

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

IN THE MATTER OF APPLICATIONS 73142, )  
73161, 73162, 73163, 73164, 73165, 73243, )  
73244, 73245, 73246, 73255, 73703, 73704, )  
73757, 73758, 73828, 73829, 73844, 73846, )  
73847, 74381, 74480, 74481, 74482, 74483, )  
74484, 74485, 74491, 74501, 74502, 74503, )  
74504 FILED TO CHANGE THE PLACE )  
AND MANNER OF USE OF WATER OF THE )  
TRUCKEE RIVER PREVIOUSLY )  
APPROPRIATED WITHIN THE TRACY )  
SEGMENT HYDROGRAPHIC BASIN (083), )  
STOREY COUNTY, NEVADA. )

**RULING**  
**# 5826**

**GENERAL**

**I.**

Application 73142 was filed on August 10, 2005, by Charles A. Kendricks and Carlinda A. Kendricks to change the manner and place of use of 180 acre-feet annually along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*.<sup>1</sup> The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The water is to be dedicated to the City of Fernley. The existing place of use is described as 40 acres within the NE¼ SW¼ of Section 20, T.20N., R.25E., M.D.B.&M.<sup>2</sup> Application 73142 was timely protested by the Pyramid Lake Paiute Tribe of Indians (Tribe) on the following grounds:

1. The proposed use of Newlands Project water rights for municipal and domestic purposes is subject to the regulatory authority and approval of the Secretary of Interior, which has not been obtained.
2. The proposed transfer is not in the best interests of the United States or the Newlands Reclamation Project.
3. The proposed transfer of decreed agricultural water rights for municipal use, using irrigation facilities for the conveyance of the municipal water, and extending deliveries outside of the irrigation season, is not contemplated and is not allowed under the Operating Criteria and Procedures (OCAP) for the Newlands Project.
4. The applicant has not obtained permission to use federal facilities for the transportation of the water it is seeking to transfer.

<sup>1</sup> Final Decree, *United States v. Orr Water Ditch Co.*, In Equity, Docket No. A-3 (D. Nev. Sept. 4, 1944).

<sup>2</sup> Application 73142, official records in the Office of the State Engineer.

5. The proposed period of use is from January 1 to December 21 whereas the prior use was limited to the irrigation season. The new use will be less efficient and will adversely affect other water users including the Protestant.
6. The application should not be approved because it involves the proposed transfer of alleged water rights which have been forfeited and/or abandoned.
7. The Pyramid Lake Paiute Tribe of Indians would be adversely affected if the above referenced application were granted because it would result in greater diversions of Truckee River water away from Pyramid Lake to the detriment of the threatened and endangered species inhabiting Pyramid Lake.
8. Granting the application would threaten to prove detrimental to the public interest.
9. Granting the application would threaten to prove detrimental to the public interest in light of the declining quantity and quality of the groundwater available in the Fernley hydrographic basin to serve existing permits and commitments, and in light of the obligations of the State Engineer pursuant to NRS Chapters 534 and 278 to require that the subject rights, or an approximate portion of them, be devoted to groundwater recharge to protect existing users and customers before any additional rights are allocated to new development.
10. Granting the application would threaten to prove detrimental to the public interest in ways that are not yet known to this Protestant, but which may arise or first become known to this Protestant in the period between the date of the filing of the Application and the hearing on the protested Application – by way of example Fernley Application #57555 was filed on May 1, 1992, and the hearing was not held until February 6, 2006 – and in light of the position of the State Engineer that a specifically stated protest ground may not be amended regardless of the extensive passage of time between the date the protest is required to be filed, and the date of the hearing on a protested application.

## II.

Application 73161 was filed on August 19, 2005, by the City of Fernley requesting to change the place and manner of use of 95.63 acre-feet along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 21.25 acres within a portion of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 8, T.19N., R27E., M.D.B.&M.<sup>3</sup> Application 73161 was timely protested by Churchill County (County) on the following grounds:

1. The Applicants seek to transfer the full duty of 4.5 acre-foot/acre. If this application is granted at full duty, it would adversely impact return flows, groundwater recharge and wetlands. There are down gradient surface water rights which rely upon return flows from these lands including the Stillwater wetlands. The

---

<sup>3</sup> Application 73161, official records in the Office of the State Engineer.

Massie and Mahala Sloughs, located down gradient of the existing place of use, have been designated as jurisdictional wetlands by the U.S. Army Corps of Engineers due to their connection with the Stillwater wetlands and the interstate and navigable Carson River. Although the Orr Ditch Decree does not specifically dictate a consumptive use reduction upon a manner of use change, the State Engineer has recently imposed a 2.5 acre-foot/acre consumptive use limitation on Truckee River change applications. If the applications are approved they should be limited to 2.5 acre-foot/acre with the remaining duty made available for mitigation within the Churchill County portion of the Truckee Division.

2. The Application, if granted would violate Federal Reclamation Law, 43 U.S.C. § 389, in several respects including, but not limited to: I) the detrimental effect on existing water rights within the Newlands Project; and II) violation of the trust and contract obligations of the United States of America to all owners of Newlands Project water rights including Churchill County. Specifically, the water transfer sought conflicts with and hinders the Secretary of Interior's ability to reach efficiency required by Newlands Project Operating Criteria and Procedures.
3. The Application, if granted would violate N.R.S. § 533.370 in that it would be detrimental to the public interest and conflict with existing rights by removing water resources from lands within aquifer recharge areas which in turn would deplete the groundwater which Churchill County's residents rely on to supply their water from domestic wells which have a protectible interest under Nevada law. The Application should not be granted without a condition on the transfer for mitigation of adverse effects to groundwater supplies.
4. The Application, if granted would adversely affect the cost of charges for water delivery and lessen the efficiency in the delivery of water rights owners served by the Newlands Project, including Churchill County, in violation of N.R.S. § 533.370(1)(b).
5. The Application, if granted would be contrary to and violate Federal Law, 42 U.S.C. § 4300, the National Environmental Policy Act (NEPA) because is [sic] would implement major actions by the Federal Government without having prepared the required environmental analysis of the cumulative and synergistic effects of said actions to the human environment by either an environmental assessment or an environmental impact statement.
6. The Application should be subject to Nevada Law, N.R.S. § 533.368, to determine whether hydrologic and environmental studies are necessary. If so, such studies should be completed prior to approval of the Application.
7. The Application, if granted would violate the Federal Safe Drinking Water Act because its depletion of groundwater quantity would have a corresponding negative impact on groundwater quality upon which Churchill County depends to supply drinking water to its residents.
8. The Applicants seek to change the place of use from the presently authorized use in Churchill County to a different use in Lyon County. N.R.S. 533.363 requires that Churchill County Commissioners receive notice of the application and are afforded an opportunity to notice the application and hold a hearing on the matter and submit recommendations to the State Engineer. Churchill County has not received such notice.

9. In accordance with recent data and briefings from the State Engineer's office, many basins or sub-basins in Lyon County are over appropriated and over pumped, resulting in declining water tables. Entities within Lyon County and Fernley are reaching out and attempting to acquire ground and surface waters from adjacent counties and hydrographic basins for continued rapid development with little or no effort to balance or mitigate the impacts. The potential result could be large scale well failures in Fernley and Lyon County and a regional water crises that can only be solved by the State taking resources from other counties. Until Lyon County and all municipalities sharing surface and groundwater sources within Lyon County develop and implement a State approved plan to mitigate or rebalance current groundwater mining, no new appropriations or surface water transfers from Lyon or adjacent counties should be allowed. Although N.R.S. 533.370(5) applies to interbasin groundwater transfers, these same criteria should apply to surface water transfers between counties and hydrographic basins.
10. Churchill County Code, Chapter 17.77 (Dust Ordinance) requires a person who transfers water rights off a parcel of land five (5) acres or more, or who ceases to irrigate said parcel, to obtain a permit from Churchill County to mitigate fugitive dust which results from the cessation of irrigation. By filing the application, Applicants have caused the cessation of irrigation and are therefore subject to the Dust Ordinance. To date the Applicants have taken no actions under the Ordinance. If the Application is granted before the Applicants comply with the Dust Ordinance, it would be detrimental to the public interest.
11. Approving the Application without dust mitigation will result in numerous problems related to fugitive dust including harm to plant and animal species, a nuisance to property owners downwind of parcels which the Applicants have stripped of water rights, as well as blowing dust which creates a hazard to public health, vehicular traffic on adjacent county roads and state highways. As such, if the Application is granted without conditions of mitigation, the public interest will be harmed.

Application 73161 was protested by the Tribe on the same grounds as identified above.

### III.

Application 73162 was filed on August 19, 2005, by the City of Fernley requesting to change the place and manner of use of 72.36 acre-feet along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 16.08 acres within a portion of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T.19N., R.27E., M.D.B.&M.<sup>4</sup> Application 73162 was timely protested by the County and the Tribe on the same grounds as identified above.

---

<sup>4</sup> Application 73162, official records in the Office of the State Engineer.

#### IV.

Application 73163 was filed on August 19, 2005, by the City of Fernley requesting to change the place and manner of use of 307.85 acre-feet along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 30.61 acres within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, 16.05 acres and 24.0 acres within a portion of the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, and 13.8 acres within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 19, all within T.19N., R.27E., M.D.B.&M.<sup>5</sup> Application 73163 was timely protested by the County and the Tribe on the same grounds as identified above.

#### V.

Application 73164 was filed on August 19, 2005, by the City of Fernley requesting to change the place and manner of use of 144 acre-feet along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 32 acres within a portion of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 34, T.20N., R.26E., M.D.B.&M.<sup>6</sup> Application 73164 was timely protested by the County and the Tribe on the same grounds as identified above.

#### VI.

Application 73165 was filed on August 19, 2005, by the City of Fernley requesting to change the place and manner of use of 27.9 acre-feet along with a pro-rata portion of the diversion rate, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 6.2 acres within a portion of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, T.19N., R.27E., M.D.B.&M.<sup>7</sup> Application 73165 was timely protested by the County and the Tribe on the same grounds as identified above, except that the Tribe did not allege forfeiture and/or abandonment.

#### VII.

Application 73243 was filed on September 13, 2005, by the City of Fernley requesting to change the place and manner of use of 590.4 acre-feet annually, which is a portion of the water

---

<sup>5</sup> Application 73163, official records in the Office of the State Engineer.

<sup>6</sup> Application 73164, official records in the Office of the State Engineer.

<sup>7</sup> Application 73165, official records in the Office of the State Engineer.

previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 29.2 acres within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 32.60 acres within a portion of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 34.10 acres within a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 35.30 acres within a portion of the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , all in Section 14, T.20N., R.24E., M.D.B.&M.<sup>8</sup> Application 73243 was timely protested by the Tribe on the same grounds as identified above.

#### VIII.

Application 73244 was filed on September 13, 2005, by the City of Fernley requesting to change the place and manner of use of 107.1 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 8.2 acres within a portion of the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 6.10 acres within a portion of the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 5.9 acres within a portion of the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 3.60 acres within a portion of the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , all in Section 14, T.20N., R.23E., M.D.B.&M.<sup>9</sup> Application 73244 was timely protested by the Tribe on the same grounds as identified above with an additional claim that the application should not be approved because it involves the proposed transfer of water rights, which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned.

#### IX.

Application 73245 was filed on September 13, 2005, by the City of Fernley requesting to change the place and manner of use of 159.3 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 35.4 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, T.20N., R.26E., M.D.B.&M.<sup>10</sup> Application 73245 was timely protested by the County and the Tribe on the same grounds as identified above, except that the Tribe did not allege forfeiture or abandonment, did not allege protest claims 9 or 10 referenced above, but did allege that the water rights sought to be transferred are needed to recharge the aquifer on which the City of Fernley relies for municipal and domestic use and therefore should not be transferred for municipal use.

---

<sup>8</sup> Application 73243, official records in the Office of the State Engineer.

<sup>9</sup> Application 73244, official records in the Office of the State Engineer.

<sup>10</sup> Application 73245, official records in the Office of the State Engineer.

**X.**

Application 73246 was filed on September 13, 2005, by the City of Fernley requesting to change the place and manner of use of 20.7 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 4.6 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 34, T.20N., R.26E., M.D.B.&M.<sup>11</sup>

Application 73246 was timely protested by the County and the Tribe on the same grounds as identified above, except that the Tribe did not allege protest claims 9 or 10 referenced above, but additionally alleged that the water rights sought to be transferred are needed to recharge the aquifer on which the City of Fernley relies for municipal and domestic use and therefore, should not be transferred for municipal use and that the application should not be approved because it involves the proposed transfer of water rights, which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned.

**XI.**

Application 73255 was filed on September 19, 2005, by the City of Fernley requesting to change the place and manner of use of 104.63 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 1.0 acre within the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 2.9 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 2.4 acres within the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , 13.95 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, and 3.0 acres within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, all within T.20N., R.25E., M.D.B.&M.<sup>12</sup> Application 73255 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe did not allege protest claims 9 or 10 referenced above, did not allege forfeiture or abandonment, but additionally alleged that the water rights sought to be transferred are needed to recharge the aquifer on which the City of Fernley relies for municipal and domestic use and therefore, should not be transferred for municipal use and that the application should not be approved because the Tribe would be adversely affected because use of water under the application would result in greater diversion of Truckee River water away from Pyramid Lake to the detriment of threatened and endangered species inhabiting Pyramid Lake.

---

<sup>11</sup> Application 73246, official records in the Office of the State Engineer.

<sup>12</sup> Application 73255, official records in the Office of the State Engineer.

## XII.

Application 73703 was filed on January 13, 2006, by the City of Fernley requesting to change the place and manner of use of 62.1 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 13.65 acres within a portion of the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., and 0.15 of an acre within a portion of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>13</sup>

Application 73703 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe did not allege forfeiture or abandonment, but additionally alleged that the application should not be approved because the Tribe would be adversely affected because use of water under the application would result in greater diversion of Truckee River water away from Pyramid Lake to the detriment of threatened and endangered species inhabiting Pyramid Lake.

## XIII.

Application 73704 was filed on January 13, 2006, by the City of Fernley requesting to change the place and manner of use of 89.33 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 19.85 acres within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>14</sup> Application 73704 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe added that the application should not be approved because it involves the proposed transfer of water rights which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned, that the application should not be approved because the Tribe would be adversely affected because use of water under the application would result in greater diversion of Truckee River water away from Pyramid Lake to the detriment of threatened and endangered species inhabiting Pyramid Lake.

## XIV.

Application 73757 was filed on January 26, 2006, by the City of Fernley requesting to change the place and manner of use of 11.7 acre-feet annually, which is a portion of the water previously appropriated under Permit No. 60692, Certificate 15825. The proposed manner of use is

---

<sup>13</sup> Application 73703, official records in the Office of the State Engineer.

<sup>14</sup> Application 73704, official records in the Office of the State Engineer.

municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 2.6 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, all within T.20N., R.25E., M.D.B.&M.<sup>15</sup> Application 73757 was timely protested by the Tribe on the same grounds as identified above.

#### XV.

Application 73758 was filed on January 26, 2006, by the City of Fernley requesting to change the place and manner of use of 738 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 16.75 acres within the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 18.49 acres within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 15.10 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, 0.89 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 15.61 acres within the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 0.08 of an acre within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 3.3 acres within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 26.98 acres within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 19.51 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 10.44 acres within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 15.67 acres within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 0.15 of an acre within the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 16.21 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 4.82 acres within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 23, all within T.20N., R.25E., M.D.B.&M.<sup>16</sup> Application 73758 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe added that the chain of title appears to be in question, or has not been properly established and therefore, granting the application may threaten to prove detrimental to the public interest. By letter dated August 8, 2006, the Truckee-Carson Irrigation District notified the State Engineer that the City of Fernley owns these water rights.

#### XVI.

Application 73828 was filed on February 10, 2006, by the City of Fernley requesting to change the place and manner of use of 26.67 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 5.26 acres within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>17</sup> Application 73828 was timely protested by the Tribe on the same grounds as identified above.

---

<sup>15</sup> Application 73757, official records in the Office of the State Engineer.

<sup>16</sup> Application 73758, official records in the Office of the State Engineer.

<sup>17</sup> Application 73828 official records in the Office of the State Engineer.

**XVII.**

Application 73829 was filed on February 10, 2006, by the City of Fernley requesting to change the place and manner of use of 9.09 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 1.92 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 0.1 of an acre within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>18</sup> Application 73829 was timely protested by the Tribe on the same grounds as identified above.

**XVIII.**

Application 73844 was filed on February 16, 2006, by the City of Fernley requesting to change the place and manner of use of 15.94 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 0.53 of an acre within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 14, T.20N., R.24E., 0.6812 of an acre within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T.20N., R.25E., 1.00 acre within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, T.20N., R.25E., and 1.33 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12, T.20N., R.24E., M.D.B.&M.<sup>19</sup> Application 73844 was timely protested by the Tribe on the same grounds as identified above.

**XIX.**

Application 73846 was filed on February 16, 2006, by the City of Fernley requesting to change the place and manner of use of 68.63 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 15.25 acres within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 8, T.19N., R.27E., M.D.B.&M.<sup>20</sup> Application 73846 was timely protested by the Tribe and Churchill County on the same grounds as identified above.

**XX.**

Application 73847 was filed on February 16, 2006, by the City of Fernley requesting to change the place and manner of use of 45 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*. The proposed manner of use

---

<sup>18</sup> Application 73829 official records in the Office of the State Engineer.

<sup>19</sup> Application 73844 official records in the Office of the State Engineer.

<sup>20</sup> Application 73846 official records in the Office of the State Engineer.

is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 10 acres within the NW¼ NW¼ of Section 8, T.19N., R.27E., M.D.B.&M.<sup>21</sup> Application 73847 was timely protested by the Tribe, except the Tribe did not allege forfeiture or abandonment, and Churchill County on the same grounds as identified above.

**XXI.**

Application 74381 was filed on June 13, 2006, by the City of Fernley requesting to change the place and manner of use of 53.73 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 5.2 acres within the NW¼ SW¼ and 6.74 acres within the NE¼ SW¼ of Section 10, T.20N., R.24E., M.D.B.&M.<sup>22</sup> Application 74381 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe added that the application should not be approved because it involves the proposed transfer of water rights, which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned.

**XXII.**

Application 74480 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 2.34 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 0.52 of an acre within the NW¼ NE¼ of Section 19, T.20N., R.25E., M.D.B.&M.<sup>23</sup> Application 74480 was timely protested by the Tribe on the same grounds as identified above, except the Tribe did not allege forfeiture or abandonment.

**XXIII.**

Application 74481 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 328.32 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 22.66 acres within the NW¼ NE¼, 35.4 acres within the SW¼ NE¼ and 14.9

---

<sup>21</sup> Application 73847 official records in the Office of the State Engineer.

<sup>22</sup> Application 74381 official records in the Office of the State Engineer.

<sup>23</sup> Application 74480 official records in the Office of the State Engineer.

acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, T.20N., R.25E., M.D.B.&M.<sup>24</sup> Application 74481 was timely protested by the Tribe on the same grounds as identified above, except the Tribe did not allege forfeiture or abandonment.

**XXIV.**

Application 74482 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 52.47 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 2.46 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 4.6 acres within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 4.6 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, T.20N., R.25E., M.D.B.&M.<sup>25</sup> Application 74482 was timely protested by the Tribe on the same grounds as identified above.

**XXV.**

Application 74483 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 4.28 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 0.95 of an acre within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T.20N., R.24E., M.D.B.&M.<sup>26</sup> Application 74483 was timely protested by the Tribe on the same grounds as identified above.

**XXVI.**

Application 74484 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 45.59 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 10.13 of an acre within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, T.20N., R.24E., M.D.B.&M.<sup>27</sup> Application 74484 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe added that the application should not be approved because it involves the proposed transfer of water rights, which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned.

---

<sup>24</sup> Application 74481 official records in the Office of the State Engineer.

<sup>25</sup> Application 74482 official records in the Office of the State Engineer.

<sup>26</sup> Application 74483 official records in the Office of the State Engineer.

<sup>27</sup> Application 74484 official records in the Office of the State Engineer.

**XXVII.**

Application 74485 was filed on July 6, 2006, by the City of Fernley requesting to change the place and manner of use of 36 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 8 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 13, T.20N., R.24E., M.D.B.&M.<sup>28</sup> Application 74485 was timely protested by the Tribe on the same grounds as identified above.

**XXVIII.**

Application 74491 was filed on July 10, 2006, by the City of Fernley requesting to change the place and manner of use of 7.2 acre-feet annually, which is a portion of the water previously appropriated under Permit 56219, Certificate 15817. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 1.6 acres within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 20, T.20N., R.20E., M.D.B.&M.<sup>29</sup> Application 74491 was timely protested by the Tribe on the same grounds as identified above.

**XXIX.**

Application 74501 was filed on July 13, 2006, by the City of Fernley requesting to change the place and manner of use of 3.82 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 0.85 of an acre within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>30</sup> Application 74501 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe added that the application should not be approved because it involves the proposed transfer of water rights, which were under a legal challenge in a legal proceeding that was pending on or before April 1, 1999, and which have been forfeited and abandoned.

**XXX.**

Application 74502 was filed on July 13, 2006, by the City of Fernley requesting to change the place and manner of use of 29.25 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is

---

<sup>28</sup> Application 74485 official records in the Office of the State Engineer.

<sup>29</sup> Application 74491 official records in the Office of the State Engineer.

<sup>30</sup> Application 74501 official records in the Office of the State Engineer.

described as 6.5 acres within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 14, T.20N., R.24E., M.D.B.&M.<sup>31</sup> Application 74502 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe did not allege forfeiture or abandonment.

**XXXI.**

Application 74503 was filed on July 13, 2006, by the City of Fernley requesting to change the place and manner of use of 98.83 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 20.35 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 0.5 of an acre within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, T.20N., R.25E., M.D.B.&M.<sup>32</sup> Application 74503 was timely protested by the Tribe on the same grounds as identified above, except that the Tribe did not allege forfeiture or abandonment.

**XXXII.**

Application 74504 was filed on July 13, 2006, by the City of Fernley requesting to change the place and manner of use of 18.67 acre-feet annually, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch* Decree. The proposed manner of use is municipal and domestic within the place of use served by the City of Fernley. The existing place of use is described as 1.68 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 2.47 acres within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, T.20N., R.25E., M.D.B.&M.<sup>33</sup> Application 74504 was timely protested by the Tribe on the same grounds as identified above.

**FINDINGS OF FACT**

**I.**

On February 14, 2007, the State Engineer held a pre-hearing conference in the matter of these applications. As a result of that conference, the Protestants were ordered to review and refine their protests, to indicate whether the protested parcels were on what is commonly known as the composite map, to indicate whether the protested parcels are subject to what is known as the petition cases and whether service had been made in those cases and to provide a summary of the protest allegations as to each parcel.

The State Engineer finds that by letters dated March 13 and 15, 2007, the Tribe indicated that it would not assert any claims of forfeiture and/or abandonment as to Applications 73161, 73162, 73165, 73243, 73245, 73255, 73703, 73704, 73757, 73758, 73844, 73846, 73847, 74480,

---

<sup>31</sup> Application 74502 official records in the Office of the State Engineer.

<sup>32</sup> Application 74503 official records in the Office of the State Engineer.

<sup>33</sup> Application 74504 official records in the Office of the State Engineer.

74481, 74482, 74483, 74485, 74491, 74502, 74503 and 74504.<sup>34</sup> The State Engineer notes that the Tribe did not assert forfeiture or abandonment in its protests as to some of these applications.

The Tribe maintained the following claims of forfeiture or abandonment:

<b>Application No.</b>	<b>Parcel No.</b>	<b>Acres</b>	<b>Percent Alleged</b>	<b>Contentions of Tribe with Respect to Forfeiture and Abandonment</b>
73163	1	30.61	0	None
	2	24.00	0	None
	3	13.80	70%	forfeiture and abandonment
73164	1	32.00	90%	abandonment
73244	1	8.20	100%	abandonment
	2	6.10	100%	abandonment
	3	5.9	100%	abandonment
	4	3.6	100%	abandonment
73246	1	4.60	100%	abandonment
73828	1	5.26	100%	abandonment
73829	1	1.92	100%	abandonment
	2	0.10	100%	abandonment
74381	1	5.20	100%	forfeiture and abandonment
	2	6.74	100%	abandonment
74484	1	2.39	100%	abandonment
	2	5.45	100%	abandonment
	3	1.00	100%	abandonment
	4	1.29	100%	abandonment
74485	1	8.00	100%	abandonment
74501	1	0.85	100%	abandonment

The Tribe maintained its protest ground regarding the harm attributable because of the requested change in period of use alleging it would decrease the efficiency of the Newlands Project. The Tribe withdrew its protest claim as to compliance with the laws and regulations of other jurisdictions, such as the regulatory authority of the Secretary of the Interior or OCAP or obtaining

<sup>34</sup> File No. 73161, letter dated March 13, 2007, File No. 73163, letter dated March 15, 2007, official records in the Office of the State Engineer.

federal permission and contracts for the use of the federal facilities. The Tribe withdrew its protest claims regarding harm to threatened and endangered species, but maintains its claim that the water should first be used in a ground-water recharge program to benefit and recover the over-appropriated hydrographic basin in order to protect existing users before being used to benefit new development.

The County withdrew the following protest grounds as to Applications 73161, 73162, 73163, 73164, 73165, 73246, 73846 and 73847:

All Federal grounds for denial of temporary transfer borne by paragraph 2 (Federal Reclamation Law, 43 U.S.C. § 389).

All Federal grounds for denial of temporary transfer borne by paragraph 5 (National Environmental Policy Act (NEPA), 42 U.S.C. § 4300).

All Federal grounds for denial of temporary transfer borne by paragraph 7 (Safe Drinking Water Act, 42 U.S.C. § 300).

All State grounds for denial of temporary transfer borne by paragraph 6 (NRS 533.368 (hydrologic and environmental studies) and paragraph 8 (NRS § 533.363 (notice to county commission)); and,

All public interest grounds borne by paragraph 10, relating to violation of Churchill County Code 17.77 (dust control).

## II.

On June 22, 2007, the Applicant and the Tribe entered into a Stipulation Regarding Protest Grounds. The parties agreed that as to the Tribe and the Applicant the remaining protest grounds are:

1. That the water rights included in Applications 73244, 73246, 73828, 73829, 74381, 74484 and 74501 are subject to forfeiture or abandonment claims;
2. Since the change applications seek to use the water in the non-irrigation season, this will result in increased losses in the Truckee Canal for the conveyance of Truckee River water to the Newlands Reclamation Project, contrary to NRS § 533.370(1)(b); and
3. Approval of the change applications will be detrimental to the public interest because the transfers would be used to support new development instead of repairing the over-appropriated Fernley hydrographic basin by going into a ground-water recharge program.

Pursuant to the Stipulation, the Tribe withdrew the first and second protest grounds identified above based on the City of Fernley agreeing not to use or call for the delivery of water during the non-irrigation season under any permit issued, unless and until the Operating Criteria and Procedure for the Newlands Reclamation Project, 43 CRS 418.12, for delivery of Truckee River water at the Derby Dam is amended to account for municipal and industrial uses, and takes into account the alleged increased losses in the Truckee Canal during the non-irrigation season.

In consideration of the Stipulation, the Tribe agreed to withdraw its efficiency protest ground against all the applications. With regard to the abandonment protest grounds that the Tribe had made against Applications 73244, 73246, 73828, 73829, 74381, 74484 and 74501, the City of Fernley agreed to concede to abandon portions of each of these Applications so that the total amount of approved water rights under each Application will be as follows:

<b>App. Number</b>	<b>App. Amount Before Settlement [acre-feet]</b>	<b>Abandoned due to Settlement [acre-feet]</b>	<b>App. Amount After Settlement [acre-feet]</b>
73244	107.1	46.80	60.30
73246	20.7	9.05	11.65
73828	23.67	10.34	3.33
73829	9.09	3.97	5.12
74381	53.73	23.48	30.25
74484*	39.78	17.38	22.40
74501	3.82	1.67	2.15
Total	257.89	112.69	145.20

\*74484 af after 1.29 acres [5.805] withdrawn before settlement

The State Engineer accepts the Applicant's and Tribe's agreement as to abandonment and finds that the above identified portions of Applications 73244, 73246, 73828, 73829, 74381, 74484 and 74501 will be declared abandoned and that the Tribe has agreed to withdraw its abandonment and forfeiture protest claims against the granting of the remaining water under these applications.

### III.

Based on the Stipulation, the Tribe retained one protest ground against all the Applications that being that the approval of the change applications will be detrimental to the public interest because the transfers would be used to support new development instead of repairing the over-appropriated Fernley Hydrographic Basin by going into a ground-water recharge program. The Tribe and the City of Fernley agreed to address this issue through briefing.

The Tribe argues that the Fernley Area ground-water basin is severely over-appropriated and the State Engineer should not approve changes from irrigation to municipal that will be used for new municipal development until he certifies the availability of water to meet Fernley's

existing demands and commitments. The Tribe argues that the State Engineer should deny these applications and use his authority to insure that the City of Fernley gets its municipal water supply and water system in order and is capable of meeting its existing demands on a long-term sustainable basis. The City of Fernley argues that these surface-water rights have been dedicated for use in a surface-water treatment plant that is anticipated to be built by late 2008 to treat and deliver water to Fernley residents. City of Fernley argues that the water is not being used for new development, but rather for existing developments and, when the treatment plant is built, the current reliance on the use of ground water will be replaced by treated surface water; thus, Fernley will have two sources of water for existing development. The State Engineer will review future subdivision requests on their own merits.

The State Engineer finds that when each subdivision of land was approved a determination was made, pursuant to NRS chapter 278, that sufficient water resources existed for that subdivision. The State Engineer finds that Fernley through these applications is doing exactly what the Tribe asserts it should be doing, that is by developing the surface-water source and treatment plant it is protecting the water users. The State Engineer finds that he is acting on the applications before him as filed and is not addressing whether or not the City of Fernley should be taking dedicated water and applying it to a ground-water recharge program. The State Engineer does not know what authority the Tribe asserts he has to force a municipality to institute a ground-water recharge program, that is a decision for the City of Fernley to make and the State Engineer cannot force the City to file that type of application.

#### IV.

Churchill County argues that granting the applications would be detrimental to the public interest and conflict with existing rights by removing water resources from lands within the aquifer recharge areas, which in turn would deplete the ground water that Churchill County's residents rely on to supply their water from domestic wells, which have a protectible interest under Nevada law. Thus, the Applications should not be granted without a condition on the transfer for mitigation of adverse effects to ground-water supplies. The State Engineer has on multiple occasions found that he cannot force a farmer to continue to irrigate lands with a surface-water source so as to provide continued ground-water recharge in order to protect the water quantity or quality of a ground-water user. The Protestant's argument centers around an analysis that requires unnatural conditions to continue because they hold water rights that may depend on the secondary recharge from irrigation or leakage from canals and ditches and that by

allowing the water rights to be moved from existing places of use it will impair their water rights or threaten to prove detrimental to the public interest. If a person merely ceases to irrigate and lets the water right lapse the effect would be the same.

The State Engineer has recognized that the recharge experienced from surface-water irrigation is declining in the Carson Desert Hydrographic Basin and restricted further ground-water development.<sup>35</sup> Ground-water development was restricted based on the fact that the application of surface water was disappearing, but that order did not and could not order the use of surface water for irrigation to continue. Since the turn of the 20<sup>th</sup> century and the creation of the Newlands Project, it is true that surface-water irrigation has changed the depth to water over large areas and has increased the amount of water that recharges the ground-water basin from that which occurs naturally. The State Engineer recognizes that the ground-water recharge from irrigation is declining, but surface-water users are not going to be restricted in what they can do because others hold ground-water rights that were granted in times when there was much greater surface-water irrigation that recharged the ground-water basin. It is the ground-water users that need to be planning for the acquisition of additional water rights to recharge the ground-water basin if they believe such is required.

#### V.

Churchill County alleges that if the applications are granted at full duty, it would adversely impact return flows, ground-water recharge and wetlands. The County alleges that there are down gradient surface-water rights in the Massie and Mahala Sloughs, which rely upon return flows from these lands, as well as the Stillwater wetlands. The County argues that if the applications are approved they should be limited to 2.5 acre-feet per acre with the remaining duty made available for mitigation within the Churchill County portion of the Truckee Division. The State Engineer finds that if the changes were limited to a consumptive use figure of 2.5 acre-feet per acre, the non-permitted portion of the water right would revert to the source, the Truckee River, and would not be used within the Churchill County portion of the Truckee Division as water is not going to be diverted for irrigation on the existing place of use and water is not diverted just to flow in canals and ditches for no ultimate beneficial use.

---

<sup>35</sup> State Engineer's Order No. 1116, dated August 22, 1995, official records in the Office of the State Engineer.

The water supply for the Mahala wetlands is a result of deep percolation of the agricultural fields and conveyance losses through the ditch system. In addition, ground water flows from the Swingle Bench in an easterly, northeasterly direction from the bench to the Mahala Slough area. The direction of the ground-water flow is from the bench to the wetland area and then it flows back to the northwest and the water flows out of the Mahala Slough through channels and enters Massie Slough. These wetlands have been drying up since water has been removed from the Swingle Bench. Although the Mahala/Massie wetlands were considered to be very important wetlands, in the late 1990s the bird breeding population plummeted and that the wetlands are all but eliminated today.<sup>36</sup>

The State Engineer finds that he cannot force a farmer to irrigate in order to continue runoff to support a wetland that was an artificial creation in the first place and in essence no longer exists. The State Engineer finds these water rights have already been dedicated to and are owned by the City of Fernley and irrigation at the original place of use will not continue even if the applications were denied and the full duty will be allowed to be changed.

## VI.

Churchill County asserts that if the applications are granted it would adversely affect the cost of charges for water delivery and lessen the efficiency in the delivery of water rights served by the Newlands Project, including Churchill County, in violation of NRS § 533.370(1)(b). In Churchill County's Exhibit No. 568, there are graphs that indicate that the Swingle Bench delivery efficiency has gone down since 1998 returning to the same level it was in 1990. The State Engineer finds there is no specific evidence as how these changes would affect efficiency. The State Engineer finds since it is the water right owner that has chosen to stop using the water for the decreed irrigation purpose and has sold the water, it is not the change that may have a possible effect on efficiency, but rather it is the cessation of farming. Denial of the applications will not change that fact.

---

<sup>36</sup> See, State Engineer's Ruling No. 5760, dated August 21, 2007, official records in the Office of the State Engineer.

## VII.

Churchill County asserts that in accordance with recent data and briefings from the State Engineer's office, many ground-water basins or sub-basins in Lyon County are over appropriated and over pumped, resulting in declining water tables. Entities within Lyon County and Fernley are reaching out and attempting to acquire ground and surface waters from adjacent counties and hydrographic basins to support continued rapid development with little or no effort to balance or mitigate the impacts. The potential result could be large scale well failures in Fernley and Lyon County and a regional water crises that can only be solved by the State taking resources from other counties. Churchill County argues that until Lyon County and all municipalities sharing surface-water and ground-water sources within Lyon County develop and implement a State approved plan to mitigate or rebalance current ground-water mining, no new appropriations or surface-water transfers from Lyon or adjacent counties should be allowed. Churchill County asserts that although NRS § 533.370(5) [now NRS § 533.370(6)] applies to interbasin groundwater transfers, these same criteria should apply to surface water transfers between counties and hydrographic basins. The State Engineer finds that the Nevada Legislature has not made NRS § 533.370(6) applicable to surface water transfers and the State Engineer has no authority to apply that provision of the water law regarding these change applications. The State Engineer finds that Nevada Water Law provides for interbasin and intercounty transfers of water and finds no basis in law for the protest allegation.

## VIII.

Churchill County repeats a protest ground that has been addressed repeatedly by the State Engineer, that is, that the applications should not be approved without addressing dust issues that have and will result in numerous problems related to fugitive dust including harm to plant and animal species, a nuisance to property owners downwind of parcels where water rights have been stripped, as well as blowing dust, which creates a hazard to public health, vehicular traffic on adjacent county roads and state highways. As such, without conditions of mitigation, the public interest will be harmed.

The State Engineer agrees that, as water rights are stripped from formerly irrigated lands, issues of blowing dust have become a problem; however, as State Engineers have repeatedly said the State Engineer cannot force people to irrigate and other agencies are responsible for air quality.

## CONCLUSIONS OF LAW

### I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.<sup>37</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>38</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.

Churchill County and the City of Fernley areas are changing from rural agriculture to more residential areas and the State Engineer cannot say that artificial recharge from surface-water sources must continue to support existing ground-water rights. Denial of the change applications will not change the situation in the ground. Existing places of use will not be irrigated even if these applications are denied because these water rights have been dedicated for municipal use. Areas irrigated with Newlands Project water are urbanizing and farmers are ceasing to irrigate and are selling their water. To deny change applications will not change the fact that less and less land is being irrigated with surface water in the area. When large quantities of surface water were brought in to irrigate land an unnatural system of recharge to the ground-water aquifer was created and wetlands were created that did not naturally exist. The State Engineer concludes that he cannot compel the continuation of that situation to create that recharge and wetlands and the removal of the recharge is not the type of injury to existing rights contemplated under the water law. On this basis, the State Engineer concludes that the granting of the change applications will not conflict with, injure or impair the Protestants water rights or protectible interests in existing domestic wells nor will granting the change applications threaten to prove detrimental to the public interest.

---

<sup>37</sup> NRS chapter 533.

<sup>38</sup> NRS § 533.370(5).

**RULING**

The State Engineer finds that 46.80 acre-feet under Application 73244, 9.05 acre-feet under Application 73246, 10.34 acre-feet under Application 73828, 3.97 acre-feet under Application 73829, 23.48 acre-feet under Application 74381, 17.38 acre-feet under Application 74484 and 1.67 acre-feet under Application 74501 are hereby declared abandoned. The location of the lands being declared abandoned are identified in maps attached to the Applicant's letter dated December 21, 2007. The remaining protest grounds are overruled and the applications granted subject to:

1. the payment of the statutory permit fees; and
2. all other existing rights.

Respectfully submitted,



TRACY TAYLOR, P.E.  
State Engineer

TT/jm

Dated this 4th day of  
April, 2008.