

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

IN THE MATTER OF RECHARGE, STORAGE)
AND RECOVERY APPLICATION R-014,)
WARM SPRINGS VALLEY HYDROGRAPHIC)
BASIN (83), WASHOE COUNTY, NEVADA.)

RULING
5194

GENERAL

I.

Recharge, Storage and Recovery Application R-014 (Application R-014) was filed May 1, 1998, by Intermountain Pipeline, Ltd. Ownership of the land on which the applicant proposes to operate the project on is in the names of Robert and Nanette Marshall. The recharge area is described as being located within the SW¹/₄ SW¹/₄ and SE¹/₄ SW¹/₄ of Section 3, SW¹/₄ NE¹/₄, NW¹/₄ SE¹/₄, NE¹/₄ SE¹/₄ and SE¹/₄ SE¹/₄ of Section 4 and the NE¹/₄ NW¹/₄, NW¹/₄ NE¹/₄, SW¹/₄ NE¹/₄, SE¹/₄ NW¹/₄, NE¹/₄ SW¹/₄ and NW¹/₄ SE¹/₄ of Section 10, T.23N., R.20E., M.D.B.&M. The proposed recovery wells are described as being located within the SE¹/₄ NW¹/₄, the NW¹/₄ SE¹/₄ and the SW¹/₄ SE¹/₄ of Section 10, T.23N., R.20E., M.D.B.&M.¹

II.

Sixty-seven different parties filed timely protests to Application R-014. The following tables list the parties involved in this action. Table 1 lists the protestants that filed identical protests to Application R-014.¹

TABLE 1

Robert J. Avila	Clara L. Lee
Timothy R. Jordan	Rudolph Viola, Jr.
Angela R. Beard-Mann	Kathy Hutchinson and Michael W. Clarkson
Richard J. Cieri	Sharieldean McGath
Elza Jr. and Marjorie Minton	Michael W. and Linda C. James
John M. Weisser	Sterling and Jan Murphy
Virginia E. Schwartz	Virginia Brown
Darla M. Owen	Cody and Marie Crawford
Vann Webb	Rocky Acres
Susan Bloom	Thomas R. And Jacqueline V. Hildenbrand

¹ File No. R-014, official records in the Office of the State Engineer.

Harold Shotwell	Jeffrey Turk
Mark and Wilma Carr	Richard W. Lewis
Marc Colosimo	Thomas L. and Robin M. Dobson
Ron Vucovich	Felton and Eva Hickman
Richard Otto Wise	Willard Obacka
Ronald and Claudia Messenger	Gene and Karen Kunkel
Julie Dudley	Donald C. Fox
Otto L. and A. Lehmkuhl	Eury M. Hulsey
Gerald Krupp	Joel and Laurie York
Eleanor and Michael Cesario	Casey L. Walls
Victor A. Verling	Patrick M. & Karen L. Jones
Gregory Gilbert	Jerry Whitehead
Arleta Ann Ross	Billye J. Meadows
John A. Boren, Jr.	Bob White
Sharon Lee and Gregory A. Taylor	Michael L. Jordan

Table 2 represents the protestants that filed distinct protests against Application R-014.

TABLE 2

Greg Dennis	Air Sailing, Inc.
Washoe County	Warm Springs Property Owners Association
Robert and Marilou Stone	William Brett Whitford
Pamela R. Watson	Kim J. Corbett
Hugh Lynn Ezzell	Fahnestock Enterprises Inc. and Western Turf and Nursery Farms
George Newell	Tom and Lannette Pratt
Tehama Holdings, Inc.	Nevada Potato, Inc.
Brent N. Douglas	John and Susan Claypool
William Handling	

III.

The common protest filed by the parties listed in Table 1 reads as follows:

Application No. R-014 proposes to utilize natural surface water flows and flood waters for recharge, underground storage and recovery for the exportation of 4,000 acre feet from the Warm Springs Valley.

As a domestic well and water right owner within Warm Springs Valley, I am concerned that continued groundwater recharge needed to protect our domestic wells and groundwater rights is in being jeopardized by Application No. R-014. Therefore, I request the denial of Application No. R-014 based on the following reasons.

A comprehensive perennial yield and recharge analysis must be required by the Nevada State Engineer of the entire Warm Springs Valley Basin. The results of this comprehensive analysis must be reviewed to

determine the impacts of existing water consumption and recharge within Warm Springs Valley before any groundwater or surface water can be considered for exportation.

A phased pilot project must be implemented to demonstrate the capability to safely recharge, store surface and recover surface water for quality and quantity purposes. This pilot project must be able to demonstrate that surface water recovered from groundwater storage does not decrease the historical perennial recharge already permitted to existing water right owners within this basin. The recovered surface water proposed by this application must first be consumed within Warm Springs Valley in a manner that can document no adverse impacts to existing domestic well and water right owners before any of this recovered surface water is considered for exportation.

This pilot artificial aquifer storage and recovery project must be phased over a reasonable period of time and increased volumes of water. For example, the first phase may allow for the artificial recharge, storage and recovery of 100 acre feet. If the recovery of this 100 acre feet can demonstrate no adverse impacts to the historical recharge and to existing water right owners, then the volume can be increased to 200 acre feet.

NRS 534.180 provides for the consumption of a maximum daily volume of 1,800 gallons from a well for domestic purposes. This maximum daily volume expands to 2.02 acre feet per year of groundwater. Washoe County has enacted water right dedication requirements for the approval of parcel maps within specific hydrographic basins.

Washoe County requires the dedication of 2.5 acre feet instead of 2.02 acre feet for the parceling of land utilizing a domestic well as the water supply within the Warm Springs Valley Basin. The dedication of the additional 0.48 acre feet is required by Washoe County to compensate for the over allocation of groundwater and to protect the groundwater resources within the hydrographic basin. The State Engineer must address Washoe County concerns of over allocation of groundwater rights and their water right dedication policies in Warm Springs Valley before exportation of water is considered.

The protestants requested the State Engineer to deny Application R-014.

IV.

Greg Dennis protested Application R-014 on the following grounds:

Has not documented there are no impacts to existing water rights owners. Project has not demonstrated there are existing water rights to supply recharge. Washoe County policy requires dedication of ground water at 2.5 Ac. Ft. to 1 for consumptive use. Cost of exportation project is not economically feasible.

Environmental consequences of proposed recharge project have not been determined.

Major flows for recharge do not occur during January-February except as extremely infrequent events.

Major draw down of the aquifer will affect other water right owners.

Will completely remove vegetation and cause loss of habitat & will be a major source of dust. Will be adverse to existing air quality.

Existing water rights are permitted for irrigation, domestic & cattle or livestock watering. The use of recharge water during late winter & very early spring is only livestock.

The recharge basin is the natural basin recharge area for the valley.

Depth to ground water is substantially less in reports by same applicant. Drawing down the water table will destroy the existing vegetation.

The project must demonstrate it does not decrease the historical perennial yield.

Greg Dennis requested that the State Engineer deny Application R-014.

V.

Washoe County protested Application R-014 on the following grounds:

- 1) The project may cause harm to the users of land or other water within the area of hydrologic effect of the project, which is contrary to NRS 534.250.2.e. Washoe County disagrees with the applicant's claim that "Impacts on the ground water and surface water system from exporting this water out of this basin are virtually insignificant,..." (Stantech, addendum to R-014, September 2000). Washoe County contends that the source of supply subject to applications 64073 through 64081 are over estimated and that the actual flows are far less. Furthermore, the flood and runoff water subject to the above applications are a major source of contribution to the ground water resources of Warm Springs Hydrographic Basin. In addition, diversion of water from recovery wells could have negative impacts on subsurface flows through Mullin pass, which is a source of supply for the community of Sutcliff.
- 2) The application fails to adequately describe the methods used to quantify the recharge that would occur. Washoe County is concerned that flood and runoff events are difficult to measure with a high degree of accuracy. To allow a diversion of up to 4000 acre-feet or any amount without adequate measurement of the infiltrated surface water is arbitrary and would be detrimental to existing rights within this basin.
- 3) The application fails to adequately describe how the waters infiltrating through the Warm springs creek and Paiute creek channels can be captured from recovery wells.

Washoe County requested that the State Engineer deny Application R-014.

VI.

Robert and Marilou Stone protested R-014 on the following grounds:

Warm Springs is an agricultural area, with minimum growth. We do not want our water to be exported to any other area. Our water should remain in this valley for our own agriculture and domestic use.

Robert and Marilou Stone requested that the State Engineer deny Application R-014.

VII.

Pamela R. Watson protested Application R-014 on the following grounds:

Application No. R-014 proposes to utilize natural surface water flows and floodwaters for recharge underground storage and recovery for the exportation of 4,000 acre feet from the Warm Springs Valley.

As a domestic well and water right owner within Warm Springs Valley, I am concerned that continued groundwater recharge needed to protect our domestic wells and groundwater rights is being jeopardized by Application No. R-014. Therefore, I request the denial of Application No. R-014 based on the following reasons:

This change would be financially devastating to my family and my parents. We currently have our pump sitting at 500 feet with our well at approximately 508 feet. We have deepened our well twice in 4 years and we have burned out 3 pumps. We are currently only getting 6 gallons a minute of water plus we are facing investing in a water storage tank to supply water to our home. We know what it is like to have water problems, since we have been without water 3 different times in 4 years for at least a week at a time. I've been told by numerous people that have lived in the valley for various years, that they have had to drill new wells because previous wells have run dry. We do not need anymore water pulled from the valley. Please think of how this is effecting the people from Warm Springs Valley that have invested their life savings into a nice home in a nice area.

Our family has made every effort to conserve water by not putting any landscaping in other than a few shade trees. We don't wash our vehicles at home or use our water in any unnecessary ways. We will be forced into a minimum of \$30,000.00 investment for a new well if this application is approved.

We have already invested everything we have (\$150,000.00) from my husband and myself and my parents have invested \$110,000.00 to provide a nice home and good country living for our children. If this Application No. R-014 gets approved it will most likely make my home worthless.

If you care at all about the well being of people in Warm Springs Valley you will deny Application No. R-014.

Pamela R. Watson requested that the State Engineer deny Application R-014.

VIII.

Hugh Lynn Ezzell protested Application R-014 on the following grounds as part of his protest he included an analysis of the applicant's exhibits in support of recharge program. Mr. Ezzell presented the following conclusions:

In conclusion, the applicant has arrived upon a theoretically and economically attractive project. However, the amount of engineering effort placed into the project to date appears to be inadequate given the number of basic questions I have raised regarding engineering aspects of the design. Many items have not been addressed at all – the applicant does not know for sure how many recovery wells will be used (because they appear to know almost nothing of the aquifer) nor where the recovery wells will be located. The locations given in Exhibit I are not accurate – production wells that close together will not work unless drilled very deep. Deep wells likely will not work in this aquifer due to geothermal water intrusion. Modeling of the aquifer in the absence of good soils data is likely misleading.

While technically deficient, the application also appears to be misleading with respect to the storage/recovery budget. Flow rates in figures and tables seem to be misleading in that excessive rounding is used which, undoubtedly, benefits the applicant. Accounting methods appear to double count flow rates (noted above) or to count water not known to exist. In addition, water delivered for storage depends on unproven development techniques for Winnemucca Creek and its tributaries. Thus, the applicant very possibly will not be able to deliver the amounts of water into storage as claimed.

Should extended draw down occur related to recovery wells, area wildlife and phreatophytes will be affected. I have personally observed deer and antelope as well as the usual suite of desert rodents in the areas proposed for storage and recovery. These, as has occurred elsewhere in this basin, likely would disappear or die with excessive pumping.

Private wells will be affected. While it is likely that my own well will not be affected by draw down, my well could be affected through additional intrusion of geothermal waters and the arsenic contamination that probably will accompany.

Hugh Lynn Ezzell requested that the State Engineer defer the approval of Application R-014 until the applicant conducts a more extensive analysis of the surface and ground water resources.

IX.

George Newell, Tehama Holdings, Inc., Brent N. Douglas, Nevada Potato, Inc., John and Susan Claypool, Fahnestock Enterprises, Inc. and Western Turf & Nursery

Farms and Tom and Lannette Pratt protested Application R-014 on the following grounds:

COMPREHENSIVE PERENNIAL YIELD AND RECHARGE ANALYSIS REQUIRED:

The Warm Springs Valley groundwater basin was designated in 1977 under NRS 533.120 based upon concerns of groundwater depletion and over appropriation. Historical perennial yield and recharge studies only investigate portions of the Warm Springs Valley Hydrographic Basin.

The water right owners within Warm Springs Valley located east of the Pyramid Lake Highway are concerned that continued groundwater recharge needed to protect the beneficial use of their permitted and certificated groundwater rights is preserved. The above protestant along with several other neighboring water right owners have been very active in groundwater and surface water management issues in Warm Springs Valley Basin for many years. This group of water right owners and neighbors personally funded a \$60,000 perennial recharge analysis completed in 1997 by Washoe County Department of Water Resources. This perennial yield analysis focussed [sic] on the central and eastern portions of Warm Spring Valley Basin. The westerly portion of Warm Springs Valley Basin known as Winnemucca Valley has been studied by the owners of Intermountain Pipeline, Ltd. to support the proposed aquifer recharge, storage, recovery and exportation project.

A comprehensive perennial yield and recharge analysis must be required by the Nevada State Engineer of the entire Warm Springs Valley (Winnemucca Valley) Hydrographic Basin No. 84. The results of this comprehensive analysis must be reviewed to determine the impacts of existing water consumption and recharge within Warm Springs Valley before any groundwater or surface water can be considered for exportation.

AQUIFER STORAGE AND RECOVERY MUST BE DEMONSTRATED WITHIN THE VALLEY BEFORE EXPORTATION IS CONSIDERED:

Aquifer storage and recovery of surface water within Warm Springs Valley is a valuable concept to investigate. A phased pilot project must be implemented to demonstrate the capability to safely recharge, store surface and recover surface water for quality and quantity purposes. This pilot project must be able to demonstrate that surface water recovered from groundwater storage does not decrease the historical perennial recharge already permitted to existing water right owners within this basin.

The recovered surface water proposed by this application must first be consumed within Warm Springs Valley in a manner that can document no impacts to existing water right owners before any of this recovered surface water is exported.

This pilot artificial aquifer storage and recovery project must be phased over a reasonable period of time and increased volumes of water. For example, the first phase may allow for the artificial recharge, storage and recovery of 100 acre feet. If the recovery of this 100 acre feet can demonstrate no adverse impacts to the historical recharge and to existing water right owners, then the volume can be increased to 200 acre feet.

This pilot project must be capable of being discontinued if the historical perennial yield and/or water right owners are impacted negatively. Therefore, the water produced by the pilot artificially recharge and storage project must not be committed to a permanent water consumer until a volume of recovered water is demonstrated to have no adverse impacts..

CURRENT WASHOE COUNTY POLICIES REQUIRE ADDITIONAL DEDICATION OF WATER RIGHTS TO COMPENSATE FOR OVER APPROPRIATION:

NRS 534.180 provides for the consumption of a maximum daily volume of 1,800 gallons from a well for domestic purposes. This maximum daily volume expands to 2.02 acre feet per year of groundwater.

Washoe County has enacted water right dedication requirements for the approval of parcel maps within specific hydrographic basins. Washoe County requires the dedication of 2.5 acre feet instead of 2.02 acre feet for the parceling of land utilizing a domestic well as the water supply within Warm Springs Valley Basin. The dedication of an additional 0.48 acre feet is required by Washoe County to compensate for the over allocation of groundwater and to protect the groundwater resources within the hydrographic basin. The State Engineer must address Washoe County concerns of over allocation of groundwater rights and their water right dedication policies in Warm Springs Valley before exportation of water is considered.

EXISTING AND FUTURE DEVELOPMENT WATER NEEDS WITHIN WARMS SPRINGS VALLEY:

The above protestant along with several other neighboring water right owners personally hired SEA Consulting Engineers to complete the necessary studies and applications to Washoe County for a "Specific Plan Area" designation. The Specific Plan Area application was submitted in 1992 and approved by Washoe County. This Specific Plan Area provides a blue print for development of property located within Warm Springs Valley east of Pyramid Lake Highway. The Specific Plan Area contains the current zoning for residential and commercial uses.

High Density Rural – 1 dwelling unit (du) per 2.5 acres totaling 237 units

Medium Density Rural – 1 dwelling unit (du) per 5 acres totaling 238 units

Low Density Suburban – 1 dwelling unit (du) per 1 acre to 1 du per 2.5 acres totaling 1,266 units

General Commercial – totaling 20 acres

Business Park – totaling 47 acres
Public Facilities – totaling 12 acres
Spine Road Right-of-Way – totaling 50 acres
Open Space – totaling 360 acres
Parks and Recreation Facilities – 131 acres

The proposed artificial recharge, storage, recovery and exportation must not impact the water quality and quantity within the Warm Springs Valley Basin. Protection of the historical perennial yield and recharge is required to provide the necessary water resources to satisfy the current zoning and development.

George Newell, Tehama Holdings, Inc., Brent N. Douglas, Nevada Potato, Inc., John and Susan Claypool, Fahnestock Enterprises, Inc. and Western Turf & Nursery Farms and Tom and Lannette Pratt requested that the State Engineer deny Application R-014.

X.

Air Sailing, Inc. protested Application R-014 on the following grounds:

Air Sailing, Inc., a property owner in Sections 11, 14, and 15 of Township 32 North, Range 14 East, Mt. Diablo Meridian, with operating water well and owner of water rights in the Palomino Valley, hereby protests Application No. R-014 to operate a project for the recharge, underground storage and recovery of up to 4,000 acre-feet of water, resulting in the export of water from the Palomino Valley to the Lemmon Valley.

This protest is made by Air Sailing, Inc. who will be adversely affected by the proposed project on the grounds that (1) the applicant has not demonstrated technical and financial capability to construct and operate such a project and (2) the project may cause harm to users of the land and water within the area of hydrologic effect of the project by (a) significantly lowering the underground water table and thereby causing existing wells to be non-producing, and (b) significantly increasing the salinity of the underground water table and thereby causing water from existing wells to require treatment prior to human consumption or other use.

Air Sailing, Inc. requested that the State Engineer deny Application R-014.

XI.

William Brent Whitford protested Application R-014 on the following grounds:

The lower reaches of the streams to be “artificially recharged” are ephemeral and naturally recharge the valley aquifer system through a very coarse grained channel bottom. Therefore it is unclear as to how 4000 acre feet would be gained that is otherwise lost due to Evapotranspiration.

By exporting 4000 acre feet of water from the valley that would naturally recharge the system there is no chance for the water being put to some use in the valley that would allow for some recharge to the aquifer.

My understanding of the data regarding stream flows and other needed hydrogeologic data in that part of the valley is that there is little actual data regarding stream flows, runoff volumes or actual recharge data. Much of the data used to construct hydrogeologic models for the area are empirical and flawed at best. As such the state may again over appropriate water in a basin to be used to the long-term detriment of others.

There is no way that an export plan will not impact property owners in the valley or adjacent areas directly. As a result it is for-seen that an attempt to take land in the valley for the sake of a pipeline that does not benefit the residents is at hand. Even though this area of environmental justice may not be the normal jurisdiction of the State Engineer it may well become one if the application is approved.

William Brent Whitford requested that the State Engineer deny Application R-014.

XII.

Kim J. Corbett protested Application R-014 on the following grounds:

We're concerned the groundwater recharge will be jeopardized by Application No. R-014. Our wells and ground water rights will be jeopardized.

Kim J. Corbett requested that the State Engineer deny Application R-014.

XIII.

The Warm Springs Property Owners Association protested Application R-014 on the following grounds:

This plan should not even be considered, as it will lower the water table. Wells can go dry. Property values will be destroyed. Why should one man be allowed to destroy hundreds of peoples' lives? Why should one man be allowed to take hundreds of peoples' dreams and turn it into nothing? Everyone in Warm Springs has worked hard all their lives to achieve what they have. We are talking lifetimes of hard work and money. Their homes would virtually become worthless. This valley will turn into a dust bowl.

The Warm Springs Property Owners Association requested that the State Engineer deny Application R-014.

XIV.

After all parties of interest were duly noticed by certified mail, a public administrative hearing was held on March 5, 2002, regarding the protests to Application R-014 in Carson City, Nevada, before representatives of the State Engineer.²

XV.

Robert Marshall represented the applicant, Intermountain Pipeline, Ltd. John Rhodes represented the protestant, Washoe County. Michael Buschelman represented the protestant Robert J. Avila; Bob White; Tom and Lannette Pratt; John and Susan Claypool; Nevada Potato, Inc.; Fahnestock Enterprises, Inc. and Western Turf & Nursery Farms; and Tehama Holdings, Inc. None of the remaining protestants presented evidence or testimony at the administrative hearing.

FINDINGS OF FACT

I.

The State Engineer finds that NRS § 534.250(2) requires that he make a determination on the following criteria before an application for a recharge, storage and recovery project can be approved or denied:³

- A. The applicant has the technical and financial capability to construct and operate a project.
- B. The applicant has a right to use the proposed source of water for recharge pursuant to an approved appropriation consistent with this chapter and chapter 533 of NRS. Any determination made by the state engineer for purposes of this paragraph is not binding in any other proceeding.
- C. The project is hydrologically feasible.
- D. If the project is in an area of active management, the project is consistent with the program of augmentation for that area.
- E. The project will not cause harm to users of land or other water within the area of hydrologic effect of the project.

II.

The applicant, Intermountain Pipeline Limited made application to the State Engineer to operate a recharge, storage and recovery project. Part of the application is to

² Exhibit No.1 and Transcripts, public administrative hearing before the State Engineer, March 5, 2002.

³ NRS § 534.250.

provide the State Engineer with documentation that provides evidence of the applicants financial ability to operate such a project. The State Engineer finds that the applicant has provided the necessary documentation to support the construction and operation of a recharge, storage and recovery project under Application R-014.¹

III.

Conceptually, Application R-014, proposes to recharge a portion of the Warm Springs Valley groundwater basin with surface waters appropriated from Warm Springs Creek and its tributaries under Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079, then recover a portion of this water for export to Lemmon Valley and surrounding areas for municipal and domestic purposes. The amount of water removed from irrigation and recharged into the Warm Springs Valley groundwater basin by the applicant would be measured by continuous recording gages. Based on recorded streamflows reported quarterly, the amount of water recharged into the groundwater basin less the amount of water that is presently returned to the hydrologic system (non-consumptive use portion) would be the amount recoverable and available for export. The State Engineer finds that Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079 were issued for a total combined duty of 1,656.3 afa. The State Engineer finds that the criteria under NRS § 534.250 (2B) has been satisfied and the applicant has the right to use the proposed source of water for recharge.

IV.

On May 1, 1998, Robert L. Marshall and Nanette Marshall filed Applications 64073, 64074, 64075, 64076, 64077, 64078 and 64079 to change the water decreed under Proofs of Appropriation V-02737, V-02738, and V-02739 and previously appropriated under Permits 28273, 28367, 28369 and 34960, respectively. Applications 64080 and 64081 were filed to appropriate the tail waters of Paiute Creek and the floodwaters of Warm Springs Creek and its tributaries, respectively.

Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079 were issued on January 2, 2002, for a total combined duty of not to exceed 1,656.3 afa. Application 64080 was denied by the State Engineer on the grounds that until a final determination was made as to the waters of Paiute Creek there is no unappropriated water available. Application 64081 was denied on the grounds that Warm Springs Creek and its

tributaries, the sources of the proposed appropriation, were declared fully appropriated and approving the application would violate the Warm Springs Creek Decree.⁴

The State Engineer finds that the applicant has sufficient water rights to make the recharge, storage and recovery project as described under Application R-014 hydrologically feasible.

V.

The State Engineer finds that by allowing the applicant to only recover the consumptive use portion of the water that has already been appropriated should not cause harm to existing water rights or land users within the area of hydrologic effect of this project. The State Engineer further finds that the applicant, through continuous stream flow monitoring and reporting, will only be allowed to recover that water which would have been consumed through evapotranspiration and stockwatering, thus having no additional impacts on the resources of Warm Springs Valley.

VI.

The greatest concern shared by the protestants was the potential negative impact that the recovery of the water would have on their existing domestic and permitted wells. The protestants through testimony at the administrative hearing voiced a common concern that the initial study of the surface hydrology and subsurface geology of Warm Springs Valley was not comprehensive. A number of protestants favored a phased or stepped approach for the project; if the State Engineer approved Application R-014.

The State Engineer finds that the applicant has not provided a detailed hydrogeologic study defining the target aquifer(s) that will be recharged by the surface water. A comprehensive assessment of the vertical and horizontal characteristics of the aquifer(s) and any confining layers will be required using scientifically accepted methods for monitoring and modeling the groundwater system before any credit for recovery will be granted.

⁴ State Engineer Order No. 5066, dated September 11, 2001.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵

II.

In order for the State Engineer to issue a permit to operate a recharge, storage and recovery project he must first determine that:⁶

- A. The applicant has the technical and financial capability to construct and operate the project;
- B. The applicant has a right to use the proposed source of water for recharge pursuant to an approved appropriation consistent with this chapter and chapter 533 of NRS. Any determination made by the state engineer for purposes of this paragraph is not binding in any other proceeding.
- C. The project is hydrologically feasible;
- D. If the project is in an area of active management, the project is consistent with the program of augmentation for that area; and
- E. The project will not cause harm to the users of land or other water within the area of hydrologic effect of the project.

III.

The State Engineer concludes that the applicant has the financial and technical capabilities to construct and operate the proposed project under Application R-014.

IV.

Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079, inclusive, were approved by the State Engineer on January 2, 2002, for municipal and domestic purposes. Conceptually, these permits propose to recharge the Warm Springs Valley groundwater basin with the surface water of Warm Springs Creek and its tributaries, then recover a portion of this water for export to Lemmon Valley and surrounding areas.³ The State Engineer concludes that the applicant has been granted the right to use the water under Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079, subject to the terms and conditions of the permits, for the recharge, storage and recovery project proposed under Application R-014. The State Engineer further concludes that with the approval of

⁵ NRS chapters 533 and 534.

⁶ NRS § 534.250.

Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079 that he has determined that project is hydrologically feasible.

V.

Warm Springs Valley Hydrographic Basin has been designated as provided under NRS § 534.030.⁷ Under the terms and conditions issued under Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079, the permittee may only use the consumptive use portion of the water previously appropriated under Proofs of Appropriation V-02737, V-02738 and V-02739 and Permits 28273, 28367, 28369 and 34960, respectively. The State Engineer concludes that he has taken in to consideration the potential impact to the Warm Springs Valley groundwater system by limiting the amount of water available for export to the consumptive use portion of the water previously used for irrigation under existing water right permits.

VI.

The overall scope of the project under R-014 has changed from the original application filed by Intermountain Pipeline, Inc. Originally the application proposed to recharge 4,000 afa of surface water into the Warm Springs Groundwater Basin. The 4,000 afa included the water owned by Washoe County, which is currently leased to Winnemucca Ranch, in addition to water from Paiute Creek and the floodwaters of Warm Springs Creek. Washoe County made it known to the applicant that it has no interest in participating in this project and Applications 64080 and 64081, for the waters of Paiute Creek and the floodwaters of Warm Springs Creek, respectively, were denied by the State Engineer.³ The State Engineer concludes that under the terms and conditions under Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079 the applicant can only receive recharge credit for the amount of water measured and reported to the State Engineer on an annual basis. Upon receipt of the amount of water reported by the applicant, the State Engineer will determine the credit for the water to be recovered, with the maximum limited to the total combined duty of Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079, which is 1,656.3 acre-feet.

⁷ State Engineer Order No. 607, dated January 18, 1977.

RULING

Recharge, Storage and Recovery Application R-014 is approved on the following conditions:

No commitments for water service will be granted until it has been demonstrated to the State Engineer what quantity of water is available for recharge through the collection of stream flow data as required under the terms and condition set forth in Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079.

The recovery and commitment of water under Recharge, Storage and Recovery Application R-014 and Permits 64073, 64074, 64075, 64076, 64077, 64078 and 64079 will be limited to the amount of water the State Engineer determines is available on an annual basis.

A monitoring plan must be developed and approved by the State Engineer prior to any recovery of water for exportation. The monitoring plan must include a mitigation plan for any adverse impacts to domestic wells and existing rights that are as a result of operating the recharge, storage and recovery project. The State Engineer reserves the right to require additional monitoring as deemed necessary to protect the public interest and existing rights.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/KH/jm

Dated this 7th day of
January, 2003.