

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

IN THE MATTER OF APPLICATION NUMBERS 64308,) )  
64309, 64310, 64311, 64312, 64313, AND ) )  
64314 FILED TO CHANGE PREVIOUSLY DECREED ) )  
SURFACE WATERS FROM BARBER CREEK, CARSON ) )  
VALLEY HYDROGRAPHIC BASIN (105), DOUGLAS ) )  
COUNTY, NEVADA. ) )

RULING  
# 4804

GENERAL

I.

Application 64308 was filed on July 16, 1998, by Jim Tom Crawford, Estil Jack Crawford, and Pearl Crawford to change the point of diversion and place of use of 3.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree<sup>1</sup> under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M., Douglas County Assessor's Parcel No. ("APN") 19-191-01, totaling 1.05 acres. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>2</sup>

II.

Application 64309 was filed on July 16, 1998, by Robert D. and Luella R. Watrous, Trustees of the Watrous Family Trust dated August 9, 1988, to change the point of diversion and place of use of 6.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M., APN's 19-191-02 and 19-191-27, totaling 1.632

<sup>1</sup> Final Decree, In the Matter of the Determination of the Relative Rights to the Waters of Barber Creek and Its Tributaries in Douglas County, Nevada, First Judicial District Court of the State of Nevada, in and for the County of Douglas, May 27, 1921. (Hereinafter "Barber Creek Decree".)

<sup>2</sup> File No. 64308, official records in the office of the State Engineer.

acres. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 14.<sup>3</sup>

III.

Application 64310 was filed on July 16, 1998, by Jack Lambton and Bonnie B. Lambton to change the point of diversion and place of use of 6.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the SW¼ SW¼ of Section 14, T.12N., R.19E., M.D.B.&M., APN's 19-191-05 and 19-191-26, totaling 2.708 acres. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 14.<sup>4</sup>

IV.

Application 64311 was filed on July 16, 1998, by John W. Dugan and Dena Jensen-Dugan to change the point of diversion and place of use of 3.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the SW¼ SW¼ of Section 14, T.12N., R.19E., M.D.B.&M., APN 19-191-07, totaling 1.40 acres. The proposed point of diversion is described as being located within the SW¼ SW¼ of said Section 14.<sup>5</sup>

V.

Application 64312 was filed on July 16, 1998, by Andrew W. Hughes to change the point of diversion and place of use of 3.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350,

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<sup>3</sup> File No. 64309, official records in the office of the State Engineer.

<sup>4</sup> File No. 64310, official records in the office of the State Engineer.

<sup>5</sup> File No. 64311, official records in the office of the State Engineer.

Douglas County, Nevada, for irrigation purposes within portions of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M., APN 19-191-08, totaling 1.76 acres. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>6</sup>

VI.

Application 64313 was filed on July 16, 1998, by Willis John Ward and Minnie Sue Ward to change the point of diversion and place of use of 3.0 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M., APN 19-191-09, totaling 2.0 acres. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>7</sup>

VII.

Application 64314 was filed on July 16, 1998, by Gale E. Maynor and Judith A. Maynor, Trustees of the Maynor Family Trust dated January 14, 1998, to change the point of diversion and place of use of 6 acre-feet per season, a portion of the surface water decreed under the Barber Creek Decree under Proof Numbers V-01349 and V-01350, Douglas County, Nevada, for irrigation purposes within portions of the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.19E., M.D.B.&M., APN's 19-200-30 and 19-200-31, totaling 2.523 acres. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 14.<sup>8</sup>

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<sup>6</sup> File No. 64312, official records in the office of the State Engineer.

<sup>7</sup> File No. 64313, official records in the office of the State Engineer.

<sup>8</sup> File No. 64314, official records in the office of the State Engineer.

VIII.

Applications 64308 through 64314, inclusive, were timely protested by Dennis R. Buckley on the grounds as follows: (1) that the change applications would conflict with the protestant's existing decreed water rights in Barber Creek; (2) that the change applications would affect the quantity of water deliverable to other beneficial users downstream who use all available water flows for agricultural purposes during the same time period stated in the applications; (3) that the proposed changes divert water to areas that are not under cultivation and do not require stockwater, and the water necessary for landscape maintenance can be provided by the relevant domestic wells; (4) that the State Engineer's office previously directed the applicants to work with the owners of record as to which parcels would be stripped of existing water rights and no agreement has been reached with any of the property owners of lands covered by water rights from Barber Creek, and that any change applications would have to show uniform compliance indicating which parcels were being stripped of water rights; (5) not all those persons who previously were illegally diverting the waters of Barber Creek have filed change applications leaving the door open for further action by the State Engineer's office; (6) since the point of diversion is above the main split of Barber Creek, the waters flowing to the Reyloc Ranch would be affected and this is not shown on the application map; (7) that the cease and desist order indicated that the relevant assessor's parcels have no permitted, vested or decreed water rights for the use of water from Barber Creek; (8) that the statement in the applications that the diversion structure is completed is misleading as the structure is not functional, the financial impact of correcting and providing a flow meter to the parcel will exceed the estimated costs shown on the application, and that any attempt to refurbish the structure will necessitate major disruption of the creek bed allowing debris and sediment onto cultivated, water-righted properties and will eliminate stock

water to these same properties; and (9) that the statement on the applications regarding a possible impact on the Sheridan Creek adjudication process has no bearing on applications filed on Barber Creek, and that water flowing through this creek is utilized for areas shown on the survey map as not being under the Barber Creek Decree.

IX.

On December 2, 1998, the applicants filed a Response to Protest of Applications 64308 through 64313, inclusive.<sup>9</sup>

X.

After all parties of interest were duly noticed by certified mail, a public administrative hearing was held in Carson City, Nevada, before representatives of the office of the State Engineer on May 12, 1999, regarding the protests to Applications 64308 through 64314, inclusive.<sup>10</sup>

FINDINGS OF FACT

I.

Mr. Buckley, as the protestant, made certain allegations in his protest generally stating that these change applications will interfere with his existing water rights. Yet, Mr. Buckley at the public administrative hearing provided little, if any, concrete evidence as to exactly what his water rights are and how these change applications would interfere with those rights. The State Engineer finds that it is the protestant's burden to produce the evidence and prove his protest claims. It is not the applicants' job to disprove the protestant's claims.

II.

During the public administrative hearing, counsel for the applicants moved to strike Mr. Buckley's protest on the grounds

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<sup>9</sup> Barber Creek Hearing File, official records in the office of the State Engineer.

<sup>10</sup> Transcript, public administrative hearing before the State Engineer, May 12, 1999 (hereinafter "Transcript").

that he had not proven he is the owner of the downstream property referred to as the Buckley Ranch, and NRS § 533.386 provides that the State Engineer shall not consider or treat a person to whom an adjudicated water right is conveyed as the owner or holder of the right for the purposes of that chapter until a report of conveyance is confirmed pursuant to the statute. Under the provisions of NRS § 533.365, any interested person may file a protest against the granting of an application. The State Engineer has long interpreted NRS § 533.365 to provide that any person who timely files a protest to an application based on the criteria found in NRS § 533.370 and other statutes can participate in the administrative process. In this case, the applicants in essence alleged that Mr. Buckley has no standing to allege interference with existing rights if he cannot show he is the owner of existing rights on the same source. The State Engineer finds Mr. Buckley is the owner of record in the office of the Douglas County Assessor of APN 19-200-17,<sup>11</sup> and these same lands have appurtenant decreed water rights as depicted in exhibits submitted at the administrative hearing.<sup>12</sup> The State Engineer further finds Mr. Buckley owns land with decreed water rights under the same proof from which the applicants seek to transfer water, therefore, the motion to strike is without merit.

### III.

The rights to use the waters of Barber Creek were established as set forth in the Barber Creek Decree. Applications 64308 through 64314, inclusive, each apply to change the point of diversion and place of use of the waters of Barber Creek as set forth under Proof Numbers V-01349 and V-01350. However, the

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<sup>11</sup> Transcript, p. 11; Exhibit No. 23, public administrative hearing before the State Engineer, May 12, 1999 (hereinafter "Exhibit"), and per telephone inquiry by a staff member of the office of the State Engineer May 12, 1999.

<sup>12</sup> Exhibit Nos. 24, 27, 28 and 30; Transcript, pp. 63, 83 and 99.

decreed points of diversion and places of use described as the existing points of diversion and places of use under the Applications only describe those lands found under Proof No. V-01350. The State Engineer finds that Applications 64308 through 64314, inclusive, are applications to change the existing point of diversion and place of use of a portion of Proof No. V-01350 and not Proof No. V-01349 as described in the Barber Creek Decree.

IV.

The protestant complains that all the people who were previously illegally diverting the waters of Barber Creek have not filed change applications leaving the door open for further action by the State Engineer's office. The State Engineer finds those who have not filed change applications are under a cease and desist<sup>13</sup> order and cannot use the waters of Barber Creek until the appropriate change applications are granted. The State Engineer finds he cannot force a person to file a change application, but can prevent the use of the waters until the appropriate statutory processes are complied with in order to use the waters for a new purpose or at a new location.

V.

The protestant complains that the State Engineer's cease and desist order indicates the relevant parcels do not have permitted, vested or decreed water rights for the use of the waters of Barber Creek. The State Engineer finds the applicants have sufficiently proven a chain of title to water rights to support their change applications.<sup>14</sup>

VI.

The protestant complains that the statement in the applications that the diversion structure is completed is misleading, that the structure is not functional, that the

<sup>13</sup> Exhibit No. 19.

<sup>14</sup> File No. V-01350, official records in the office of the State Engineer.

financial impact of correcting and providing a flow meter to the parcel will exceed the estimated costs shown on the application, and that any attempt to refurbish the structure will necessitate major disruption of the creek bed allowing debris and sediment onto cultivated land, water-righted properties and eliminate stock water to those same properties. At the administrative hearing, the protestant testified that the diversion box will draw water, that he has no idea whether it will distribute water to the applicants' properties, that he has no actual knowledge whether the diversion structure is functional or not, and he has done no analysis as to whether the monetary amount stated in the applications is correct or not.<sup>15</sup> Furthermore, testimony was provided that the proposed changes are to merely document what has been taking place since the early 1950's.<sup>16</sup> Nevada Revised Statute § 533.365 provides that a person filing a protest must set forth with reasonable certainty the grounds of such protest which shall be verified by affidavit. The State Engineer finds the protestant's lack of actual knowledge as to the claims in his protest as set forth in this finding violate the provisions of NRS § 533.365, and therefore, the merit of said protest claims are questionable.

#### VII.

The protestant alleges that the change applications would interfere with his existing decreed water rights in Barber Creek, yet, he could not answer the question presented as to the total duty allocated in the Barber Creek Decree for his specific property, as to how much water he diverts from Barber Creek, and knows of no limitation of the amount that can be diverted for the ranch properties downstream from the applicants.<sup>17</sup> The State

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<sup>15</sup> Transcript, pp. 49-51.

<sup>16</sup> Transcript, p. 105.

<sup>17</sup> Transcript, pp. 26, 44 -46, 51.

Engineer finds the protestant provided little to no factual evidence to substantiate his claim of interference with his existing water rights.

VIII.

The protestant alleges that the applicants can use their domestic wells for their landscaping purposes, that they have no areas under cultivation and do not require stock water, yet admits the applicants' deeds gave them rights to the waters of Barber Creek.<sup>18</sup> The protestant believes his agriculture use is a higher and better use than that proposed by the applicants and that the applicants proposed uses should not be allowed to interfere with the ranching uses.<sup>19</sup> The State Engineer finds the protestant provided no citation to authority in support of this statement and there is none. The State Engineer also finds that the holder of a valid water right can file an application to change the point of diversion, place or manner of use of that right so long as it does not interfere with existing rights or threaten to prove detrimental to the public interest.<sup>20</sup> The State Engineer further finds just because a property owner has a domestic well does not preclude that property owner from using a valid surface water right for irrigation purposes and the property owner is not required to use said well for landscaping purposes.

IX.

The protestant complains that the State Engineer's office previously directed the parties illegally diverting water from Barber Creek to work with the existing owners of record as to which parcels would be stripped of water rights and no agreement has been reached with any of the property owners of lands covered by water rights from Barber Creek. Testimony was provided at the

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<sup>18</sup> Transcript, pp. 18, 27-30, 48.

<sup>19</sup> Transcript, p. 35.

<sup>20</sup> NRS § 533.325 and 533.370.

administrative hearing that meetings were held in an attempt to resolve the outstanding issues and concerns of the protestant and no agreement was reached.<sup>21</sup> The subject applications propose to strip a portion of the acre-foot per acre duty decreed under Proof V-01350 as set forth in the Barber Creek Decree from an area once called the Judd Ranch and later known as the Crowell Ranch.<sup>22</sup> The decreed acre-foot per acre duty under Proof V-01350 was 5.435 acre-feet per acre per season. The protestant's land is covered by the same Proof. The deeds from the Judd/Crowell Ranch properties did not specifically describe which lands were to be stripped of water when water rights were sold off those ranches, and those deeds merely described water rights and not land. The State Engineer finds that since no land within the decreed place of use was proposed to be dried up, it must be assumed that the grantor intended to reduce the overall duty from all of the acreage decreed with water rights under Proof V-01350. Therefore, with the concurrence of the State Engineer, the duty across the decreed irrigated acreages was to be reduced proportionally.<sup>23</sup> The State Engineer finds that the proportional stripping of water from the decreed lands is most likely the intent of the original grantors and is a reasonable manner for resolving the issue of which lands are to be stripped of water rights in support of those water rights sold. The State Engineer further finds that the transfer of a portion of the acre-feet per acre duty will not interfere with the protestant's existing water rights since the remaining duty under Proof V-01350 for the protestant's land will be in excess of five acre-feet per acre per season, which is in excess of the four acre-feet per acre duty that is considered by

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<sup>21</sup> Transcript, p. 100.

<sup>22</sup> The Judd Ranch was slightly larger than what was known as the Crowell Ranch.

<sup>23</sup> Transcript, pp. 94 - 97; Exhibit Nos. 2, 3, 4, 5, 6, 7, 8, 16, 17, 18, 20, 21 and 30.

the State Engineer to be sufficient water in Northern Nevada for the irrigation of land.

X.

Applications 64308 through 64314, inclusive each propose to change the point of diversion and place of use of a portion of Proof V-01350 as set forth in the Barber Creek Decree and do not purport to change the decreed manner of use which is irrigation. The protestant agreed that the applicants are the recipients of the waters described in the change applications through various documents of transfer from the previous owners of the lands decreed as having appurtenant water rights.<sup>24</sup> The State Engineer finds that the records of the office of the State Engineer reflect conveyances of portions of Proof V-01350 to each of the subject applicants,<sup>25</sup> that the subject applications do not propose to change the decreed manner of use, and have been filed in accordance with NRS § § 533.325 and 533.345.

XI.

The deeds which conveyed water to the Crawford, Dugan, Watrous (1st of their 2 parcels), and Lambton (1st of their 2 parcels) properties described the amount of water that can be conveyed through a  $\frac{3}{4}$  inch pipe, but not to exceed 3.0 acre-feet per year.

The deeds which conveyed water to the Hughes, Lambton (2nd of their 2), and Watrous (2nd of their 2) parcels merely described a quantity of water that can be conveyed through a  $\frac{3}{4}$ -inch pipe. The deeds that conveyed water to the Ward parcel described a 1-inch pipe not to exceed 3.0 acre-feet. The deeds that conveyed water to Maynor (2 parcels) properties described a quantity of water that can be conveyed through a 1 $\frac{1}{2}$ -inch pipe. The applications for Crawford, Dugan, and Ward limit the requests as described by deed

<sup>24</sup> Transcript, p. 48.

<sup>25</sup> Proof No. V-01350, official records in the office of the State Engineer.

to 3.0 acre-feet per irrigation season for each parcel. The application for Hughes is for 3.0 acre-feet per season even though the deeds that conveyed water limited the quantity to the amount conveyed by a ¾-inch pipe without a specific acre-foot duty limitation. The applications for Watrous, Lambton, and Maynor each request to change 6.0 acre-feet per season for the two parcels within the described places of use. Even though the deeds for these parcels describe a ¾-inch pipe and a 1½-inch pipe limitation, the State Engineer believes the intent of the grantor was the same 3.0 acre-feet per parcel duty. The State Engineer finds that the acre-feet requested per applicant is reasonable in light of what appears to have been the intent of the grantor as to what was conveyed based on what was described as the acre-feet limitation in some of the deeds.

**XII.**

While Applications 64038 through 64314 describe only one point of diversion, there is another 2-inch pipe in the creek which draws off water to two ponds on the Lambton parcel identified as APN 19-191-05. Water then flows from the ponds to a holding tank to irrigate land on the Lambton parcels identified as APN's 19-191-05 and 19-191-26.<sup>26</sup> Testimony was provided that the two distinct points of diversion were described as one under the applications due to being in such close proximity to each other. Testimony described the main point of diversion (described as POD-1) as being a structure, and the point of diversion to the Lambton property as merely being a pipe in the creek to take advantage of the pressure at the creek to get the water into the ponds.<sup>27</sup> Downstream from the applicants' points of diversion are two other points of diversion described as POD-2 (Reyloc Ranch diversion) and POD-3 (Simon, Rooker, Buckley and Carnes diversion that runs

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<sup>26</sup> Transcript, pp. 70 - 77; Exhibit No. 25.

<sup>27</sup> Transcript, p. 76.

across Foothill Road and commingles with water from Sheridan Creek).<sup>28</sup> Testimony was provided that it is believed that POD-1 was installed by Judd in 1944 (not including the Lambton pipe in the creek) to service the parcels to which he was deeding water,<sup>29</sup> and that POD-2 and POD-3 were installed sometime in the late 1950's or early 1960's and were based on an apparent water agreement between ranchers at that time.<sup>30</sup> Further, testimony indicates that there is a 2,000-gallon water tank on the Lambton property and a 1,900-gallon water tank on the Dugan property.<sup>31</sup>

Testimony provided by the applicants' witness indicates that all 10 parcels together are entitled to a flow rate of 37 gallons per minute (gpm) during the irrigation season at a diversion rate of 0.0827 cubic foot per second ("cfs").<sup>32</sup> The State Engineer finds that the proportional diversion rate for each of the subject applications requesting three acre-feet per season is 0.0083 cfs and for each of the applications requesting six acre-feet per season is 0.0166 cfs, and the total cumulative diversion rate for all of the subject applications is 0.083 cfs equating to 37.25 gpm.

The Lambton's 2-inch pipe in Barber Creek was not described on the map filed in support of their application.<sup>33</sup> The filing of an application to change the point of diversion must contain a substantially accurate description of the place at which the water is proposed to be diverted.<sup>34</sup> The State Engineer finds that the

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<sup>28</sup> Transcript, p. 75.

<sup>29</sup> Transcript, pp. 76 - 77.

<sup>30</sup> Transcript, p. 77.

<sup>31</sup> Transcript, p. 78.

<sup>32</sup> Transcript, pp. 92, 97.

<sup>33</sup> Exhibit Nos. 20 and 25.

<sup>34</sup> NRS § 533.330 and 533.345.

2-inch pipe of the Lambton's is not described on the map that accompanied Application 64310 and further finds it must be removed from the creek to alleviate any potential use not in accordance with State Water Law.

**XIII.**

These applicants have the same rights to the waters of Barber Creek that the protestant has as their water rights arise from the same decreed right from which the protestant's water right originates. The State Engineer finds that since the original grantors, Judd and Crowell, sold the water rights for servicing the same properties which the applicants now attempt to file the change applications to clarify the records, the original grantors must not have believed those changes interfered with their existing remaining rights to use of the waters of Barber Creek. The State Engineer finds these change applications are merely to reflect what Judd and Crowell did decades ago without the benefit of filing change applications with the Nevada State Engineer.

**XIV.**

The central issue as to these change applications is really more one of regulation than of right. The protestant admits the applicants are entitled to a portion of the waters of Barber Creek.

The first thing to be established is what is the total amount any parcel is allowed to divert and use and how is that quantity to be regulated in relation to the right of the protestant. The testimony and evidence indicate that the total combined right of these applications is 37 gallons per minute at a total diversion rate of 0.0827 cubic foot per second, but this diversion rate is not limited by the works of diversion.<sup>35</sup> Testimony indicates that the amount of water that can flow through a ¾-inch pipe is ten gallons per minute which equates to 8.0 acre-feet per year which is more than any single parcel is entitled to use.

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<sup>35</sup> Transcript, p. 108.

Second, is the question of what happens when the flow of Barber Creek is insufficient to satisfy the rights of both the applicants and the protestant and the rights of any other users entitled to use the waters decreed under Proof V-01350. Evidence was presented that the United States Geological Survey has measured the flow of Jobs Canyon Creek (aka Barber Creek) with flows ranging from 0.08 cfs to over 6.0 cfs during the period 1976 through 1988.<sup>36</sup> In times of high flows, Barber Creek carries sufficient water to meet the decreed quantities, but in times of low flow a methodology must be established in order to insure that the upstream diversions at POD-1 (applicants' point of diversion) is not operated to the detriment of the downstream users (those diverting at POD-2 and POD-3). In other words, a method to share the shortages must be fashioned.

The decreed diversion rate under Claim V-01350 is 3.0436 cfs, which is the underlying water right that forms the basis for the subject applications. The cumulative proportional diversion rate under all of the subject applications is 0.083 cfs, which is approximately three percent of the decreed diversion rate of Claim V-01350. The State Engineer finds that a substantial measuring device to facilitate the measurement and control of water must be installed and maintained by the applicants at a point above the upper most point of diversion on Barber Creek. Said device must be approved by the State Engineer prior to installation. The device is to be suitable to measure the variable flow and one such device is a Parshall flume having a throat width of three feet.

The existing structure designated as POD-1 (applicants' point of diversion) is currently able to draw water from the creek at a rate above the cumulative diversion rate of all the subject applications.<sup>37</sup> The State Engineer finds that a valve or

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<sup>36</sup> Exhibit No. 29.

<sup>37</sup> Transcript, p. 109.

other type of regulating device must be installed at the applicants' point of diversion to ensure that the total quantity of water diverted is limited to that amount requested under the subject applications. The ability to regulate and control the flow through the applicants' proposed point of diversion will be necessary at all times and only the proportional diversion rate be allowed to pass through their intake structure if the measured flow is below the decreed amount as established under Claim V-01350. The State Engineer finds that the regulation of the proposed diversions should prevent interference with existing rights at all levels of flow of Barber Creek.

#### CONCLUSIONS

##### I.

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

##### II.

The State Engineer concludes the applicants' motion to strike the protest is without merit and is denied.

##### III.

The State Engineer is prohibited by law from granting a permit under an application to change use of the public waters where:<sup>39</sup>

- A. the proposed use conflicts with existing rights; or
- B. the proposed use threatens to prove detrimental to the public interest.

##### IV.

The State Engineer concludes the applicants' and protestant's right to use the waters of Barber Creek arise under the same decreed right and have the same priority date as set forth in the

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<sup>38</sup> NRS Chapter 533.

<sup>39</sup> NRS § 533.370(3).

Barber Creek Decree, therefore, in times of shortages both the applicants and the protestant have the right to share in the use of the waters as set forth under Proof V-01350.

V.

The burden to produce evidence and prove the claims as alleged in protest is upon the protestant. The State Engineer concludes the protestant either lacked actual knowledge or failed to provide evidence as to his claims of interference with his existing right or as to his claims relevant to the diversion structure, therefore, the merits of those protest claims are questionable. The State Engineer concludes that the applications have been filed in accordance with the applicable statutes and that the approval of Applications 64308 through 64314, inclusive, will not conflict with any existing rights.

VI.

The State Engineer concludes that an owner of a valid surface water right may file an application to change for irrigation purposes irrespective of the existence of a domestic well producing water from underground.

VII.

The State Engineer concludes that the proportional reduction in duty under Proof V-01350 will not interfere with existing decreed water rights since the remaining duty is greater than the duty of four acre-feet per acre established and accepted to be sufficient for crops in Northern Nevada.

VIII.

The State Engineer concludes that the installation of a measuring device above the uppermost diversion on Barber Creek and a control structure at the applicants' point of diversion will facilitate distribution of the available waters to prevent interference with existing rights.

IX.

The State Engineer concludes that the 2-inch pipe of the Lambtons' must be removed from Barber Creek, since there is no

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legal authority for its existence as it represents a different point of diversion than that described under Application 64310.

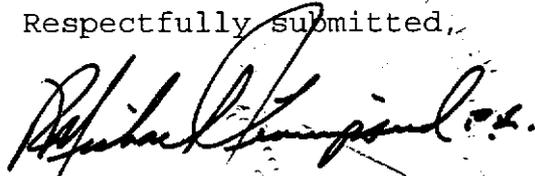
X.

The State Engineer concludes that the subject applications are for the parcels of land described in the State Engineer's Order No. 1158 of May 8, 1997, and that the applicants have substantially complied with said Order.

RULING

The protests to Applications 64308, 64309, 64310, 64311, 64312, 64313 and 64314 are hereby overruled and Applications 64308, 64309, 64310, 64311, 64312, 64313 and 64314 are hereby granted subject to existing decreed rights, the conditions established above and the payment of statutory permit fees.

Respectfully submitted,



R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/cl

Dated this 8th day of  
November, 1999.