 49566, 49567, 49568, 49569, 49570, 49638, 49689, 49742, 49880, 49998, 49999, 50000, 50001, 50002, 50003, 50004, 50005, 50006, 50007, 50008, 50009, 50010, 50011, 50012, 50013, 50014, 50029, 50333, 50334, 50523, 50524, 51037, 51038, 51039, 51040, 51042, 51043, 51044, 51046, 51047, 51049 (53 applications in total, but no ruling on Application 50000; therefore, 52 applications in total) (Group 5) on January 28, 1988. These applications are also part of what is described as the "190" change applications and were the subject of State Engineer Ruling No. 3528 dated June 2, 1988. Permits 49566 and 51044 have been cancelled, Permits 49565 and 51042 were withdrawn by the applicants, the PLPT withdrew its protests to Applications 49284, 49742 and 50013, and portions of Permits 49397, 49689, 49880, 50005, 50007, 50008, 50014, 50029, 51040 and 51046 have been withdrawn by the applicants leaving forty-five (45) change applications in Group 5 that are subject to the remand Order described below.

The State Engineer held a hearing on Applications 51006, 51041, 51045, 51048, 51050, 51051, 51052, 51054, 51055, 51056, 51057, 51058, 51059, 51060, 51061, 51082, 51136, 51137, 51138, 51139, 51217, 51225, 51226, 51227, 51228, 51229, 51230, 51231, 51232, 51233, 51234, 51235, 51236, 51237, 51238, 51368, 51369, 51370, 51371, 51372, 51373, 51374, 51375, 51376, 51377, 51378, 51379, 51380, 51381, 51382, 51384, 51599, 51600, 51601, 51602, 51604, 51605, 51606, 51607, 51645, 51732, 51734 (62 applications in total) (Group 6) on February 16 & 22, 1989. These applications are also part of what is described as the "190" change applications and were the subject of State Engineer Ruling No. 3598 dated April 14, 1989. Application 51381 was not protested by the PLPT, Permit 51055 was cancelled by the State Engineer, the PLPT withdrew its

protests to Applications 51217 and 51372, and portions of Permits 51006, 51045, 51050, 51060, 51061, 51138, 51227, 51228, 51232, 51368, 51377 and 51602 have been withdrawn by the applicants leaving fifty-eight (58) change applications in Group 6 that are subject to the remand Order described below.

All the change applications in Groups 4 through 6, excluding Application 50000, were also subject of State Engineer Supplemental Ruling on Remand No. 3778 dated February 8, 1991.

The State Engineer held a hearing on Applications 5 1 3 8 3 , 51603, 51608, 51733, 51735, 51736, 51737, 51738, 51953, 51954, 51955, 51956, 51957, 51958, 51959, 51960, 51961, 51997, 52021, 52252, 52335, 52361, 52542, 52543, 52544, 52545, 52546, 52547, 52548, 52549, 52550, 52551, 52552, 52553, 52554, 52555, 52570, 52668, 52669, 52670, 52843, 53659, 53660, 53661, 53662, 53797, 53894, 53910, 54152, 54594, 54595, 54596, 54714, 54715, 54882 (55 applications in total, but no ruling was issued on Applications 53660, 53797 and 53894; therefore, 52 applications in total) (Group 7) was held on April 1, 1991. These applications are also part of what is described as the "190" change applications and were the subject of State Engineer Ruling No. 3868 dated January 30, 1992. Permit 51997 was withdrawn by the applicant, the PLPT withdrew its protest to Application 52555, and portions of Permits 51383, 51959, 52550, 52552, 53659, 54595 and 54882 have been withdrawn by the applicants leaving fifty (50) change applications in Group 7 that are subject to the remand Order described below.

The original twenty five change applications will hereinafter be referred to as Group 3. Of the "190" change applications in Groups 4 through 7, only 176 are subject to the remand Order described below and are part of the proceedings now before the State Engineer. The remaining applications in Groups 3 through 7 all represent requests to change the place of use of decreed water rights associated with the Newlands Reclamation Project and were protested by the Pyramid Lake Paiute Tribe ("PLPT").

The granting of the change applications was appealed to the United States District Court, District of Nevada, and was twice appealed to the Ninth Circuit Court of Appeals. The Ninth Circuit remanded the cases to the United States District Court which Court issued an Order in October 1995 remanding the change applications to the State Engineer for the consideration of issues related to the protestant's claims alleging lack of perfection, forfeiture and abandonment of the base water rights supporting the change applications. The United States District Court's Order instructed the State Engineer "to establish a timetable for the expeditious hearing of these application cases. Should the State Engineer decide additional evidence is required, he shall afford the parties the opportunity to present such evidence."<sup>2</sup>

In light of the remand Order, a status conference regarding Group 3 of the change applications was held on Monday, February 5, 1996. At that hearing the parties agreed that a clean record was warranted as to the specific issues remanded and agreed to a procedure for briefing legal issues, the exchange of evidence and settlement conferences.

Pursuant to the Court's Order, on March 6, 1996, the State Engineer notified those applicants in Groups 4 through 7 of a timetable to be followed regarding the filing of pre-hearing briefs and the exchange of documentation regarding those remanded applications. The methodology set forth in the March 6, 1996, notices follows the same procedure agreed to by the parties with regard to Group 3.

On March 22, 1996, the PLPT filed with the State Engineer a request to reconsider the schedules set forth in the March 6, 1996, notices stating that the PLPT had no objection to the May 1, 1996, date for filing pre-hearing briefs addressing the legal issues; however, the PLPT requested that all other deadlines be set aside

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<sup>2</sup>Order Remanding Transfer Application Cases to Nevada State Engineer, October 4, 1995, pp. 3-4.

on the grounds that they imposed an onerous and unfair burden on the PLPT in that it does not afford the PLPT ample time to prepare its cases.

On or about March 22, 1996, the United States and the Secretary of the Interior also filed a request for reconsideration of the schedule established in the March 6, 1996, notices asking that any schedule for proceeding with Groups 4 - 7 be delayed until the State Engineer has issued his rulings with regard to the change applications in Group 3. The United States argues that waiting would allow the parties to learn from Group 3 and that the schedule established for Groups 4 - 7 seriously conflicts with the schedule adopted for Group 3. The State Engineer notes that the United States Department of Interior moved to intervene as an unaligned party, and stated that it was not seeking standing either in support of the change applications or the protests. The State Engineer granted intervenor status to the United States, but as an unaligned party.<sup>3</sup>

Responses to the PLPT's request for reconsideration were also filed on behalf of many of the applicants. Some applicants objected to any reconsideration of the schedule established on the basis that: (1) it has been more than ten years since the PLPT's protests were filed to these change applications; (2) the Court ordered resolution of the change applications in an expeditious manner; and (3) the United States has been withholding the delivery of water under the applications as approved.

Other applicants responded suggesting a different approach for handling the change applications in Groups 4 - 7 than that process established for Group 3. Due to the fact that some applicants believe it was a mistake for the Court to consider the "First 25" (Group 3) while leaving the "190" (Groups 4 - 7) in limbo, these applicants do not want action on Groups 4 - 7 to continue to be

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<sup>3</sup>Transcript, pp. 6 - 15, public administrative hearing before the State Engineer, November 26, 1984.

stayed while Group 3 moves along. These applicants have requested that no rulings be issued until all cases are heard and also suggested a different procedure for the exchange of information and briefing with regard to Groups 4 - 7. The procedure suggested was that the factual record should be established as to common evidence, the applications should then be grouped as to farming units, next the parties would exchange documentary evidence and hold conferences and separate hearings held as to each farm unit, and finally, the applications should then be consolidated for joint briefing and hearing on common questions of law.

It has been more than ten years since these change applications were first filed and the PLPT has already been provided an initial opportunity to present its evidence with regard to its protest claims of lack of perfection, forfeiture and abandonment. The State Engineer would assume that any common evidentiary issues have already been presented. However, if it becomes apparent through the exchange of information process that common factual issues are present, any party may request that a hearing be held on those common factual issues at the beginning of the hearing process.

The United States District Court granted the State Engineer the discretion whether to reopen the hearings for further evidence regarding the specific remanded issues. In the interest of final resolution of these applications, the State Engineer decided to allow the PLPT one more chance to present evidence with regard to the remanded issues. Either the PLPT has a case or it does not and after ten years it should be in a position to present its evidence. The State Engineer concludes it is not unreasonable to ask the PLPT to present its evidence within a four month time frame.

The State Engineer concludes that the briefing schedule established by the March 6, 1996, notice serves the purpose of consolidation on common issues of law. Part of the very reason for the March 6, 1996, notice was to provide the applicants in Groups 4 - 7 the opportunity to present any arguments they may have with

regard to legal issues common to all the remanded applications.

As to the suggestion of grouping the applications as to farming units, the State Engineer concludes that is the process envisioned and discussed by the parties at the February 5, 1996, status conference. The applicants are being given an opportunity to suggest groupings and that includes all the change applications in Groups 3 - 7.

The State Engineer's intent in putting the 190 on the same schedule was to allow for the filing of suggestions on grouping applications from the various groups that perhaps should be heard as a farming unit rather than individually. If an applicant believes an application from Group 3 should be considered along with applications in Groups 4 through 7 (because they comprise a farming unit), the applicants (or protestant) are free to suggest that a Group 3 application be held and heard along with applications from Groups 4 - 7. The State Engineer concludes that suggestions regarding grouping for the hearings of applications from Groups 4 through 7 are all due on April 11, 1997; thus, the opportunity already exists for hearing the applications as a farming unit.

The State Engineer would hope the parties could stipulate as to groupings and perhaps they could agree to such groupings at the beginning of the process. While the notices allow the parties until September 1996 and April 1997 to make grouping suggestions nothing in the notices prevents the parties from agreeing now as to farm unit groupings. The parties are scheduling their own conferences on the change applications. If they believe they should be heard as a unit, they are free to set up their conferences in that manner, and if evidence should be presented as a group, again, the parties are free to present it in that manner.

As the notice schedule provides the same dates for all the applications in Groups 4 - 7, no applicant should have to present its case more than one time.<sup>4</sup>

As to the disagreement as to when the State Engineer should issue rulings on individual applications, the State Engineer appreciates the concern that rulings early in the process may again stall any action with regard to those applications that are to be heard later in the process. It is the State Engineer's understanding that water deliveries have been stopped to any of the lands wherein these change applications are at issue, and that deliveries have been stopped for several irrigation seasons. On the basis that each year of non-delivery of water presents hardships to those not receiving their water deliveries, at the present time the State Engineer does not intend to withhold ruling on specific applications until the hearings have been completed on all the change applications in Groups 3 - 7.

If common issues of evidence applying to all protested applications become evident, they should be so apparent by the time the PLPT provides its evidence by the end of July. If an applicant or protestant determines that a joint hearing on common evidence would be worthwhile, on or before September 1, 1996, any party may file a request for such a joint hearing.

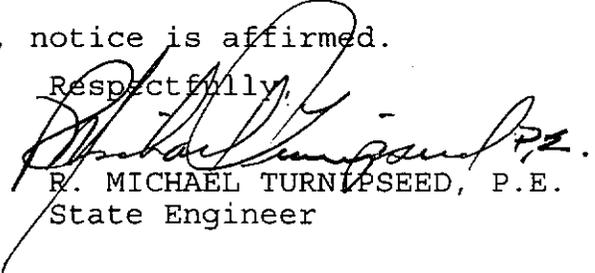
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<sup>4</sup>The State Engineer is aware that this process does not include the "subsequent 105" change applications which have not been acted on to date. While it would be nice to include any applications which relate to the same farming unit, the present proceedings before the State Engineer are specific to the remand Order. As the subsequent 105 applications will include broader issues for consideration they will not be considered at the present time.

Ruling  
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IT IS HEREBY ORDERED THAT the PLPT's and the United States' requests for reconsideration are denied and the schedule established in the March 6, 1996, notice is affirmed.

Respectfully,

  
E. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/SJT/ab

Dated this 10th day of  
April, 1996.