

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

IN THE MATTER OF APPLICATIONS 74911,)
74943, 74980, 75503, 75504, 75581, 75582,)
75583, 75862, 75863, 75864, 75865, 76061,)
76209, 76292, 76837, 76976, 76977, 77006,)
77050, 77276, 77533, 77534, 77535, 77923,)
77924, 78073 AND 78626, FILED TO CHANGE)
THE PLACE AND MANNER OF USE OF)
WATER OF THE TRUCKEE RIVER)
PREVIOUSLY APPROPRIATED WITHIN THE)
TRACY SEGMENT (83), STOREY COUNTY,)
NEVADA.)

RULING

6047

GENERAL

I.

Application 74911 was filed on October 13, 2006, by the City of Fernley (Fernley) to change the manner and place of use of 8.865 acre-feet annually (afa), 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 1.97 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, T.20N., R.25E., M.D.B.&M.¹

II.

Application 74943 was filed on October 26, 2006, by Fernley to change the manner and place of use of 1.12 afa, 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 0.25 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T.20N., R.25E., M.D.B.&M.²

III.

Application 74980 was filed on October 30, 2006, by Fernley to change the manner and place of use of 4.5 afa, 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 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 19, T.20N., R.25E., M.D.B.&M.³

¹ File No. 74911, official records in the Office of the State Engineer.

² File No. 74943, official records in the Office of the State Engineer.

³ File No. 74980, official records in the Office of the State Engineer.

IV.

Application 75503 was filed on April 3, 2007, by Fernley to change the manner and place of use of 3.465 afa, which is a portion of the water previously appropriated under Permit 48544. 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 0.77 acres within the NW¼ NW¼ of Section 19, T.20N., R.25E., M.D.B.&M.⁴

V.

Application 75504 was filed on April 3, 2007, by Fernley to change the manner and place of use of 10.0 afa, 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 2.22 acres within a portion of the SE¼ SW¼ of Section 10, T.20N., R.24E., M.D.B.&M.⁵

VI.

Application 75581 was filed on April 13, 2007, by Fernley to change the manner and place of use of 4.815 afa, 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 1.070 acres within the SW¼ NE¼ of Section 14, T.20N., R.24E., M.D.B.&M.⁶

VII.

Application 75582 was filed on April 13, 2007, by Fernley to change the manner and place of use of 2.97 afa, 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 0.66 acres within the SW¼ NE¼ of Section 14, T.20N., R.24E., M.D.B.&M.⁷

VIII.

Application 75583 was filed on April 13, 2007, by Fernley to change the manner and place of use of 23.72 afa, 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

⁴ File No. 75503, official records in the Office of the State Engineer.

⁵ File No. 75504, official records in the Office of the State Engineer.

⁶ File No. 75581, official records in the Office of the State Engineer.

⁷ File No. 75582, official records in the Office of the State Engineer.

use served by the City of Fernley. The existing place of use is described as 5.27 acres within the NW¼ NW¼ of Section 19, T.20N., R.25E., M.D.B.&M.⁸

IX.

Application 75862 was filed on June 13, 2007, by Fernley to change the manner and place of use of 7.67 afa, 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 1.7 acres within the SE¼ NE¼ of Section 13, T.20N., R.24E., M.D.B.&M.⁹ By letter dated October 16, 2009, Fernley withdrew 2.61 afa from the application.

X.

Application 75863 was filed on June 13, 2007, by Fernley to change the manner and place of use of 6.57 afa, 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 1.46 acres within the NW¼ NE¼ of Section 13, T.20N., R.24E., M.D.B.&M.¹⁰

XI.

Application 75864 was filed on June 13, 2007, by Fernley to change the manner and place of use of 41.4 afa, 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 8.0 acres within the NW¼ SE¼ and 1.2 acres within the SW¼ SE¼ of Section 14, T.20N., R.24E., M.D.B.&M.¹¹

XII.

Application 75865 was filed on June 13, 2007, by Fernley to change the manner and place of use of 14.4 afa, 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 3.2 acres within the SE¼ NE¼ of Section 19, T.20N., R.25E., M.D.B.&M.¹²

⁸ File No. 75583, official records in the Office of the State Engineer.

⁹ File No. 75862, official records in the Office of the State Engineer.

¹⁰ File No. 75863, official records in the Office of the State Engineer.

¹¹ File No. 75864, official records in the Office of the State Engineer.

¹² File No. 75865, official records in the Office of the State Engineer.

XIII.

Application 76061 was filed on July 16, 2007, by Fernley to change the manner and place of use of 14.535 afa, 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 SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.55 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 14, T.20N., R.24E., M.D.B.&M.¹³

XIV.

Application 76209 was filed on August 28, 2007, by Fernley to change the manner and place of use of 1,217.01 afa, 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 279.82 acres within the SE $\frac{1}{4}$ of Section 19, the SE $\frac{1}{4}$ of Section 21, the NW $\frac{1}{4}$ of Section 20, and the NW $\frac{1}{4}$ of Section 18, T.20N., R.25E., M.D.B.&M.¹⁴ By letter dated October 16, 2009, Fernley withdrew 186.865 afa from the application.

XV.

Application 76292 was filed on September 18, 2007, by Fernley to change the manner and place of use of 653.605 afa, 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 145.2277 acres within the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 13, T.20N., R.24E., M.D.B.&M.¹⁵ By letter dated October 16, 2009, Fernley withdrew 71.70 afa from the application.¹⁶

XVI.

Application 76837 was filed on March 20, 2008, by Fernley to change the manner and place of use of 162.23 afa, 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 36.0271 acres within the NE $\frac{1}{4}$, NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 13, T.20N., R.24E., and the NE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 19,

¹³ File No. 76061, official records in the Office of the State Engineer.

¹⁴ File No. 76209, official records in the Office of the State Engineer.

¹⁵ File No. 76292, official records in the Office of the State Engineer.

¹⁶ The State Engineer calculated the amount more specifically as 71.695 af.

T.20N., R.25E., M.D.B.&M.¹⁷ By letter dated October 16, 2009, Fernley withdrew 13.51 afa from the application. By letter dated June 8, 2010, Fernley withdrew an additional 4.5 afa from the application.

XVII.

Application 76976 was filed on April 21, 2008, by Fernley to change the manner and place of use of 10.0 afa, 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 2.22 acres within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19, T.20N., R.25E., M.D.B.&M.¹⁸

XVIII.

Application 76977 was filed on April 21, 2008, by Fernley to change the manner and place of use of 3.465 afa, which is a portion of the water previously appropriated under Permit 48544. 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 0.77 acres within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 19, T.20N., R.25E., M.D.B.&M.¹⁹

XIX.

Application 77006 was filed on May 2, 2008, by Fernley to change the manner and place of use of 261.07 afa, which is a portion of the water previously appropriated under Claim No. 3 of the *Orr Ditch Decree*, Permit 48469 and Permit 50014. 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 57.989 acres within the SE $\frac{1}{4}$ of Section 12, the SW $\frac{1}{4}$, NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 14, and the NE $\frac{1}{4}$ of Section 15, T.20N., R.24E., the NE $\frac{1}{4}$ of Section 22, T.20N., R.23E., the SW $\frac{1}{4}$, NW $\frac{1}{4}$ and NE $\frac{1}{4}$ of Section 20, the NE $\frac{1}{4}$ of Section 21, the SW $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 22 and the SW $\frac{1}{4}$ of Section 24, T.20N., R.25E., M.D.B.&M.²⁰ By letter dated October 16, 2009, Fernley withdrew 6.61 afa from the application.²¹

¹⁷ File No. 76837, official records in the Office of the State Engineer.

¹⁸ File No. 76976, official records in the Office of the State Engineer.

¹⁹ File No. 76977, official records in the Office of the State Engineer.

²⁰ File No. 77006, official records in the Office of the State Engineer.

²¹ The State Engineer calculated the amount more specifically as 6.6051 af.

XX.

Application 77050 was filed on May 14, 2008, by Fernley to change the manner and place of use of 120.59 afa, 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 26.8 acres within the SW¼ and SE¼ of Section 10, T.20N., R.24E., M.D.B.&M.²² By letter dated June 3, 2010, Fernley withdrew 21.0 afa from the application.

XXI.

Application 77276 was filed on August 4, 2008, by Fernley to change the manner and place of use of 336.45 afa, 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 74.76 acres within the NE¼ of Section 24, T.20N., R.24E., M.D.B.&M.²³ By letter dated June 7, 2010, Fernley withdrew 1.35 afa from the application.

XXII.

Application 77533 was filed on October 24, 2008, by Fernley to change the manner and place of use of 8.325 afa, 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 1.85 acres within the NE¼ NE¼ of Section 19, T.20N., R.25E., M.D.B.&M.²⁴

XXIII.

Application 77534 was filed on October 24, 2008, by Fernley to change the manner and place of use of 2.25 afa, 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 0.5 acres within the SE¼ SW¼ of Section 14, T.20N., R.24E., M.D.B.&M.²⁵

²² File No. 77050, official records in the Office of the State Engineer.

²³ File No. 77276, official records in the Office of the State Engineer.

²⁴ File No. 77533, official records in the Office of the State Engineer.

²⁵ File No. 77534, official records in the Office of the State Engineer.

XXIV.

Application 77535 was filed on October 24, 2008, by Fernley to change the manner and place of use of 44.91 afa, 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 9.98 acres within the NE¼ SE¼ of Section 10, T.20N., R.24E., M.D.B.&M.²⁶ By letter dated October 16, 2009, Fernley withdrew 43.2 afa from the application.

XXV.

Application 77923 was filed on January 22, 2009, by Fernley to change the manner and place of use of 21.6 afa, 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 4.8 acres within the SW¼ NE¼ of Section 19, T.20N., R.25E., M.D.B.&M.²⁷

XXVI.

Application 77924 was filed on January 22, 2009, by Fernley to change the manner and place of use of 0.9 afa, 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 0.2 acres within the SW¼ NE¼ of Section 19, T.20N., R.25E., M.D.B.&M.²⁸

XXVII.

Application 78073 was filed on February 26, 2009, by Fernley to change the manner and place of use of 36.29 afa, 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 8.0634 acres within the NW¼ SE¼ of Section 10, the NE¼ SW¼ of Section 12, T.20N., R.24E., M.D.B.&M. the NE¼ NE¼ of Section 19, and the SW¼ NE¼ of Section 21, T.20N., R.25E., M.D.B.&M.²⁹ By letter dated October 16, 2009, Fernley withdrew 1.08 afa from the application.

²⁶ File No. 77535, official records in the Office of the State Engineer.

²⁷ File No. 77923, official records in the Office of the State Engineer.

²⁸ File No. 77924, official records in the Office of the State Engineer.

²⁹ File No. 78073, official records in the Office of the State Engineer.

XXVIII.

Application 78626 was filed on June 5, 2009, by Fernley to change the manner and place of use of 215.16 afa, 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 47.8278 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 13, the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 14, T.20N., R.24E., M.D.B.&M. and the NW $\frac{1}{4}$ of Section 19, T.20N., R.25E., M.D.B.&M.³⁰ By letter dated October 16, 2009, Fernley withdrew 86.31 afa from the application.

XXIX.

All the Applications were timely protested by the Pyramid Lake Paiute Tribe of Indians (Tribe) on various grounds. The only protested ground remaining is whether the granting of the applications 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 there be adequate plans to protect existing uses and commitments of groundwater and to require 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.

XXX.

All Applications except for 78073, 77533, 77534 and 77535 were timely protested by the United States Department of Interior, Bureau of Reclamation (BOR) on grounds not considered in this ruling because they were later withdrawn.

XXXI.

On March 21, 2007, the City of Fernley filed Motion to Dismiss One of Protestant's Protest Grounds and Motion to Require Protestant to Provide More Definite and Reasonably Certain Statements for Remaining Protest Grounds as to Applications 74911, 74943, 74944 and 74980.¹ In the Motion, the City argues that the First, Third and Fourth protest grounds set forth in the BOR's

³⁰ File No. 78626, official records in the Office of the State Engineer.

protests are so vague and uncertain that the City cannot reasonably be expected to frame a responsive answer. The City also moves to dismiss the Second protest ground because it is based on a condition required only as a prerequisite to the State Engineer's granting of a permit and not the Applicant's requirement in filing an application. On January 24, 2008, the City filed a Motion(s) to Require More Definite Statements and to Dismiss Protest Grounds Raised in Protest as Applications 75862, 75863, 75864, 75865 and 76209.

By Notice dated April 15, 2008, the State Engineer ordered the Protestants to provide more definitive statements and ordered the Tribe to review its protest claims and voluntarily dismiss those the State Engineer has already indicated lacked merit.

By letter dated May 15, 2008, the Tribe withdrew protest ground #2 (Newlands Project), #6 (threatened and endangered species), #7 (public interest), #10 (contingent protest) and #11 (incorporation of other protestants' protest) as to Applications 74911, 74943, 74944, 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76209 and 76292. As to protest ground #3 (deliveries outside irrigation season) and #5 (use outside irrigation season is less efficient), the Tribe agreed to resolve those protest issues as was done in the agreement on the prior Fernley change applications. Regarding protest ground #8 (prior pending legal proceeding regarding forfeiture and abandonment), the Tribe indicated that it and Fernley were discussing the implications of various issues surrounding this protest claim and the Tribe withdrew this protest ground as to certain identified parcels of land. Finally, as to protest ground #9 (detrimental to the public interest in light of groundwater issues in the Fernley basin), the Tribe continues to assert this protest issue pending appellate resolution of the point and provided a brief in support of the protest ground. By letter dated February 6, 2009, the Tribe also withdrew the same protest grounds as referenced above as to Applications 76061, 76837, 76976, 76977, 77006 and 77050 and indicated that as to protest ground #9 that the Tribe and Fernley have agreed to be bound by the final outcome of the appeal in the matter of State Engineer's Ruling No. 5826, which appeal is pending in the United States Judicial District Court as case number 3:73-CV-23 and that the State Engineer may rule on the groundwater issue as was done in Ruling No. 5826.

A response was filed by the BOR wherein it indicated that perhaps the Applications might be conditioned and the diversion sufficiently limited so that its protest concerns could be alleviated.

By letter dated June 6, 2008, Fernley filed a reply to the responses submitted by the BOR and the Tribe. The City noted that motions to dismiss were currently pending for decision and further asserted that both the Tribe's and the BOR's protests should be rejected.

By letter dated December 16, 2008, the BOR indicated that it was in negotiations with Fernley to resolve its protest issues and hoped the matter of the protest to the applications could be resolved without an administrative hearing.

XXXII.

On September 24, 2009, Fernley and the Tribe filed a Stipulation to Dismiss Protest Grounds as to Applications 74911, 74943, 74944,³¹ 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77533, 77534, 77535, 77923, 77924, 78073 and 78626. The Stipulation noted that the Tribe's previous withdrawal of protest grounds did not apply to all applications under consideration in this ruling, but pursuant to the Stipulation the Tribe withdrew the same protest grounds as to Applications 76061, 76837, 76976, 76977, 77006, 77050, 77276, 77533, 77534, 77535, 77923, 77924, 78073 and 78626. The Stipulation indicates that the Tribe's remaining protest grounds are that the: (1) required federal approval has not been obtained; (2) proposed transfers from agricultural to municipal are not allowed by the Operating Criteria and Procedures for the Newlands Project; (3) Fernley has not obtained permission or contracts for use of the necessary facilities; (4) non-irrigation season use of water is less efficient; (5) water rights included in 74944,³¹ 75862, 76209, 76292, 76837, 77006, 77535, 78073 and 78626 are subject to forfeiture or abandonment of existing water rights; and (6) proposed transfers would be detrimental to the public interest in light of groundwater issues. However, based on the agreement set forth in the Stipulation, the Tribe withdrew its first through fifth protest grounds and agreed that the outcome of the remaining protest issue of the Tribe, that the proposed transfers would be detrimental to

³¹ Application 74944 was withdrawn by the Applicant on October 16, 2009. File 74944, official records in the Office of the State Engineer.

the public interest in light of groundwater issues, will be determined by the final outcome of the currently in progress appeal of the identical issue contained in State Engineer's Ruling No. 5826, and without a hearing. Fernley and the Tribe jointly requested the State Engineer incorporate the Terms and Conditions of the Stipulation into any permit issued under these change applications, but agreed that the Stipulation is enforceable between Fernley and the Tribe whether or not it is incorporated into any such permit. With regard to the protest issues of abandonment/forfeiture that the Tribe filed against Applications 74944,³¹ 75862, 76209, 76292, 76837, 77006, 77535, 78073, and 78626, Fernley and the Tribe agreed that within 30 days they would reach a consensus on portions of water-righted land to withdraw from the Applications. Based on the Stipulation, the Tribe retained one protest ground against these change applications, that being that the approval of the applications will be detrimental to the public interest in light of groundwater issues in the Fernley basin.

By letter dated December 10, 2009, the Bureau of Reclamation withdrew its protests to Applications 74911, 74943, 74944,³¹ 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77923, 77924 and 78626 based on an agreement that it has reached with Fernley.

FINDINGS OF FACT

I.

The State Engineer finds only one protest issue remains as to these applications and the parties have agreed that the State Engineer should adopt the findings and conclusions set forth in State Engineer's Ruling No. 5826 and agreed that the outcome of the remaining protest issue of the Tribe, that the proposed transfers would be detrimental to the public interest in light of groundwater issues, will be determined by the final outcome of the currently in progress appeal of the identical issue contained in State Engineer's Ruling No. 5826, and without a hearing.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action and determination.³²

³² NRS Chapter 533.

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:³³

- 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 a requirement that artificial recharge from surface-water sources must continue to support existing groundwater rights is not supported by law. Denial of the change applications will not change the situation on 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 groundwater 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 and the removal of the unnatural 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 Protestant's water rights or protectible interests in existing domestic wells nor will granting the change applications threaten to prove detrimental to the public interest.

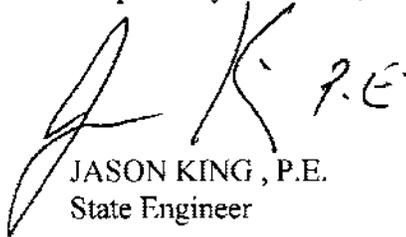
³³ NRS § 533.370(5).

RULING

The protests to Applications 74911, 74943, 74980, 75503, 75504, 75581, 75582, 75583, 75862, 75863, 75864, 75865, 76061, 76209, 76292, 76837, 76976, 76977, 77006, 77050, 77276, 77533, 77534, 77535, 77923, 77924, 78073 and 78626 are overruled and the applications granted subject to:

1. The payment of the statutory permit fees; and
2. Existing rights.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 25th day of
June, 2010.