

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

IN THE MATTER OF APPLICATIONS )  
74283, 74284, 74285, 74286, 74369, 74370, )  
74402, 74427, 74434, 74562, 74569, 74570, )  
74592, 74611, 74612, 74922, 74979, 75101, )  
75102, 75103, 75104, 75157, 75158, 75159, )  
75160, 75277, AND 75283 FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS OR CHANGE THE POINT OF )  
DIVERSION, PLACE AND/OR MANNER )  
OF USE OF THE UNDERGROUND )  
WATERS OF THE DAYTON VALLEY )  
HYDROGRAPHIC BASIN (103), LYON )  
COUNTY, NEVADA. )

**RULING**  
**# 5828**

**GENERAL**

**I.**

On May 9, 2006, Lyon County filed Application 74283 to change the point of diversion, place and manner of use of 0.0424 cubic feet per second (cfs), 10.0 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33, 34 and 35 of T.16N., R. 21 E., M.D.B.&M., within all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, 19 and 20, T.16N., R.22E., M.D.B.&M., within a portion of Section 36, T.17N., R.21E., M.D.B.&M., within all or portions of Sections 22, 27, 28, 29, 30, 31, 32, 33 and 34, T.17N., R.22E., M.D.B.&M., and within the water service area of Lyon County/Dayton Utilities. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.22E., and within portions of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N.,

R.22E., M.D.B.&M. Application 74283 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>1</sup>

## II.

On May 9, 2006, Lyon County filed Application 74284 to change the point of diversion, place and manner of use of 0.093 cfs, 50.0 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 17 and the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N., R.22E., M.D.B.&M. Application 74284 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>2</sup>

## III.

On May 9, 2006, Lyon County filed Application 74285 to change the point of diversion, place and manner of use of 0.01 cfs, 2.34 afa, a portion of the underground water previously appropriated under Permit 50697, Certificate 14177, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.16N., R.21E., M.D.B.&M. Application 74285 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>3</sup>

## IV.

On May 9, 2006, Lyon County filed Application 74286 to change the point of diversion, place and manner of use of 0.004 cfs, 0.24 afa, a portion of the underground

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<sup>1</sup> File No. 74283, official records in the Office of the State Engineer.

<sup>2</sup> File No. 74284, official records in the Office of the State Engineer.

<sup>3</sup> File No. 74285, official records in the Office of the State Engineer.

water previously appropriated under Permit 25503, Certificate 8468, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.16N., R.21E., M.D.B.&M. Application 74286 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>4</sup>

#### V.

On June 8, 2006, Aspen Creek, LLC, filed Application 74369 to change the point of diversion, place and manner of use of 0.181 cfs, 68.4 afa, a portion of the underground water previously appropriated under Permit 13577, Certificate 3688, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  of Section 1, T.16N., R.22E., the NW $\frac{1}{4}$  of Section 6, T.16N., R.23E., portions of Sections 35 and 36, T.17N., R.22E., and portions of Section 31, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.16N., R.21E., M.D.B.&M. Application 74369 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>5</sup>

#### VI.

On June 8, 2006, Aspen Creek, LLC, filed Application 74370 to change the point of diversion, place and manner of use of 0.8984 cfs, not to exceed 250 afa, a portion of the underground water previously appropriated under Permit 35971, Certificate 10426, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place

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<sup>4</sup> File No. 74286, official records in the Office of the State Engineer.

<sup>5</sup> File No. 74369, official records in the Office of the State Engineer.

of use is the same as that identified under Application 74283. The existing place of use is within portions of Sections 34, 35, and 36, T.17N., R.22E., and portions of Section 31, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 34, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.16N., R.21E., M.D.B.&M. Application 74370 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>6</sup>

## VII.

On June 19, 2006, The Connection Assembly of God filed Application 74402 to appropriate 0.025 cfs, 2.02 afa, of the underground water in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. Application 74402 was timely protested by the Pyramid Lake Paiute Tribe of Indians<sup>7</sup>

## VIII.

On June 29, 2006, Lyon County filed Application 74427 to change the point of diversion, place and manner of use of 0.0029 cfs, 0.5475 million gallons annually, a portion of the underground water previously appropriated under Permit 22516, Certificate 8121, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is commercial. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the E $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 23, T.16N., R.21E., M.D.B.&M. The existing point of diversion is located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 23, T.16N., R.21E., M.D.B.&M. Application 74427 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>8</sup>

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<sup>6</sup> File No. 74370, official records in the Office of the State Engineer.

<sup>7</sup> File No. 74402, official records in the Office of the State Engineer.

<sup>8</sup> File No. 74427, official records in the Office of the State Engineer.

### IX.

On June 30, 2006, Dennis W. Smith & Marcia Bennett Smith, David D. Winchell & Sandra L. Winchell filed Application 74434 to change the point of diversion, place and manner of use of 0.673 cfs, 101 afa, a portion of the underground water previously appropriated under Permit 20928, Certificate 7257, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.16N., R.21E., M.D.B.&M. Application 74434 was timely protested by the Pyramid Lake Paiute Tribe of Indians, Churchill County and Lynne Arndell for the Stagecoach General Improvement District, which subsequently withdrew its protest.<sup>9</sup>

### X.

On July 25, 2006, Lyon County filed Application 74562 to change the point of diversion, place and manner of use of 0.0458 cfs, 10 afa, a portion of the underground water previously appropriated under Permit 21475, Certificate 6878, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the S $\frac{1}{2}$  of Section 4 and N $\frac{1}{2}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.17N., R.22E., M.D.B.&M. Application 74562 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>10</sup>

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<sup>9</sup> File No. 74434, official records in the Office of the State Engineer.

<sup>10</sup> File No. 74562, official records in the Office of the State Engineer.

**XI.**

On July 28, 2006, Lyon County filed Application 74569 to change the point of diversion, place and manner of use of 0.0423 cfs, 10 afa, a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. and within portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.16N., R.21E., M.D.B.&M. Application 74569 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>11</sup>

**XII.**

On July 28, 2006, Lyon County filed Application 74570 to change the point of diversion, place and manner of use of 0.014 cfs, 9.98 afa, a portion of the underground water previously appropriated under Permit 28586, Certificate 8873, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.16N., R.21E., M.D.B.&M. Application 74570 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>12</sup>

**XIII.**

On August 3, 2006, Dennis W. Smith & Marcia Bennett Smith filed Application 74592 to change the point of diversion and place of use of 0.009 cfs, 1.36 afa, a portion of the underground water previously appropriated under Permit 20928, Certificate 7257,

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<sup>11</sup> File No. 74569, official records in the Office of the State Engineer.

<sup>12</sup> File No. 74570, official records in the Office of the State Engineer.

in the Dayton Valley Hydrographic Basin. The proposed place of use is described as being located within a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.16N., R.22E., M.D.B.&M. The existing place of use is within of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.16N., R.22E., M.D.B.&M. Application 74592 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>13</sup>

#### XIV.

On August 9, 2006, James E. Morehouse filed Application 74611 to appropriate 0.02 cfs, 0.54 afa of the underground water in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes. The proposed place of use is described as being located within a portion of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 27, T.17N., R.22E., M.D.B.&M. Application 74611 was timely protested by the Pyramid Lake Paiute Tribe of Indians<sup>14</sup>

#### XV.

On August 9, 2006, Lyon County filed Application 74612 to change the point of diversion, place and manner of use of 0.186 cfs, 100 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 17, and portions of the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E. M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.17N., R.22E. M.D.B.&M. Application

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<sup>13</sup> File No. 74592, official records in the Office of the State Engineer.

<sup>14</sup> File No. 74611, official records in the Office of the State Engineer.

74612 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>15</sup>

#### XVI.

On October 18, 2006, Lyon County filed Application 74922 to change the point of diversion, place and manner of use of 0.0084 cfs, 2.02 afa, of the underground water previously appropriated under Permit 70116 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is the same as that identified under Application 74283. The existing place of use is within a portion of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.17N., R.22E., M.D.B.&M. Application 74922 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>16</sup>

#### XVII.

On October 30, 2006, Daniel Hague filed Application 74979 to change the point of diversion, place and manner of use of 0.013 cfs, 0.70 afa, a portion of the underground water previously appropriated under Permit 25503, Certificate 8468, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for commercial purposes and the existing manner of use is irrigation and domestic. The proposed place of use is described as being located within a portion of the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T.16N., R.21E., M.D.B.&M. The existing place of use is within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T.16N., R.21E., M.D.B.&M. Application 74979 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>17</sup>

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<sup>15</sup> File No. 74612, official records in the Office of the State Engineer.

<sup>16</sup> File No. 74922, official records in the Office of the State Engineer.

<sup>17</sup> File No. 74979, official records in the Office of the State Engineer.

### XVIII.

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75101 to change the point of diversion, place and manner of use of 3.092 cfs, 484.16 afa, of the underground water previously appropriated under Permit 64782 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.16N., R.22E., M.D.B.&M. The remarks sections of Applications 75101 through 75104 indicate that the intent of the applications is to unstack the non-supplemental portions of Permits 64782 through 64785. Additionally, the remarks indicate that both the existing and proposed manner of use is for municipal and domestic purposes; however, a change in manner of use was listed to reflect the fact that the non-supplemental and supplemental portions of the water rights are being changed. Application 75101 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>18</sup>

### XIX.

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75102 to change the place and manner of use of 2.1761 cfs, 396.96 afa, of the underground water previously appropriated under Permit 64783 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions

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<sup>18</sup> File No. 75101, official records in the Office of the State Engineer.

of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the NW¼ NW¼ of Section 19, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75102 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>19</sup>

**XX.**

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75103 to change the place and manner of use of 2.3959 cfs, 874.14 afa, of the underground water previously appropriated under Permit 64784 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections 1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SE¼ SE¼ of Section 18, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75103 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>20</sup>

**XXI.**

On November 17, 2006, Dayton Valley Investors, LLC, and Lyon County filed Application 75104 to change the place and manner of use of 0.762 cfs, 139.06 afa, a portion of the underground water previously appropriated under Permit 64785 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for municipal and domestic purposes and the existing manner of use is municipal and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within all or portions of Sections

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<sup>19</sup> File No. 75102, official records in the Office of the State Engineer.

<sup>20</sup> File No. 75103, official records in the Office of the State Engineer.

1, 2, 11, 12, 13, 14, 23, 24, 26, 27, 28, 33 and 34, T.16N., R.21E., M.D.B.&M., all or portions of Sections 3, 4, 5, 6, 9, 16, 17, 18, and 19, T.16N., R.22E., M.D.B.&M., a portion of Section 36, T.17N., R.21E., M.D.B.&M., and portions of Sections 31, 33 and 34, T.17N., R.22E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, T.16N., R.22E., M.D.B.&M. The remarks section of the application is the same as that identified under Application 75101. Application 75104 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>21</sup>

#### **XXII.**

On December 4, 2006, Lyon County filed Application 75157 to change the point of diversion, place and manner of use of 0.0414 cfs, 9.8 afa, a portion of the underground water previously appropriated under Permit 23685, Certificate 8451, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within portions of the NE $\frac{1}{4}$  and SE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M., and portions of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 7, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.16N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.16N., R.21E., M.D.B.&M. Application 75157 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>22</sup>

#### **XXIII.**

On December 4, 2006, Lyon County filed Application 75158 to change the point of diversion, place and manner of use of 0.121 cfs, 56 afa, a portion of the underground water previously appropriated under Permit 27817, Certificate 9178, in the Dayton Valley Hydrographic Basin. Application 75158 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>23</sup> By letter dated February 14, 2008, Application 75158 was withdrawn.

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<sup>21</sup> File No. 75104, official records in the Office of the State Engineer.

<sup>22</sup> File No. 75157, official records in the Office of the State Engineer.

<sup>23</sup> File No. 75158, official records in the Office of the State Engineer.

**XXIV.**

On December 4, 2006, Lyon County filed Application 75159 to change the point of diversion, place and manner of use of 0.0789 cfs, 17.24 afa, a portion of the underground water previously appropriated under Permit 21475, Certificate 6878, in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within the SE $\frac{1}{4}$  and SW $\frac{1}{4}$  of Section 4, NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.16N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.17N., R.22E., M.D.B.&M. Application 75159 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>24</sup>

**XXV.**

On December 4, 2006, Lyon County filed Application 75160 to change the point of diversion and place of use of 0.0012 cfs, 0.84 afa, of the underground water previously appropriated under Permit 73524 in the Dayton Valley Hydrographic Basin. The manner of use is for commercial purposes. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.17N., R.22E., M.D.B.&M. Application 75160 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>25</sup>

**XXVI.**

On January 23, 2007, Lyon County filed Application 75277 to change the point of diversion, place and manner of use of 0.457 cfs, 245.5 afa, a portion of the underground water previously appropriated under Permit 61572 in the Dayton Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing

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<sup>24</sup> File No. 75159, official records in the Office of the State Engineer.

<sup>25</sup> File No. 75160, official records in the Office of the State Engineer.

manner of use is irrigation and domestic. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within portions of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 17, and the SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.17N., R.23E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.16N., R.21E., M.D.B.&M. Application 75277 was timely protested by the Pyramid Lake Paiute Tribe of Indians and Churchill County.<sup>26</sup>

#### XXVII.

On January 25, 2007, Lyon County filed Application 75283 to change the point of diversion and place of use of 0.033 cfs, 2.02 afa, of the underground water previously appropriated under Permit 72801 in the Dayton Valley Hydrographic Basin. The manner of use is quasi-municipal purposes. The proposed place of use is within a similar, but not identical, place of use as that identified under Application 74283. The existing place of use is within a portion of the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, T.17N., R.22E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.17N., R.22E., M.D.B.&M. Application 75283 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>27</sup>

#### XXVIII.

Applications 74283, 74284, 74285, 74286, 74369, 74370, 74402, 74427, 74434, 74562, 74569, 74570, 74592, 74611, 74612, 74922, 74979, 75101, 75102, 75103, 75104, 75157, 75159, 75160, 75277, and 75283 were protested by the Pyramid Lake Paiute Tribe (Tribe) on the following grounds as summarized below.

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the ground water available in the basin resulting in the inability to serve existing permits. Granting the application would threaten to prove detrimental to the public interest without first implementing measures to prevent the depletion of the ground water of the Dayton Valley

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<sup>26</sup> File No. 75277, official records in the Office of the State Engineer.

<sup>27</sup> File No. 75283, official records in the Office of the State Engineer.

Hydrographic Basin and to restrict withdrawals of ground water to no more than the average annual replenishment to the ground-water supply. Granting the applications would threaten to prove detrimental to the public interest without first considering and fulfilling the State Engineer's responsibility to insure the availability of water for subdivisions under NRS § 278.377(1)(b). (All applications.)

2. The proposed transfer threatens to prove detrimental to the public interest because it extends water deliveries outside the irrigation season. (Applications 74283, 74284, 74285, 72486, 74369, 74370, 74434, 74569, 74570, 74922, 74979, 75101, 75102, 75103, 75104, 75157, 75159.)
3. The water rights have been forfeited and/or abandoned. (Applications 74283, 74284, 74285, 74286, 75101, 75102, 75103, 75104.)
4. The terms and conditions associated with the base water right permits have not been satisfied and precludes granting the application. (Applications 75101, 75102, 75103, 75104.)
5. The duty should be limited to the historical consumptive use amount of 2.5 cfs, otherwise the application amounts to a request for a new and additional appropriation in an over-appropriated ground-water basin. (All applications.)
6. The application is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. (Applications 74283, 74284, 74285.)
7. Use of water under the application would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Paiute Indian Reservation was created and the public interest by depleting flows in the Carson River and thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which would impact Pyramid Lake and its fishery. (All applications.)
8. If the water sought to be changed is supplemental to a surface-water right, granting the application would in effect amount to granting a new water right in an over-appropriated basin thereby conflicting with existing rights. (Applications 74283, 74284, 74285, 74286.)

9. Granting the applications would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise before the applications are actually considered by the State Engineer. (All applications.)
10. Granting the application would threaten to prove detrimental to the public interest. (All applications.)

**XXIX.**

Applications 74283, 72484, 74285, 74286, 74434, 74569, 74570, 74592, 74612, 74922, 75277 were protested by Churchill County on the following grounds as summarized below.

1. The application and its accompanying maps are deficient in that they do not adequately identify the exact location of the 2.5 acres to be stripped. (Application 72483.)
2. The water right may be subject to a declaration of forfeiture and/or abandonment. (Applications 74283, 74284, 72485, 74286, 74434, 74569, 74570, 74592, 74612.)
3. The water right may be supplemental to Carson River rights and should not be allowed to be stripped and become stand alone right. (Application 74283.)
4. The application should be limited to the consumptive use of 2.5 afa. (Applications 74283, 74284, 74285, 74286, 74434, 74569, 74612.)
5. The Applicant is seeking to move the point of diversion closer to the Carson River, which will have the effect of depleting ground water that is base flow to the river or inducing recharge from the river thereby affecting senior downstream surface-water right holders. (Applications 74283, 74284 (3 miles to 1,700 feet Stagecoach subarea), 74285 (3.3 miles to 300 feet Stagecoach subarea), 74286 (0.4 miles to 300 feet), 74434 (5 miles to 1.25 miles Stagecoach subarea), 74569 (2,200 feet to 600 feet Carson Plains subarea), 74570 (1 mile to 600-800 feet Carson Plains subarea), 74592 (5 miles to 100 feet Carson Plains subarea), 74612 (3 miles to 0.3 miles Carson Plains subarea), 74922 (6 miles to 0.75 – 1 mile Stagecoach subarea), 75277 (3.25 miles to 0.75 – 1.0 miles Stagecoach subarea).

6. The proposed points of diversion under Applications 74283, 74284, 74285, 74286 are within the Carson Plains subbasin of Dayton Valley, which is over-appropriated, experiencing water-level declines, has return flow issues and is adverse to and will impact existing surface-water and ground-water right holders.
7. Due to the severe over-appropriation of the ground-water basin the State Engineer should either deny the applications or withhold action until remediation actions are implemented to control the over-appropriation in the basin. (All applications.)
8. Action should be withheld on these applications until studies are completed to determine if ground-water pumping is intercepting base flow of the Carson River and inducing inflow from the river. (All applications.)
9. Use of water under the applications threatens to prove detrimental to the public interest because it will cause less water to reach Lahontan Reservoir, thereby increasing diversions from the Truckee River causing alleged harm to the Tribe and the United States Fish and Wildlife Service and Pyramid Lake and its fishery. (All applications.)
10. Use of water under the application will conflict with existing rights. (All applications.)

**XXX.**

On April 17, 2007, the State Engineer held a pre-hearing meeting in order to bring the parties together to discuss an approach to a resolution of the applications and related protests. By notice dated April 24, 2007, the State Engineer provided the Applicants until May 24, 2007, the opportunity to file a requested motion and ordered the Protestants to serve on all parties by June 25, 2007, evidence in support of their protest claims. By July 25, 2007, the Applicants were provided the opportunity to file an answer and/or provide evidence in rebuttal to the protests and/or in support of their applications. Nevada Revised Statute § 533.365(3) provides that the State Engineer shall consider the protests, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to achieve a full understanding of the rights involved. The State Engineer finds he has sufficient information to review and decide upon these applications and protests.

## FINDINGS OF FACT

### I.

On May 24, 2007, Lyon County filed a Motion to Dismiss Individual Protest Claims. On June 7, 2007, a Response in Opposition to Dismiss Individual Protest Claims was filed by Churchill County, and an Opposition of Pyramid Lake Paiute Tribe to Motion of Applicants to Dismiss Protests was also filed. On July 2, 2007, the State Engineer issued an Interim Ruling addressing the Motion to Dismiss and dismissed the following protest claims.

As to the Tribe's protest claims, the State Engineer dismissed the protest claim identified above as number 2 in General Section XXVIII that the proposed transfer threatens to prove detrimental to the public interest because it extends water deliveries outside the irrigation season as to Applications 74283, 74284, 72485, 74286, 74370, 74434, 74570, 74922, 75101, 75102, 75103, 73104 and 75159. As to the protest claim identified as number 3 in General Section XXVIII, that the water rights have been forfeited and/or abandoned, the Tribe in its evidentiary filing of June 22, 2007, indicated that it would be formally withdrawing its claims as to Applications 74283 and 74284. Therefore, the State Engineer dismisses the claim of forfeiture and/or abandonment as to Applications 74283 and 74284. As to the protest claims identified as numbers 4, 6, 9 and 10 in General Section XXVIII, the State Engineer dismissed the claims in their entirety.

As to Churchill County's protest claims, the State Engineer dismissed the protest claim identified above as number 1 in General Section XXIX that as to Application 72483 the application and map are deficient.

### II.

During the course of the oral arguments, Protestant Churchill County objected that it did not have the opportunity to respond with rebuttal to the Applicants' evidence because of the process established by the State Engineer for the exchange of evidence. The State Engineer allowed Protestants Churchill County and the Tribe to provide rebuttal evidence limited to review of the evidence provided by TEC and Mr. Turnipseed.

In the rebuttal evidence provided by Churchill County and the Tribe is a letter from a person with the United States Geological Survey (USGS) addressed to a person at the United States Fish and Wildlife Service, which specifically reviews the evidence of

TEC and Mr. Turnipseed. This evidence prompted Applicants Aspen Creek, LLC and Dayton Valley Investors, LLC to file a Motion to Strike and Seal USGS Administrative Letter Report Dated October 10, 2007, arguing that the letter is “inappropriately and illegally submitted” and that it “constitutes new evidence, which violates various aspects of Nevada Administrative Code (“NAC”) and case law.” Applicants argue that the information should not be allowed as it does not comply with multiple provisions of guidelines for the dissemination of USGS information. Applicants additionally argue that the information should be stricken because it is “new evidence” and they have not been afforded the opportunity to address the information.

Persons from the USGS have often provided testimony in hearings before the State Engineer and that testimony is not required to go through the USGS guidelines for dissemination of information. The State Engineer finds there is nothing inappropriate or illegal about it. The letter is exactly the type of information the State Engineer was expecting to be filed and the type of information found useful. The State Engineer finds that administrative hearings before him are not district court trials, that by statute the technical rules of evidence are not applicable to hearings before the State Engineer (NRS § 533.365(4)) and finds he will use the best information available to him to make the best and most informed decision for the resource and all the citizens of Nevada.

Besides the rule of law found in NRS § 533.365, which makes the decision to hold a hearing completely within the State Engineer’s discretion, NRS § 533.375 provides that the State Engineer may require the filing of information he deems necessary to consider applications. The first provision of the Nevada Administrative Code cited by Applicants in their argument provides that the State Engineer may construe the rules liberally to secure the just, speedy and economical determination of the issues presented and in special cases where strict compliance to the rules is unnecessary that the State Engineer can deviate from the rules. In this case, many different applicants were put together in the same proceeding, some of the applicants have substantial resources and some of the applicants do not have the resources to participate in a large sophisticated trial-type proceeding. In order to accommodate all the interests, the State Engineer used a shortened and expedited process. As to the issue of the Applicants’ complaint that they have not had the opportunity to respond to the letter, the volley of information could go

on indefinitely in a never ending battle of experts and the State Engineer finds there is no reason to allow that to continue. The process must be cut off somewhere. The State Engineer denies the motion to strike and seal.

### III.

Prior to the oral argument, Churchill County filed a Motion to Exclude Evidence and to Deny Applications 74283, 74285, 74286, 74592, 74922 and 75158 pursuant to which Churchill County objects to parties incorporating the evidence filed by other parties into their cases. The specific evidence Churchill County objects to is already a public record in the Office of the State Engineer from the Dayton Valley Basin Designation hearing. The State Engineer does not ignore the records and information within his office and his scope of knowledge just because someone was not a participant when that information was obtained. Additionally, the reason the parties were incorporating each other's evidence into their cases was solely a matter of conservation, i.e., saving paper, a process which the State Engineer completely supports. There is absolutely no reason to have the same six volumes of information copied multiple times wasting resources, storage space and time. Requiring each applicant to supply the identical documentation over and over in the same proceeding is unduly burdensome, expensive and not in the interest of economy. Just because Churchill County did not participate in the public hearing on the basin designation does not mean the State Engineer cannot consider the information. The State Engineer is always building upon the knowledge he already possesses. Additionally, the rebuttal allowed for at the oral argument provided Churchill County the opportunity to respond to that information; therefore, the State Engineer finds that portion of the motion moot.

Churchill County's motion also requested that the State Engineer summarily deny Applications 74283, 74285, 74286, 74592, 74922 and 75158 on the grounds that those Applicants did not provide any information in support of their applications. The Tribe also filed a Motion to Deny Certain Applications arguing that 13 Applicants did not provide any information; therefore, Applications 74283, 74285, 74286, 74402, 74427, 74592, 74611, 74922, 74979, 75157, 75158, 75160 and 75283 should be denied. The Tribe argues that in a hearing on another application filed by a Mr. Schumacher, the State Engineer denied the application because the applicant failed to respond to notices or

provide evidence. The State Engineer finds that in the case of Mr. Schumacher each of the certified notices of hearing was returned by the United States Postal Service as undeliverable and the language denying the application was merely a way to dispose of an application for which there was no indication of any continued interest in pursuing.

In this case, Applications 74283, 74285, 74286, 74427, 74922, 75157, 75158, 75160 and 75283 were all filed in the name of Lyon County who, part-way through the process, determined it was not going to be responsible for the bills for legal counsel and experts to process these applications and address the protests. The State Engineer does not even know who the real party in interest is in order to have that person served and will not deny those applications on the grounds of the motion. The State Engineer provided anyone the opportunity to present evidence, but they were **not** required to present it and that does not change the Tribe's or Churchill County's burden to prove their protest claims. An applicant is not required to submit anything in response to a protest claim, particularly if the applicant does not believe a protestant has proven its claim. And, by not doing so, does not mean the protestant's point is valid or substantiated. As to the Applicants under Applications 74402, 74592, 74611, and 74979, three of the Applicants were at the oral argument and are lay people without legal counsel trying to move or appropriate very small quantities of water (2.02 afa, 1.36 afa, .054 afa and 0.70 afa, respectively).

The Tribe also takes issue with the fact that many of the Applicants filed only a witness list and documentary evidence, but did not file a substantive answer or rebuttal to the Tribe's information and, because of that, requests the State Engineer deny Applications 74284, 74562, 74570, 74612, 75159 and 75277. The State Engineer finds he did not order anyone to file such a document, but rather permitted them to file what they wanted him to consider and denies the Motion to Deny Certain Individual Applications. The State Engineer finds no Applicant was required to provide information and the burden did not shift from Protestant's obligation to prove their protest claims. Nevada Revised Statute § 533.365 requires the State Engineer to consider the protest, but nothing requires an applicant to disprove a protestant's claim.

#### IV.

Many of the protest claims are based on or derive from the allegation that the Dayton Valley Hydrographic Basin is “severely over-appropriated.” It is alleged that the permitted and certificated ground-water rights in the Dayton Valley Hydrographic Basin far exceed the estimated perennial yield, and as such, the pumping of ground water is or will take Carson River surface water that is claimed by senior water-right holders in the Newlands Project thereby impacting existing rights. The State Engineer notes that the Tribe is not a senior water-right holder on the Carson River and does not have any existing decreed right to Carson River surface water. The Tribe also protested the applications on the grounds that granting them would threaten to prove detrimental to the public interest for other reasons. One reason being that the over-appropriation of the ground water available in the basin results in the inability of the perennial yield to serve existing permits and commitments with ground water. Another being, the obligation of the State Engineer pursuant to NRS chapters 533, 534 and 278 to require that there be adequate plans to protect existing water users and commitments of ground water. And finally, the Tribe argues that the State Engineer should exercise his authority and discretion to control the demand on the water source to protect both the public and other surface-water and ground-water right holders.

The State Engineer finds that protesting the *change* of an existing right is not the proper vehicle in which to address the issue of over appropriation in a particular basin. The State Engineer finds that if the Protestants had any issue with the initial granting of these ground-water rights, they should have protested when the notice of the original, new appropriation was made and appealed that granting of the original base right permit at that time. The State Engineer finds that almost all the applications under consideration in this ruling are changes to existing rights that have been in existence for decades.

#### V.

Although the State Engineer does not believe he needs to analyze for over-appropriation on change applications, the State Engineer will address the Protestants arguments as to water appropriated and used in the Dayton Valley in order to demonstrate why their protest claims are unfounded. Protestants present a simple comparison of ground-water permits to the perennial yield and makes it appear that the Dayton Valley is

over-appropriated; however, that type of analysis does not present a full and complete analysis of whether or not a basin is over-appropriated, and when these factors are considered, the Dayton Valley Hydrographic Basin is not “severely over-appropriated.” The State Engineer finds the protest claims warrant the consideration of the actual use of the water, including factors such as consumptive use, the limited use of supplemental water rights, dedication requirements, secondary recharge, and artificial recharge projects. Through this analysis it is shown that the use of water under the committed water rights in the basin is within the acceptable range of recharge.

The State Engineer finds that a simple straight line analysis is not adequate in this basin; however, the State Engineer does not agree with the Applicants numbers or that pumping is the sole indicator of whether or not a basin is over-appropriated. The State Engineer finds the water that is recharged to the basin from precipitation is available for appropriation within the ground-water basin and the water does not belong to those claiming rights to the Carson River surface waters. The State Engineer finds that neither Protestant provided substantial evidence that the water recharged from precipitation within the basin is not available for appropriation or that they have a valid claim to use of that ground water from the river system.

## VI.

The Tribe and Churchill County argue that estimates of annual recharge or perennial yield for the ground-water basin range from 9,445 to 12,525 afa<sup>28</sup> and that the total amount of committed ground-water rights in the basin total approximately 25,600 afa.<sup>29</sup> Therefore, they argue that the committed ground-water rights exceed the annual recharge or perennial yield by more than 12,000 to 16,000 afa and that the pumping of the total amount of allocated ground water will take river water, impacting existing rights. Their evidence indicates that the amount of ground water pumped from the Dayton Valley was reported as 3,724 af [sic 13,724] in 2002, 11,431 af in 2003, 10,358 af in 2004, 8,540 af in 2005, and 9,105 af in 2006;<sup>30</sup> thus, ground-water use in Dayton Valley has exceeded the lower estimate of recharge for three of those years and the

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<sup>28</sup> PLPT, Binder A, Tabs 2, 3, 4, and 22, and Binder B, Tab 26.

<sup>29</sup> PLPT Binder A, Tabs 3 and 4.

<sup>30</sup> PLPT, Binder A and B, Tabs 5, 6, 7, and 43.

higher estimate of recharge in 2002.<sup>31</sup> The Tribe asserts that since current pumping is so close to the accepted range of estimates of recharge, any applications for further development should be denied. The Tribe also asserts that water rights requested for use under some of these change applications have not been pumped in recent years, so use of water under any permit granted will increase the amount of water pumped topping the 12,000 afa mark within the next year or two, thereby exceeding the estimates of recharge from precipitation.<sup>32</sup>

Dayton Valley is a stream dominated basin, and it is difficult to effectively capture ground-water evapotranspiration by pumping. Therefore, the State Engineer has determined, in such basins, that the best measure of perennial yield is ground-water recharge, rather than ground-water ET discharge, as used in closed basins throughout the state. As to the amount of water recharged annually to the ground-water basin, Applicants provided evidence summarizing ground-water recharge estimated by using various precipitation maps and recharge coefficients. Mr. Xu, a witness for Applicants, provides his analysis of estimates of recharge using three precipitation distributions (Hardman 1936, Hardman 1965 and PRISM 1997) and two recharge coefficients (Maxey-Eakin 1949 and Nichols 2000).<sup>33</sup> Mr. Xu made four estimates of recharge for the Dayton Valley Hydrographic Area by applying Maxey-Eakin 1949 recharge coefficients to the three precipitation distributions and by applying Nichols recharge percentages to the PRISM 1997 precipitation distribution, the latter method is not accepted by the State Engineer. Mr. Xu's recharge estimates ranged from 8,511 to 21,558 afa.

Reference was also made to Maurer's 1997<sup>34</sup> estimates of recharge from precipitation that used Maxey/Eakin recharge estimates with an altitude-precipitation distribution by Glancy and Katzer (1976), a distance-altitude relation, and the 1996

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<sup>31</sup> PLPT, June 22, 2007, Report of Stetson Engineers and Robert C. Maddox and Associates in Support of Protests of the Pyramid Lake Paiute Tribe of Indians to 27 Applications to Change or Appropriate Dayton Valley Hydrographic Basin Groundwater Rights. As noted in the Applicants' evidence, the pumping figures for 2004, 2005 and 2006 were mistakenly released by the State Engineer's staff as those inventories had not been presented to the public in final form at the time of the evidentiary exchange. Since that time, the 2006 pumpage inventory has been released as a public record, but those for 2004 and 2005 are not finalized. However, the former State Engineer did present preliminary numbers as to pumpage in 2002, 2003 and 2004 at a public meeting.

<sup>32</sup> Transcript, p. 17, September 20, 2007, official records in the Office of the State Engineer.

<sup>33</sup> Applicant's Binder, Applications 74369, 74370, 75101-75104, Volume II, Tab 25.

<sup>34</sup> USGS WRI 97-4123.

PRISM map. Those estimates of recharge were 7,900 afa, 11,000 afa and 26,000 afa.

The State Engineer also considers qualitative data in evaluating basin recharge estimates, and prefers to utilize the most recent studies available for representative basins. One such method is to compare recharge estimates in basins having similar hydrogeology, precipitation rates, and climates. The Tracy Segment lies due north of the Dayton Valley, and is directly comparable. Unfortunately, recharge estimates in the Tracy Segment are hindered by the same limitations as Dayton Valley, being a river-dominated basin. Nevertheless, ground-water recharge was estimated to be 11,500 afa, or approximately 7.7% of the estimated precipitation.<sup>35</sup> The Pine Nut Mountains and the eastern side of Carson Valley are very similar to Dayton Valley in terms of its hydrogeology, precipitation and climate. Recharge in the Pine Nut Mountains was estimated to be 4,300 to 11,000 afa, which is 3.3%<sup>36</sup> to 8.4% of the average precipitation of 131,000 afa.<sup>37</sup> Precipitation in Dayton Valley was estimated to be 180,000 to 250,000 afa.<sup>38</sup> The State Engineer finds using an average rate of 4% to 8% of precipitation, ground-water recharge in Dayton Valley would be 7,200 to 20,000 afa.

The State Engineer finds that a specific number for perennial yield cannot be determined with the available information, but after considering all the evidence, without simply averaging the various estimates, that a reasonable estimate of the average annual ground-water recharge from precipitation in the basin is between 8,000 and 20,000 afa. Considering the known errors associated with recharge estimated, a narrower range for estimated recharge is not possible at this time. The amount of recharge available for use in Dayton Valley is limited to the local, in-basin recharge. Any inflow from Eagle Valley is reserved for appropriation in Eagle Valley.

## VII.

The 2006 Dayton Valley Pumpage Inventory indicates that 24,517 acre-feet of ground-water rights are committed in the Dayton Valley Hydrographic Basin. Of that amount, 3,691 af are non-supplemental irrigation water rights and 5,312 af are

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<sup>35</sup> State Engineer's Ruling No. 5747, dated June 27, 2007, official records in the Office of the State Engineer.

<sup>36</sup> USGS SIR 2006-5305, pp. 25 and 32.

<sup>37</sup> USGS SIR 2006-5305, pp. 25, 32 and 38.

<sup>38</sup> WRI 97-4123, p. 10.

supplemental to surface-water rights. The Applicants calculated 6,794 af to be supplemental to Carson River surface-water rights.<sup>39</sup> Applicants argue that since it is the policy of the State Engineer not to allow supplemental irrigation rights to be converted to municipal use they should not be counted in the quantification of existing rights in the basin, and should be fully deducted from the amount of water considered committed in the basin.<sup>40</sup> The Tribe and Churchill County argue that supplemental water rights should be analyzed at the full duty of 4.0 af per acre as indicated on the permit or certificate. The Tribe takes issue with counting supplemental water rights as a zero in the amount of water actually committed, arguing that the water is pumped, particularly in dry years, and thus, should not be discounted from the amount of water committed in the basin.

The State Engineer agrees that supplemental water rights should not be fully discounted from the amount of water committed in a hydrographic basin, but rather that a determination needs to be made regarding the actual amount used and the effective duty of supplemental ground-water rights. Supplemental irrigation water rights, as discussed in this ruling, are ground-water rights which have a place of use appurtenant to the same place of use as an existing surface-water right and are available for use when the surface-water flow is inadequate to meet irrigation demands.

Analyses by the State Engineer determined that 5,312.22 af of irrigation rights are supplemental to surface-water rights. This amount is somewhat lower than the Applicant's estimate of 6,793.86 af. While the Office of the State Engineer has not previously established an effective duty for supplemental irrigation ground-water rights for the purposes of determining total existing ground-water use in Dayton Valley, it is reasonable to assume that the effective duty of a supplemental irrigation ground-water right is neither zero nor the full duty of 4.0 af per acre as indicated on the permit or certificate. Instead, it is much more reasonable to establish the effective duty of a supplemental irrigation ground-water right as the maximum annual amount of the ground-water right actually used to supplement the surface-water right to meet irrigation demands. The State Engineer's effective duty estimate of supplemental irrigation ground-water rights in Dayton Valley is based on actual field work. One supplemental

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<sup>39</sup> Applicant's Binder Applications 74369, 74370, 75101-75104, Volume III, Tab 28F.

<sup>40</sup> Applicant's Binder Applications 74369, 74370, 75101-75104, Volume II, Tab 13, pp. 82-89.

ground-water right in the basin has a meter on the well and the use of water under the other supplemental rights is based on interviews with the well owners whereby information is gathered as to when the availability of surface water ended, estimating the number of days the well was used and multiplying that by the permitted diversion rate. For the period 2003 through 2007, the information indicates that the metered well used 42 percent of its supplemental ground-water right while a second user only used 5 percent. The priority dates of the underlying surface-water rights ranged from 1861 to 1905, with 72 percent of the rights having an 1878 priority date.

For comparison, during the period of 1996 to 2005, the State Engineer looked at places of use in Carson Valley which have surface-water rights from the Carson River and supplemental ground-water rights for the entire place of use of the surface-water right. The total duty of supplemental ground-water rights used on a percentage basis during the review period ranged from a low of 4 percent to a high of 28 percent with an average of 16.2 percent. Using that comparison, the State Engineer will take the average of 42 percent and 5 percent (23 percent) for the amount applied for use of supplemental ground-water rights in Dayton Valley. When the State Engineer calculates for basin abstracting purposes the existing rights in a basin, the actual permitted or certificated duty is used for all rights, not an average of each right's annual use.

The State Engineer finds using the pumpage data for supplemental ground-water rights in Dayton Valley, the average amount of supplemental ground-water used was 23 percent of the maximum duty of 4.0 af per acre annually. This analysis results in a supplemental use in Dayton Valley of 1,222 af ( $5,312 \times .23$ ). The consumptive use portion of the supplemental water rights is 977 afa, estimated at 3.2 af/acre as described in Finding of Fact XIV. The State Engineer finds that while he is calculating an effective duty for these supplemental water rights that generally they will not be allowed to be transferred to become stand alone water rights because of their supplemental nature that ties them to a primary surface-water right.

### VIII.

Applicants assert that 2,385 afa<sup>41</sup> of the committed resources of the basin are for mining and milling, of which 1,240 af were issued as a preferred use after the basin was designated in 1973.<sup>42</sup> They argue and the State Engineer agrees that since mining and milling rights are considered temporary in nature and the right to change them to other uses is usually denied that such temporary permits should also be deducted from the committed rights in the basin. The State Engineer finds there are 2,723 af of combined mining/milling and industrial uses of which 1,132 af are temporary in nature.

### IX.

Applicants further argue that the quantity of water actually committed should also be reduced because of the dedication requirements in relation to actual consumptive use for quasi-municipal or municipal purposes. Prior to 2001 ground-water rights were dedicated at a rate of 1.12 af per unit. The Applicants assert that the actual historical demand averages 0.6 af per unit, so while these water rights appear on the books as committed rights they are not in fact being fully used.<sup>43</sup> The 2006 Pumpage Inventory indicates that of the 13,478 af permitted for municipal use only 4,166 af was pumped during the 2006 water year. Also, municipal pumpage has notably decreased from 6,062 af in 2002, 5,062 af in 2003, 4,744 af in 2004 to 4,166 af in 2006, even while development has increased.<sup>44</sup>

Additionally, Applicants argue that the committed resource calculation should also take into account that the consumptive use of municipal water rights is less than that for irrigation and there is return flow to the ground-water basin through either septic tanks or effluent recharge basins which should be taken into consideration in a determination of whether the basin is over-committed or not. They provided evidence to show that return flows from municipal and industrial use are 40% and assert that, assuming the total municipal appropriations of 13,478 af was being used, 5,391 af would

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<sup>41</sup> 2006 Pumpage Inventory identifies this number as 2,358.

<sup>42</sup> Applicant's Binder Applications 74369, 74370, 75101-75104, Volume III, Tab 28, p. 13.

<sup>43</sup> Applicant's Binder Applications 74369, 74370, 75101-75104, Volume III, Tab 28, p. 14.

<sup>44</sup> PLPT, Binder A, Tab 5.

return to the ground-water basin through Lyon County's rapid infiltration basin.<sup>45</sup> However, as noted by the Tribe, this analysis fails to address that in Dayton Valley some of the municipal effluent is used for golf course irrigation, which is considered a 100% consumptive use and, as noted by Churchill County, fails to recognize that more of the effluent could be used in the future rather than recharged. At this time, the evidence indicates that 4,166 acre-feet were pumped for municipal use in 2006.

Estimated consumptive use of municipal/quasi-municipal water is based on reported pumpage by municipal providers, estimating the number of homes served, and calculating the probable consumptive portion for new dedications. There are currently 13,756 af of combined municipal/quasi-municipal rights. It is estimated that approximately 8,300 af are currently dedicated in the basin. Based on pumpage reports by Dayton Utilities, the amount delivered is approximately 50% of the 1.12 af/home dedication amount, for a consumptive use of 4,150 af. Approximately 1,900 af are pumped by Carson City and used throughout their system in the Eagle Valley Hydrographic basin; therefore, their use is entirely consumptive. Of the remaining 3,556 af, it is estimated that the consumptive portion will be 80% of the water right, or 2,845 af, on the basis of present dedication policies. The State Engineer finds that of the 13,756 af of municipal and quasi-municipal water rights, the amount that would be consumptively used with full use would be 8,895 af.

#### X.

And, finally, Applicants argue that the State Engineer should take into consideration pumpage data that indicates that pumpage has ranged from 13,724 af in 2002 to a low of 8,564 af in 2005 and 9,105 af in 2006. They argue this range is still below the available yield of 12,525 afa. All parties' evidence indicates that, since 2002, pumping in the Dayton Valley Hydrographic Basin had been generally decreasing.

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<sup>45</sup> Some of the testimony provided at the basin designation hearing addressed the issue of residential consumptive use where three average lots within the basin were analyzed. For a 13,800 square foot lot, the consumptive use was found to average 0.51 acre-feet per year while water was dedicated at 0.95 acre-feet. After factoring in secondary recharge through the Dayton area waste water treatment plant, which utilizes rapid infiltration basins, the actual consumptive use is 0.29 acre-feet or 19 per cent of the allocated water. This same analysis for a 6,000 sq. ft. lot that has a dedication rate of 0.7 acre-feet the average consumptive use is 0.4 acre-feet and after factoring in the waste recharge it is 0.18 acre-feet. For many years, water was dedicated at rate of 1.12 acre-feet per lot and the witness believes that pumpage inventories are skewed too high when the 1.12 acre-feet number is the amount used in the pumpage inventory.

Pumping went from 13,724 af in 2002 to 8,564 af in 2005; however, in 2006 pumping was estimated at 9,105 afa. The use of water for irrigation has decreased from 5,718 af in 2002 to 2,240 af in 2005.<sup>46</sup> Additionally, water use in the Riverview, Mound House, Carson Plains and Bull Canyon segments has also been declining between 2002 and 2005, even with many people moving into the Carson Plains subbasin. Applicants believe that most of this decrease to be the result of the conversion of irrigation water rights to municipal use and the excess municipal dedication requirement.<sup>47</sup> However, Protestants argue that the amount pumped still exceeds the natural recharge of the subbasins.

The State Engineer finds, as discussed below, that based on current information the amount of water that will be consumed considering full use of the total appropriation in the Dayton Valley Hydrographic Basin is within the 8,000 to 20,000 acre-feet annual recharge calculations, and as such the basin is not over-committed and the applications for de minimis amounts of water in the new appropriations should not be denied.

#### **XI.**

Using the above findings, the State Engineer finds the total consumptive use of ground-water under the permitted rights in the Dayton Valley Hydrographic Basin is as follows:

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<sup>46</sup> Applicant's Applications 74369, 74370, 75101-75104, Volume II, Tab 13, pp. 69-72 and Tab 14.

<sup>47</sup> Applicant's Applications 74369, 74370, 75101-75104, Volume II, Tab 13, pp. 77-79, and Tab 14.

**Table 2.** Ground-water consumptive use

Manner of Use	Permits (af)	Consumptive Use (af)
Irrigation <sup>1</sup>	9,003	NA
Non-supplemental irrigation <sup>2</sup>	3,691	2,953
Supplemental irrigation	5,312 <sup>3</sup>	977 <sup>4</sup>
Mun/QM <sup>1,5</sup>	13,756 <sup>1</sup>	8,895 <sup>5</sup>
MM/Ind <sup>1</sup>	2,723	1,591 <sup>6</sup>
Stock/Rec/Env <sup>1</sup>	58	58
Com <sup>1</sup>	97	97
Domestic (rights) <sup>7</sup>	18	18
Domestic (wells)	NA	1,495 <sup>8</sup>
Total water rights	25,655	
<b>Total consumptive use</b>		<b>16,084</b>
<p>1. NDWR Hydrographic abstract summary 2/21/08</p> <p>2. Equal to total irrigation less supplemental irrigation, 80% consumptive.</p> <p>3. Estimated by State Engineer.</p> <p>4. Equal to 23% of gross duty, 80% consumptive.</p> <p>5. Consumptive portion as described in text.</p> <p>6. Consumptive portion equal to 100% of non-temporary permits.</p> <p>7. Dayton Valley Pumpage Inventory, 2006.</p> <p>8. Dayton Valley Pumpage Report 1,495 wells @ 1.0 af/well</p>		

The State Engineer finds by using a more in-depth analysis the Dayton Valley Hydrographic Basin is not over-appropriated and these changes to existing water rights should not be denied.

## XII.

The State Engineer finds that he, as well as State Engineers before him, has actively managed the Dayton Valley by utilizing statutory tools to accomplish that management. For management and planning purposes, the United States Geological Survey (USGS) and the Nevada Division of Water Resources (Division) have divided the state of Nevada into 256 ground-water basins and sub-areas, each of which is identified by a name and number. Contained within the basins, is a subset of ground-water basins

that are classified as designated ground-water basins. The intent of the orders designating basins is to provide a mechanism that allows additional administration of the state's water resources on a basin-by-basin basis. The Dayton Valley Hydrographic Basin was initially designated in 1973, with the designated area being extended in 1977.<sup>48</sup> State Engineers have previously denied applications for new appropriations that would place additional land into irrigation in the basin at a time when pumpage in the basin exceeded 14,000 acre-feet annually, have denied applications that would move additional water into the Stagecoach area because to do so would conflict with existing rights, and have denied large new appropriations for municipal purposes north of the Carson River and in close proximity to the river at a time when pumpage exceeded 15,930 acre-feet annually.<sup>49</sup> The former State Engineer initiated a consumptive use limitation on changes from irrigation to other uses; however, that decision was reversed by the district court.<sup>50</sup> Subsequently, the Nevada Legislature has specifically authorized the State Engineer to perform such an analysis and the State Engineer will take into consideration the consumptive use of the original and proposes new uses.

The Division spends a significant amount of time in the Dayton Valley performing field work to help gauge the health of the basin. Pumpage inventories have been conducted since 2001 to monitor the quantity of water pumped in Dayton Valley and water-level measurements are taken at numerous sites and field investigations are conducted throughout the year as necessary.

When water rights are dedicated for municipal use, the dedication policy of the State Engineer is designed to cover the maximum amount of water ever anticipated to be used and the actual use has been demonstrated to be less than the total amount dedicated. The State Engineer has consistently performed the obligation to protect existing rights, and to assure water is available for development through signatory authority over subdivision maps. It should be noted that, other than the Stagecoach area, the water-level data collected by the Division fails to indicate any significant declining water-level trends.

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<sup>48</sup> PLPT, Binder A, Tab 10 and 11.

<sup>49</sup> PLPT, Binder A, Tab 14, 15, 16

<sup>50</sup> Applicant's Applications 74369, 74370, 75101-75104, Volume III, Tab 28C.

The State Engineer finds that, if he determines the basin needs additional regulation, he can impose additional conditions on water use such as designating preferred uses, requiring totalizing meters, requiring the reporting of actual water use, limiting the depths of wells, requirements as to the construction of specific wells, and requirements as to quantities dedicated for each unit contemplated for quasi-municipal and municipal development. Many of these tools are already being used in Dayton Valley. And if it is believed that additional concern is warranted, the State Engineer has other tools available to him such as calling for proofs of beneficial use, denial of extensions of time to place water to beneficial use, cancellation and forfeiture of existing rights and ultimately he could regulate the basin on the basis of priority. However, based on the reasonable analysis provided in this ruling, the State Engineer finds use of the most extreme tools is not warranted at this time and denial of change applications for water rights that have been in existence for decades is not the proper method for accomplishing that objective.

The State Engineer finds that the Protestants are mistaken in their allegation that the State Engineer has not performed his obligation with regard to management of water in Dayton Valley.

### **XIII.**

Applicants presented a report that takes the position that before limiting a change to the historical consumptive use the State Engineer should consider the consumptive use and efficiency of the new use and that municipal use has a lower consumptive use than irrigation use.

As to all the applications under consideration in this ruling, the Tribe alleges that the duty should be limited to the historical consumptive use of 2.5 acre-feet per acre otherwise the application is requesting a new and additional appropriation in an over-appropriated basin. Churchill County alleges as to Applications 74283, 74284, 74285, 74286, 74434, 74569, and 74612 that the applications should be limited to a consumptive use of 2.5 acre-feet per acre.

Applications 74283, 74284, 74285, 74286, 74369, 74370, 74434, 74562, 74569, 74570, 74592, 74612, 74922, 74979, 75101, 75157, 75158, 75159, and 75277 are all changes from irrigation to some other manner of use. The State Engineer finds that

Applications 74402, 74427, 74611, 75101, 75102, 75103, 75104, 75160, and 75283 are not requesting a change in manner of use from irrigation to some other use and overrules the Tribe's protest claim as to those applications.

Consumptive use of a crop can be defined as that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use or water lost due to inefficiencies or waste during the irrigation process. The consumptive use of a crop is equal to the crop evapotranspiration less the precipitation amount that is effective for evapotranspiration by the crop.

The State Engineer's consumptive use estimate for Dayton Valley is based on the Penman-Monteith short reference evapotranspiration equation and crop coefficient approach for estimating growing season crop evapotranspiration, similar to methods of the California Irrigation Management Information System (CIMIS). The standardized methods are described by the American Society of Civil Engineers<sup>51</sup> and the Food and Agriculture Organization of the United Nations,<sup>52</sup> and are for a crop of alfalfa with a growing season from the last killing frost to the first killing frost of 20° F. Daily weather data of temperature, relative humidity, wind speed, and incoming solar radiation used as input to Penman-Monteith equation were obtained from Carson City and Fallon weather stations operated by the Western Regional Climate Center and U.S. Bureau of Reclamation, respectively. Mean annual last and first frost dates for Dayton Valley were estimated to be April 1 and October 31, respectively.

Effective precipitation as defined by the Natural Resources Conservation Service (NRCS) National Engineering Handbook<sup>53</sup> (NEH) is the part of precipitation that can be used to meet the evapotranspiration of growing crops. The NRCS NEH outlines an empirical method for computing the effective precipitation based on 22 studies. Because no significant record of precipitation exists in Dayton Valley, PRISM 800 meter

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<sup>51</sup> *The ASCE Standardized Reference Evapotranspiration Equation*, 2005, official records in the Office of the State Engineer.

<sup>52</sup> *FAO Irrigation and Drainage Paper No. 56. Crop Evapotranspiration: Guidelines for Computing Crop Water Requirements*, 1998, official records in the Office of the State Engineer.

<sup>53</sup> *Irrigation Water Requirements*, 2003, official records in the Office of the State Engineer.

resolution precipitation normals from 1971-2000 were used, in which the mean annual precipitation for the valley floor was estimated to be 8.4 inches. Using mean monthly PRISM precipitation normals, and applying the NRCS effective precipitation method during the growing season and monthly soil water balance during the non-growing season, the estimated mean annual effective precipitation is 0.2 feet per year. The State Engineer finds that by using a distance weighted crop evapotranspiration rate of 3.4 feet per year with an effective precipitation rate of 0.2 feet per year, the annual consumptive use of irrigated areas in Dayton Valley is 3.2 feet per year or 80% of the 4.0 af/acre duty.

The State Engineer finds the consumptive use for an irrigation right using ground water in the Dayton Valley Hydrographic Basin is 3.2 acre-feet per acre.<sup>54</sup> The State Engineer finds the Nevada Legislature clarified that consumptive use may be a proper part of the analysis when changing a water right from irrigation to a new use, which is merely a reflection of the long-standing common law and rejects Applicants' argument that it cannot be applied to the changes under consideration here.<sup>55</sup>

The State Engineer finds that the consumptive use figure established in the *Alpine* Decree is not binding on the State Engineer's analysis as to changes of ground-water rights. The State Engineer finds the science of estimating consumptive use has progressed past that used when the *Alpine* Decree was entered and he relies on the most modern science when it is reliable and such science was used in this analysis. The State Engineer finds that 3.2 af/acre is the consumptive use figure that will be used in the Dayton Valley Hydrographic Basin for changes of water from irrigation to other uses, but in this case, rather than limiting the change to the consumptive use portion, the State Engineer will determine the amount to be changed after considering the actual consumptive use of the new manner of use.<sup>56</sup> The full quantity cannot be used until the Applicants provide the State Engineer with evidence as to the consumptive use of the new manner of use and permission is obtained from the State Engineer to use the additional amount of water.

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<sup>54</sup> Applicant's Applications 74369, 74370, 75101-75104, Volume III, Tab 28.

<sup>55</sup> See, Senate Bill No. 274, 2007 Session, Nevada Legislature.

<sup>56</sup> NRS § 533.370(3).

#### XIV.

The thrust of the Tribe's and Churchill County's arguments appear to be that they want the State Engineer to conduct an investigation and regulate the Dayton Valley Hydrographic Basin on the basis of priority, which would eliminate many of the existing water rights in the basin. However, in its oral argument, the Tribe posed that additional investigation is not needed to see that average annual replenishment is not adequate to support the water rights that currently exist in the ground-water basin.<sup>57</sup> Citing to NRS § 534.110(6), which provides that the State Engineer shall conduct investigations in any basin or portion where it appears that the average annual replenishment to the ground-water supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings so indicate the State Engineer may order that withdrawals be restricted to conform with priority rights, the Tribe argues the evidence of perennial yield versus existing rights and ground-water pumpage satisfies the statutory requirement and the State Engineer should initiate and conduct the investigation provided for under the statute and regulate the basin on the basis of priority.

The Tribe argues that in the absence of a determination that water rights may be exercised on a long-term sustainable basis, these 27 applications should be denied on the grounds that water is not available for appropriation and granting the applications would threaten to prove detrimental to the public interest. The Tribe argues that the former State Engineer publicly recognized that pumpage from the Dayton Valley Hydrographic Basin has exceeded estimated potential recharge and that the potential exists for additional pumpage under existing rights that have not yet been developed. It asserts that before any pending applications are permitted promoting further dependence on the over-committed ground-water resources, the State Engineer should take action under NRS § 534.110.

The State Engineer finds he does not need to conduct an investigation into the basin as he is fully aware of the facts of water appropriated in the basin, and is adequately informed as to water use in the basin. The State Engineer finds the more in depth analysis presented in this ruling demonstrates that the Dayton Valley Hydrographic Basin is not "severely over-appropriated." The State Engineer finds that the dedication

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<sup>57</sup> Transcript, p. 20.

requirements that have been in place for years do adequately protect existing users. As noted, by the Applicants, the requirements of multiple State Engineers have built in a margin of safety that protects existing users. The State Engineer finds as demonstrated by this ruling that as more water is converted from agricultural to municipal uses that he has been fully analyzing water use and has addressed concerns through things such a dedication requirements that are in place to protect the water users. The State Engineer finds that he has fulfilled his responsibility under NRS § 278.377(1)(b) and that with the information before him today the basin is not in great jeopardy.

**XV.**

As to Applications 74369, 74569, 74979 and 75157, the Tribe alleges that the proposed transfers threaten to prove detrimental to the public interest by extending water deliveries outside the irrigation season. The State Engineer finds that Nevada Water Law provides for changes in the manner of use of water rights and just because water use is extended outside the season of use provided for in the original permit does not change the total quantity of water permitted for use under the base water right or that can be used under the change. The State Engineer finds the Tribe did not provide any evidence in support of this protest claim.

**XVI.**

Both the Tribe and Churchill County made allegations that certain water rights have either been forfeited and/or abandoned. The Tribe made said allegations as to the base water rights that Applications 74285, 74286, 75101, 75102, 75103, and 75104 seek to change. Churchill County made said allegations as to the base water rights that Applications 72483, 74284, 72485, 74286, 74434, 74569, 74570, 74592, and 74612 seek to change.

As to Application 74285, the Tribe alleges that the application seeks to change the point of diversion, place and manner of use of water appropriated under Permit 50697, which is permitted for 24 afa, but that less than 7 afa has been used under the permit for the water years of 2002 through 2006; therefore, the remaining portion of the water right

under Permit 50697 should be declared forfeited or abandoned<sup>58</sup> and Application 74285 denied. The State Engineer finds the Tribe did not adequately research this protest claim in that two change applications and relinquishments have been granted for 17.76 afa off Permit 50697 in 2004 and 2005 leaving a little less than 7 afa under the permit.

As to Application 74286, the Tribe alleges that the application seeks to change the point of diversion, place and manner of use of water appropriated under Permit 25503, which is permitted for 16.2 afa, but that less than 2 afa has been used under the permit for the water years of 2002 through 2006; therefore, the remaining portion of the water right under Permit 25503 should be declared forfeited or abandoned<sup>59</sup> and Application 74286 denied. The State Engineer finds the Tribe did not adequately research this protest claim in that a change application and relinquishments have been granted for all but 2.94 afa off Permit 25503 in 2004, 2005 and 2006.

As to Application 75101, the Tribe argues that the application seeks to change the point of diversion, place and manner of use of water appropriated under Permit 64782, which is permitted for 484.16 afa, but that no water was used under the permit for the years of 2002 through 2006; therefore, Permit 64782 should be declared forfeited, abandoned or cancelled. As to Application 75102, the Tribe argues that the application seeks to change the place and manner of use of water appropriated under Permit 64783, which is permitted for 396.96 afa, but that no water was used under the permit for the years of 2002 through 2006; therefore, Permit 64783 should be declared forfeited, abandoned or cancelled. As to Application 75103, the Tribe argues that the application seeks to change the place and manner of use of water appropriated under Permit 64784, which is permitted for 874.14 afa, but that no water was used under the permit for the years of 2002 through 2006; therefore, Permit 64784 should be declared forfeited, abandoned or cancelled. As to Application 75104, the Tribe argues that the application seeks to change the place and manner of use of water appropriated under Permit 64785, which is permitted for 139.06 afa, but that no water was used under the permit for the

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<sup>58</sup> The Tribe in its argument alleges the remaining portion of the water right should be cancelled; however, this was not a protest issue alleged in its protest. Therefore, the State Engineer will not consider the cancellation argument.

<sup>59</sup> The Tribe in its argument alleges the remaining portion of the water right should be cancelled; however, this was not a protest issue alleged in its protest. Therefore, the State Engineer will not consider the cancellation argument.

years of 2002 through 2006; therefore, Permit 64785 should be declared forfeited, abandoned or cancelled.

The Tribe also argues that Permits 64782, 64783, 64784 and 64785 should be cancelled since the base rights did not allow for municipal and domestic use; however, it did not allege this in its protests, and the State Engineer finds that Nevada water law specifically provides for changes in manner of use and finds the argument without merit and bordering on frivolous. The State Engineer finds the Tribe did not assert a claim of cancellation in its formal protests to Applications 75101 through 75104; therefore, no such claim will be considered. A protestant is not allowed to add additional claims to a protest in the middle of a proceeding. The State Engineer finds proof of beneficial use of water under Permits 64782, 64783, 64784, and 64785 is not even due to be filed in the Office of the State Engineer until March 2, 2012; therefore, the permits are in good standing and not subject to a determination of cancellation and finds no merit in the Tribe's claims of abandonment and overrules the claim. The State Engineer finds the doctrine of forfeiture is only applicable to certificated water rights, and thus, is not applicable to Permits 64782, 64783, 64794, and 64785.

The Tribe alleges that if the water sought to be changed is supplemental to a surface-water right, granting the application would in effect amount to granting a new water right in an over-appropriated basin thereby conflicting with existing rights. (Applications 74283, 74284, 74285, 74286, 74374.) Since at least April of 2006, the State Engineer has been communicating with the Applicant's agent as to the supplemental and non-supplemental nature of the water rights under Permits 64782, 64783, 64784 and 64785.<sup>60</sup> By letter dated March 7, 2007, the State Engineer determined that 580 acre-feet of ground-water rights on the Hermann Ranch would be considered as non-supplemental water rights and available for transfer to municipal use.<sup>61</sup> The State Engineer finds no evidence was provided to support a claim that supplemental water rights are being transferred and the State Engineer is not permitting the supplemental portion of the water rights to be transferred.

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<sup>60</sup> Letters dated April 11, 2006, October 6, 2006, File No. 64872, official records in the Office of the State Engineer.

<sup>61</sup> File No. 64782, official records in the Office of the State Engineer.

Churchill County alleges that the water right requested for change under Application 74283 may be supplemental to Carson River rights and should not be allowed to be stripped and become a stand alone right. The State Engineer finds Churchill County did not provide any evidence to support its protest claims that supplemental water rights are being transferred under Application 74238 or its claims of abandonment and/or forfeiture of the water rights sought to be changed by Applications 74283, 74284, 74285, 74286, 74434, 74569, 74570, 74592, and 74612.

#### **XVII.**

Churchill County alleges that the proposed points of diversion under Applications 74283, 74284, 74285, 74286, 74434, 74569, 74570, 74592, 74612, 74922, 75158, and 75277 are moving points of diversion closer to the Carson River and thereby will be depleting the base flow to the river or inducing recharge from the river thereby affecting senior downstream surface-water right holders. Additionally, that Applications 74283, 74284, 74285, 74286 have points of diversion which are within the Carson Plains subbasin of Dayton Valley, which is over-appropriated, experiencing water-level declines, has return flow issues and is adverse to and will impact existing surface-water and ground-water right holders and that by moving points of diversion closer to the Carson River impacts to existing users will be exacerbated. The State Engineer recognizes there are areas of hydrologic connection between the ground-water basin and the river, but the local recharge belongs to the ground-water basin and may be appropriated. By moving points of diversion closer to or further from the river, the principal affect will be the timing of potential interaction with the river. Simply moving a point of diversion in no way equates to an additional appropriation that will reduce long-term river flows.

It is recognized that wells located immediately adjacent to the river have the potential to capture river water. Therefore, the State Engineer has imposed restrictions on wells closer than 0.25 of a mile from a live stream. See, NAC § 534.390. The State Engineer finds that before any water may be pumped under Applications 74285, 74286, 74427, 74569, 74570 and 74692 the well construction at the new point of diversion must be approved by the State Engineer.

### **XVIII.**

In the Tribe/Stetson Report, an argument is presented as to lack of beneficial use of water rights in Dayton Valley and forfeiture of ground-water rights. The Tribe argues that a significant quantity of Dayton Valley ground-water rights have not been put to beneficial use during the preceding five or more years suggesting that a substantial amount (approximately 14,700 af) of Dayton Valley ground-water rights should be cancelled or found forfeited and the State Engineer should initiate comprehensive proceedings pursuant to NRS § 534.120, which provides that in an area where in the State Engineer's judgment ground water is being depleted he is empowered to make rules, regulations and orders as are deemed essential for the welfare of the area involved. The State Engineer finds this was not asserted in the protests, that those water rights are not the subject of this ruling, the holders of those water rights have had no notice of these proceedings and the evidence does not support the claim that the ground water is being depleted and overrules the protest claim. The State Engineer finds that annual pumpage inventories are performed in Dayton Valley and if a water right is subject to forfeiture it falls under the notice provision of NRS § 534.090. The State Engineer finds he has recently instituted a policy that will result in a more rigorous review of applications for extension of time to prevent forfeiture. The State Engineer finds that each extension of time requested for filing proof of completion of works of diversion and proof of beneficial use are individually reviewed and that a policy has recently been instituted for a more rigorous review of applications for extension of time to assure there is a demonstration of good faith and reasonable diligence in placing the water to beneficial use.

### **XIX.**

The Tribe argues the water to be used in the 27 applications under consideration in this ruling is to be used for quasi-municipal, municipal, commercial or domestic purposes and it is likely a significant amount of the water rights sought to be changed under these applications, particularly those of Lyon County, Aspen Creek, LLC and Dayton Valley Investors would be used for proposed subdivisions. It asserts that under the circumstances of the permitted rights vs. the available resource in the basin, the State

Engineer should take into account his responsibility under NRS § 278.377(1)(b) to certify the availability of water for proposed subdivisions. Additionally, the Tribe's evidence includes a opinion of the Nevada Attorney General that opines that even if the State Engineer has granted a permit this does not mean that he may not restrict the appropriation of water if conditions so warrant such restrictions.<sup>62</sup> The Tribe argues that for the State Engineer to act in a manner that authorizes, promotes, encourages or facilitates reliance on the severely over-appropriated ground-water resources of the Dayton Valley for new subdivision development would conflict with his responsibility under NRS § 278.377(1)(b) and thereby threaten to prove detrimental to the public interest. The State Engineer finds the Dayton Valley Hydrographic Basin is not severely over-appropriated and use of water rights for additional development is already being closely scrutinized. The State Engineer finds the dedication of water for development exceeds the actual use and thus provides a measure of safety as to water availability in the future. The State Engineer finds he has fulfilled his responsibility under NRS § 278.377.

**XX.**

The Tribe argues that the use of water under the applications would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Paiute Indian Reservation was created and the public interest by depleting flows in the Carson River and thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which would impact Pyramid Lake and its fishery. Churchill County alleges that the use of water under the applications threatens to prove detrimental to the public interest because it will cause less water to reach Lahontan Reservoir, thereby increasing diversions from the Truckee River causing alleged harm to the Tribe, United States Fish and Wildlife Service, Pyramid Lake and its fishery and conflicting with existing rights.

The Tribe has been decreed the two most senior water rights on the Truckee River, those being Claims 1 and 2. The State Engineer is not aware of any time water has not been available under those rights nor does Operating Criteria and Procedures for the Newlands Reclamation Project trump those claims. The Tribe was also granted the

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<sup>62</sup> PLPT, Binder B, Tab 42.

unappropriated water in the Truckee River pursuant to State Engineer's Ruling No. 4683.<sup>63</sup> In this ruling, it was found that to remove the unappropriated flow from the river that in the past would have been available for the endangered and threatened species in Pyramid Lake would conflict with the Endangered Species Act and threaten to prove detrimental to the public interest. However, in that ruling, the State Engineer made it very specific that he was only granting the Tribe water for the "high flows in excess of decreed or existing water rights on the system..." He noted that in some years there would be no water available under the permits and in other years when there is flooding on the river, there would be a substantial quantity of water available. The State Engineer found that the rights granted to the unappropriated water in the Truckee River can only be exercised in those years where there are high flows in the river in excess of all decreed rights. This ruling did not change the fact that there are other decreed rights on the system, such as the right of the Newlands Project under Claim 3 of the Truckee River Decree. In its protests, the Tribe makes no claims that its decreed water rights will be harmed and cannot make such a claim. Claim 3 has a decreed right to take water from the Truckee River over to Lahontan Reservoir. As noted in State Engineer's Ruling No. 5185,<sup>64</sup> which permitted the Tribe to change Claims 1 and 2 to instream flow, that just because one had the benefit of using someone else's water when it was not being used does not create in that other user a right to the water to the detriment of the decreed user. The same logic applies here. Just because water is allowed to be diverted to the Newlands Project under Claim 3 does not in itself mean that there is harm to the Tribe's rights or the public interest. There is a decreed right to divert water to Lahontan. The State Engineer finds the Tribe or Churchill County have not made the legal connection between water rights claimed by the Tribe in the Truckee River and any ground-water rights in the Dayton Valley.

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<sup>63</sup> State Engineer's Ruling No. 4683, dated November 23, 1998, official records in the Office of the State Engineer.

<sup>64</sup> State Engineer's Ruling No. 5185, dated December 6, 2002, official records in the Office of the State Engineer.

## CONCLUSIONS

### I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>65</sup>

### II.

The State Engineer is prohibited by law from granting a permit under an application or change application to appropriate the public waters where:<sup>66</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

### III.

The State Engineer concludes there is water available for granting of the de minimis new uses under Applications 74402 (2.02 acre-feet) and 74611 (0.54 acre-feet). The State Engineer further concludes these are changes to existing rights that have already been through the process of protest and appeal when they were initially granted as new appropriations. The changes requested here do not increase the consumptive use in the basin and in some cases may decrease the consumptive use of water in the basin. The State Engineer concludes that the granting of all the applications under consideration in this ruling will not conflict with existing rights or threaten to prove detrimental to the public interest.

### IV.

The State Engineer concludes that granting the new appropriation applications does not threaten to prove detrimental to the public interest in light of the fact that basin is not over-appropriated. Furthermore, the State Engineer concludes that although he does not have to re-examine the basin's water availability when considering change applications, the protest issue that the basin is "severely over appropriated" is not accurate, and therefore, use of water under these applications does not threaten to prove detrimental to the public interest. The State Engineer concludes, based on the recharge

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<sup>65</sup> NRS chapter 533 and 534.

<sup>66</sup> NRS § 533.370(5).

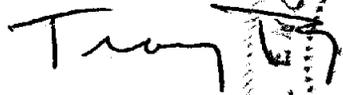
evidence, that the consumptive use of the water already appropriated is within the range of estimated recharge, that pumping is well within the range of estimated recharge, that ground water recharged by precipitation in the basin is intended for appropriation by ground-water users within the basin, that the ground water does not "belong to the river," that ground water was not included in the *Alpine Decree* and that ground water is not being withdrawn in excess of the average annual replenishment to the ground-water supply. The State Engineer concludes that he is fulfilling the State Engineer's responsibility to insure the availability of water for subdivisions under NRS § 278.377(1)(b).

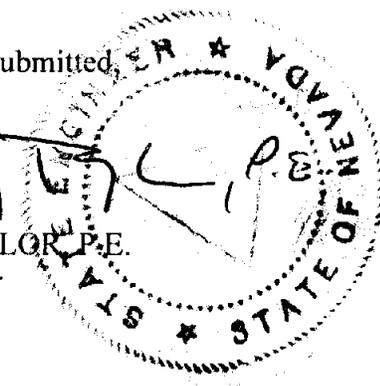
**RULING**

The protests to Applications 74283, 74284, 74285, 74286, 74369, 74370, 74402, 74427, 74434, 74562, 74569, 74570, 74592, 74611, 74612, 74922, 74979, 75101, 75102, 75103, 75104, 75157, 75159, 75160, 75277 and 75283 are hereby overruled and the applications are approved subject to:

1. Existing rights;
2. The payment of statutory permit fees;
3. Consumptive use considerations of the original and new manners of use; and
4. Water under Applications 74285, 74286, 74427, 74569, 74570 and 74592 cannot be pumped until the well construction at the new point of diversion is approved by the State Engineer.

Respectfully submitted,

  
TRACY TAYLOR, P.E.  
State Engineer



Dated this 18th day of  
March, 2008.