

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

IN THE MATTER OF APPLICATIONS)
67180, 67216, 67229, 67230, 68040)
AND 68041 FILED TO CHANGE THE)
PLACE OF USE OF THE PUBLIC WATERS)
OF A SURFACE WATER SOURCE WITHIN)
THE CARSON DESERT HYDROGRAPHIC)
BASIN (101), CHURCHILL COUNTY,)
NEVADA.)

RULING

5224

GENERAL

I.

Application 67180 was filed on February 2, 2001, by the United States of America, Bureau of Indian Affairs c/o United States Fish and Wildlife Service to change the place of use of 29.90 acre-feet annually (10 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under Truckee-Carson Irrigation District (TCID) Serial No. 24, Claim No. 3 Orr Ditch Decree, and Alpine Decree.¹ The proposed point of diversion is described as being located at Lahontan Dam. The existing place of use is described as:

Parcel 1 - 10.00 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27, T.18N., R.29E., M.D.B.&M.

The proposed place of use is described as all lands within the boundary of the Fallon Indian Reservation, further described as Sections 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, and 22, the NW $\frac{1}{4}$ of Section 2, NW $\frac{1}{4}$ of Section 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, all within T.19N., R.30E., M.D.B.&M., S $\frac{1}{2}$ of Section 33, S $\frac{1}{2}$ of Section 34, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 35, all within T.20N., R.30E., M.D.B.&M.² The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a

¹ Final Decree, U.S. v. Orr Water Ditch Co., In Equity A-3 (D.Nev. 1944) (*Orr Ditch Decree*); and Final Decree, U.S. v. Alpine Land and Reservoir Co., Civil No. D-183 (D.Nev. 1980) (*Alpine Decree*).

² File No. 67180, official records in the Office of the State Engineer.

later proceeding the remaining 0.51 acre-feet per acre for each of the 10 acres from which the 2.99 acre-feet per acre are transferred under this application.

II.

Application 67216 was filed on February 13, 2001, by the United States of America, Fish and Wildlife Service to change the place of use of 286.50 acre-feet annually (95.82 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under TCID Serial Nos. 170 and 2143, Claim No. 3 Orr Ditch Decree, and Alpine Decree. The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 11.88 acres NW¼ SE¼, Sec. 27, T.18N., R.28E., M.D.B.&M.

Parcel 2 - 27.76 acres SW¼ SE¼, Sec. 27, T.18N., R.28E., M.D.B.&M.

Parcel 3 - 26.24 acres NW¼ NE¼, Sec. 34, T.18N., R.28E., M.D.B.&M.

Parcel 4 - 29.94 acres NE¼ NE¼, Sec. 34, T.18N., R.28E., M.D.B.&M.

The proposed place of use is described as all Federally-owned or controlled lands within the approved boundary of the Stillwater National Wildlife Refuge, as described in Exhibit "A" (attached as Exhibit 1 to this ruling) and the supporting map filed with Application 65700, and the Carson Lake Area, as described in Exhibit "B" (attached as Exhibit 2 to this ruling) and the supporting map filed with Application 66229.³ The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a later proceeding the remaining 0.51 acre-feet per acre for each of the 95.82 acres from which the 2.99 acre-feet per acre are transferred under this application, and 3.5 acre-feet for the 0.60 water righted acres remaining at the existing place of use.

³ File No 67216, official records on the Office of the State Engineer.

III.

Application 67229 was filed on February 21, 2001, by the United States of America, Fish and Wildlife Service to change the place of use of 194.65 acre-feet annually (65.10 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under TCID Serial Nos. 318-1 and 318-2, Claim No. 3 *Orr Ditch Decree*, and *Alpine Decree*. The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 27.40 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35, T.18N., R.29E., M.D.B.&M.

Parcel 2 - 37.70 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 35, T.18N., R.29E., M.D.B.&M.

The proposed place of use is described as all Federally-owned or controlled lands within the approved boundary of the Stillwater National Wildlife Refuge, as described in Exhibit "A" (attached as Exhibit 1 to this ruling) and the supporting map filed with Application 65700, and the Carson Lake Area, as described in Exhibit "B" (attached as Exhibit 2 to this ruling) and the supporting map filed with Application 66229.⁴ The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a later proceeding the remaining 0.51 acre-feet per acre for each of the 65.10 acres from which the 2.99 acre-feet per acre are transferred under this application, and 3.5 acre-feet for the 3.50 water righted acres remaining at the existing place of use.

IV.

Application 67230 was filed on February 21, 2001, by the United States of America, Fish and Wildlife Service to change the place of use of 203.31 acre-feet annually (69.00 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under TCID Serial No. 6-10, Claim No. 3 *Orr Ditch*

⁴ File No 67229, official records on the Office of the State Engineer.

Decree, and *Alpine Decree*. The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 23.17 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T.17N., R.29E., M.D.B.&M.

Parcel 2 - 36.75 acres NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T.17N., R.29E., M.D.B.&M.

Parcel 3 - 9.08 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T.17N., R.29E., M.D.B.&M.

The proposed place of use is described as all Federally-owned or controlled lands within the approved boundary of the Stillwater National Wildlife Refuge, as described in Exhibit "A" (attached as Exhibit 1 to this ruling) and the supporting map filed with Application 65700, and the Carson Lake Area, as described in Exhibit "B" (attached as Exhibit 2 to this ruling) and the supporting map filed with Application 66229.⁵ The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a later proceeding the remaining 0.51 acre-feet per acre for each of the 69.00 acres from which the 2.99 acre-feet per acre are transferred under this application, and 3.5 acre-feet for the 17.80 water righted acres remaining at the existing place of use.

V.

Application 68040 was filed on September 26, 2001, by the United States of America, Bureau of Indian Affairs c/o United States Fish and Wildlife Service to change the place of use of 116.97 acre-feet annually (39.12 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under TCID Serial Nos. 900-A and 900-B, and Permit 61246, Claim No. 3 *Orr Ditch Decree*, and *Alpine Decree*. The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 32.27 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 27, T.19N., R.30E., M.D.B.&M.

⁵ File No 67230, official records on the Office of the State Engineer.

Parcel 2 - 6.85 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 27, T.19N., R.30E., M.D.B.&M.

The proposed place of use is described as all lands within the boundary of the Fallon Indian Reservation, further described as Sections 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, and 22, the NW $\frac{1}{4}$ of Section 2, the NW $\frac{1}{4}$ of Section 11, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, all within T.19N., R.30E., M.D.B.&M., S $\frac{1}{2}$ of Section 33, S $\frac{1}{2}$ of Section 34, SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 35, all within T.20N., R.30E., M.D.B.&M.⁶ The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a later proceeding the remaining 0.51 acre-feet per acre for each of the 39.12 acres from which the 2.99 acre-feet per acre are transferred under this application, and 3.5 acre-feet for the 2.19 water righted acres remaining at the existing place of use.

VI.

Application 68041 was filed on September 26, 2001, by the United States of America, Bureau of Indian Affairs c/o United States Fish and Wildlife Service to change the place of use of 159.16 acre-feet annually (53.23 acres at 2.99 acre-feet per acre), a portion of the water previously appropriated under TCID Serial Nos. 778, 778-A and 778-B, Claim No. 3 *Orr Ditch Decree*, and *Alpine Decree*. The proposed point of diversion is described as being located at Lahontan Dam. The existing places of use are described as:

Parcel 1 - 18.41 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 14, T.19N., R.30E., M.D.B.&M.

Parcel 2 - 34.82 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 14, T.19N., R.30E., M.D.B.&M.

The proposed place of use is described as all lands within the boundary of the Fallon Indian Reservation, further described as Sections 3, 4, 8, 9, 10, 15, 16, 17, 20, 21, and 22, the NW $\frac{1}{4}$ of Section 2, the NW $\frac{1}{4}$ of Section 11, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 23, all

⁶ File No. 68040, official records in the Office of the State Engineer.

within T.19N., R.30E., M.D.B.&M., S½ of Section 33, S½ of Section 34, SW¼ and W½ SE¼ of Section 35, all within T.20N., R.30E., M.D.B.&M.⁷ The proposed manner of use is described as the maintenance of wetlands for recreation and wildlife/storage with the existing manner of use being identified as being "as decreed." Under the remarks set forth in Item 15 of the application, the applicant indicates that it expressly reserves the right to transfer in a later proceeding the remaining 0.51 acre-feet per acre for each of the 53.23 acres from which the 2.99 acre-feet per acre are transferred under this application, and 3.5 acre-feet for the 6.77 water righted acres remaining at the existing place of use.

VII.

Applications 67180, 67216, 67229 and 67230 were timely protested by the City of Fallon and Applications 67229, 67230, 68040 and 68041 were timely protested by Churchill County on many grounds as summarized below.^{1, 2, 3, 4, 5, 6}

1. The applications purport to make a change in place of use; however, the applications request a change in the manner of use since the decreed use is for irrigation and the applied for use is for the maintenance of wetlands for recreation and wildlife/storage. Therefore, the applications are defective on their face and should be denied, or, in the alternative, minimally must be returned for amendment and republication to reflect the change in manner of use.

2. The applications demonstrate an intent to remove the adjudicated return flow from the Carson River, which the *Alpine Decree* expressly precludes, holding that the waters subject to a change from irrigation to other purposes (at 2.99 acre-feet per acre consumptive use rate) requires the 0.51 acre-feet per acre return flow component from disappearing from the river. The purpose of requiring a duty reduction to 2.99 acre-feet per acre for a change in manner of use is to maintain return flows within

⁷ File No. 68041, official records in the Office of the State Engineer.

the Carson River system in order to keep the river and other water rights intact. The State Engineer must determine the return flow requirement at the same time he rules on the consumptive use change.

3. The applications, if granted, would reduce return flows (drain flows) of water in the Newlands Project (in direct contradiction of the purported intent of the application), which flows historically have provided benefits as inflow to the Stillwater and Carson Lake wetlands areas, said reduction in return flow quantities would also impair the quality of return flow waters reaching said wetlands areas, and thus, would be contrary to the public interest.

4. The applications, if granted, would impair the quality of return flows to Lahontan Valley wetlands areas in violation of the federal Clean Water Act and Nevada's water quality regulations promulgated thereunder by the Nevada Division of Environmental Protection.

5. The applications identify the existing place of use of the water requested to be changed, but fail to identify legal and specific proposed places of use for said acres, instead stating that all federal lands within a certain geographic area are the proposed place of use. Said unspecific and unfettered proposed places of use are unlawful because they fail to identify the certain acres to which the water rights will become appurtenant, which is contrary to Nevada Law as previously determined by the State Engineer in rulings dealing with the issues of appurtenancy of Newlands Reclamation Project water rights.

6. The applications, if granted, would violate Nevada Water Law, because they would have a detrimental effect on the City of Fallon and other owners of existing surface water rights within the Newlands Reclamation Project.

7. The application, if granted, would violate federal Reclamation Law, 43 U.S.C. § 389 in several respects including, but not limited to: a) the detrimental effect on existing water rights in the Newlands Project; and (b) violation of the fiduciary

trust and contract obligations of the United States to all of Newlands Reclamation Project water-right owners, including the City of Fallon.

8. The applications, if granted, would violate the *Alpine and Orr Ditch Decrees*, and the Order and Judgment entered in the case of *Nevada v. US*, 463 U.S. 110 (1983).

9. The applications, if granted, would be detrimental to the public interest of the State of Nevada because the purported reservation of the 0.51 acre-feet per acre would remove water resources from Lahontan Valley aquifer and consequently deplete the groundwater supply from which the City of Fallon's existing water rights, specifically Permits 19859, 19860, 26168, 40869 and 55507, supply its residents drinking water.

10. The applications, if granted, would conflict with and impair the City of Fallon's existing water rights, specifically Permits 19859, 19860, 26168, 40869 and 55507, because by the reservation of 0.51 acre-feet per acre it would remove water resources from Lahontan Valley and consequently deplete the groundwater supply from which the City of Fallon's existing water rights supply its municipal water utility.

11. The applications, if granted, would adversely effect the cost of charges for delivery of water, causing conflicts between nonfederal owners of surface water rights and the United States as owner of surface water rights involving delivery constraints to the applicant's proposed places of use, and thus, lessen the efficiency in the delivery of water to water right owners served by the Newlands Reclamation Project in violation of Nevada Law found in NRS § 533.370(1)(b).

12. The applications, if granted, would have an adverse effect on the tax base of Churchill County within which the City of Fallon is situated for the reason that it would place valuable and taxable private property into federal ownership, thus, rendering such value property exempt from property taxes, which would be detrimental to the public interest of the State of Nevada.

13. The applications, if granted, would create the potential for dust hazards, noxious weeds and air pollution within Churchill County, within which the City of Fallon is situated, by discontinuing irrigation on the subject property and consequently would be detrimental to the public interest of the State of Nevada.

14. The applications, if granted, would present a hazard and danger to health, safety and welfare of residents of the City of Fallon and the community at large, because it would jeopardize the drinking water supply of the City's 8,300 residents, because it will harm the City's Nevada water rights under Permits 19859, 19860, 26168, 40689 and 55507, which supply the City's municipal water utility and additionally harm the City's Newlands Water Rights.

15. The applications, if granted, would be contrary to and violate federal law, 42 U.S.C. § 4300, the National Environmental Policy Act (NEPA), because they would implement major federal actions prior to the required environmental analysis of the cumulative and synergistic effects of said action to the human environment required to be analyzed in a Programmatic Environmental Impact Statement.

16. The applications, if granted, would be contrary to and violate federal law, Title II, Public Law 101-618, the Truckee-Carson-Pyramid Lake Water Settlement Act (Act), because they would violate NEPA, because the Act at 210(b)(9) and elsewhere expressly requires NEPA compliance.

17. The applications, if granted, would violate the Act, because they would violate the Alpine Decree and the Orr Ditch Decree, which the Act specifically forbids at Section 210(b)(13).

18. The applications, if granted, would violate the Act, because they would harm vested and perfected water rights, which the Act specifically forbids at Section 210(b)(13).

19. The applications, if granted, would violate the Act, because it is prior to the Act's mandated groundwater studies and mitigation agreements required in Section 205, which must

determine and mitigate the effects of such proposed water transfers to the City of Fallon's municipal water utility upon which its residents rely for their drinking water supply.

20. The applications, if granted, would be detrimental to the public interest of the State of Nevada, because it is prior to the Act's Congressionally mandated groundwater studies required in Section 210(b)(16) and mitigation agreements required in Section 205, which must determine and mitigate the effects of such proposed transfers to the City of Fallon's municipal water utility upon which its residents rely for their drinking water supply.

21. The applications, if granted, would violate NRS § 533.368, because hydrologic and environmental studies analyzing the effects of the proposed application together with other related actions affecting the City of Fallon's water rights under Permits 19859, 19860, 26168, 40689 and 55507 and to the human environment have not been analyzed in a Programmatic Environmental Impact Statement as required by NEPA and the Act.

22. The applications, if granted, would violate the Act's mandate that water rights be purchased from willing sellers, when in fact the applicant and other agencies of the United States government have created a deformed and noncompetitive water-right market to become the buyer of last resort of water rights; thus, dictating and deflating the value of water rights in the Newlands Project in violation of the Act, and causing damage to the City of Fallon's existing water rights.

23. The applications, if granted, would violate the federal Safe Drinking Water Act because they would reduce aquifer recharge upon which the City of Fallon's water rights Permits 19859, 19860, 26168, 40689 and 55507 depend with a corresponding negative impact on groundwater quality upon which the City of Fallon's municipal water utility relies.

Therefore, the protestants requested that the applications be denied.

FINDINGS OF FACT

I.

The State Engineer has considered nearly identical protest issues to similar change applications ruled on in State Engineer's Ruling No. 4979⁸ and State Engineer's Ruling No. 5078.⁹ By letter dated March 6, 2001, protestants Churchill County and the City of Fallon indicated to the State Engineer that the protest issues under consideration as to the applications ruled on pursuant to State Engineer's Ruling No. 5078 were identical to those decided in State Engineer's Ruling No. 4979 and requested the State Engineer withhold action on those applications until the Court action became final as to their appeal of State Engineer's Ruling No. 4979. However, they also indicated that in the alternative the State Engineer could issue a ruling without holding a public administrative hearing.¹⁰

By Order dated July 26, 2001, the Federal District Court affirmed the State Engineer's decision in State Engineer's Ruling No. 4979. The Court found that the State Engineer was not required to consider individual transfer applications in the context of the cumulative impact of the entire proposed wetlands program as if fully implemented and that the State Engineer was correct in reviewing the applications on their own merits. The Federal District Court's decision is now on appeal before the Ninth Circuit Court of Appeals. Churchill County has also appealed State Engineer's Ruling No. 5078 on the same grounds rejected by the Federal District Court as to State Engineer's Ruling No. 4979. The State Engineer finds the protest issues as to the applications under consideration in this ruling are the same as those raised and addressed in the State Engineer's Ruling Nos. 4979 and 5078.

⁸ State Engineer's Ruling No. 4979, dated October 18, 2000, official records in the Office of the State Engineer.

⁹ State Engineer's Ruling No. 5078, dated September 26, 2001, official records in the Office of the State Engineer.

¹⁰ File No. 65700, official records in the Office of the State Engineer.

II.

On June 20, 2002, the applicant filed a Motion to Overrule Protests Without Hearing and Issue Permits.² The Motion indicates that the legal counsel for the protestants have reviewed the declarations attached to the Motion, and did not oppose the State Engineer ruling without conducting an administrative hearing.

A public administrative hearing was held on June 27-28, 2000, on Applications 62314, 62315, 62492, 63464, 63546, 63652, 63802 and 63883.¹¹ Applications 67180, 67216, 67229, 67230, 68040 and 68041 are similar to those considered at the June 2000 administrative hearing and in State Engineer's Ruling No. 4979. The State Engineer finds that testimony and evidence from that June 2000 hearing is of value in the consideration of the issues and applications under consideration in this ruling.

Nevada Revised Statute § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters. The State Engineer finds a hearing is not necessary to consider the merits of the protest filed by Churchill County and the City of Fallon as the protest issues are the same as already addressed in State Engineer's Ruling Nos. 4979 and 5078.

III.

The State Engineer finds the reasoning found in State Engineer's Ruling Nos. 4979 and 5078 is applicable here and adopts and incorporates those findings and conclusions into the decision on these applications.

IV.

As to Applications 67180, 67216, 67229, 67230, 68040 and 68041, the existing places of use are in locations very similar to the location of the applications considered under State Engineer's Ruling Nos. 4979 and 5078.¹²

¹¹ Transcript and Exhibits, public administrative hearing before the State Engineer, June 27-28, 2000, official records in the Office of the State Engineer.

¹² Declaration of Richard Grimes, File No. 67180, official

As to Applications 67180, the existing place of use lies near to the Carson Lake and Pasture, the land was purchased in 2000 and the land appears to be lying fallow.¹³ As to Application 67216, the existing place of use lies near to the Carson Lake and Pasture, the land was purchased in 2000, the land has not been irrigated since 2000 and is currently fallow.¹⁴ As to Application 67229, the existing place of use lies near to the Carson Lake and Pasture, the land was purchased in 2000, the land has not been irrigated since 2000 and is currently fallow.¹⁵ As to Application 67230, the existing place of use lies near to the Carson Lake and Pasture, the land was purchased in 2000, the land has not been irrigated since 2000 and is currently lying fallow.¹⁶ As to Application 68040, the existing place of use lies adjacent to the Fallon Indian Reservation on the east side of Lahontan Valley, the land was purchased in 2001, and the land was irrigated in 2001.¹⁷ As to Application 68041, the existing place of use lies adjacent to the Fallon Indian Reservation on the east side of Lahontan Valley, the land was purchased in 2001, and the land was irrigated in 2001.¹⁸ The existing places of use under these applications are outside the area of downward groundwater flow. Stripping the irrigation water rights off those lands will not affect recharge to the basalt aquifers from which the municipal water system appropriates ground water. While it may affect recharge to the shallow aquifer in local areas surrounding the existing places of use, the flow in the shallow aquifer in the area of the existing places of use is primarily lateral with either little connection to the intermediate or basalt aquifers or the flow is upward from the intermediate to the shallow aquifer; therefore, water declines, if any, caused by the removal of irrigation will be

records in the Office of the State Engineer.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

minimal and reasonable.¹⁹ There is an indication that there will be minimal impact, if any, on the efficiency of the Newlands Reclamation Project conveyance system.²⁰

The State Engineer finds there is little recharge taking place as to the existing places of use because most of the lands are already lying fallow. By reviewing the application files, one can determine that the existing places of use are presently located close to the wetlands areas; therefore, recharge to the groundwater basin should not really be any different under the changes as proposed than it was when these lands were being irrigated. The existing places of use under these applications are outside the area of downward groundwater flow that could affect recharge to the intermediate or basalt aquifers from which the City of Fallon draws its water. The groundwater gradient of the shallow and intermediate aquifers flows from west to northeast towards the Stillwater wetlands area, and the existing places of use under these applications are in areas where there is upward groundwater flow and recharge to the shallow aquifer from the intermediate aquifer, and where the shallow aquifer is primarily lateral with little connection to recharge the intermediate or basalt aquifers. Previous testimony provided in the administrative hearing resulting in State Engineer's Ruling No. 4979, indicated that in the discharge zone where there is an upward gradient, the land use could minimally affect the shallow aquifer, but would have no effect on the intermediate or basalt aquifer.²¹ The State Engineer finds as to these applications that their existing places of use are not considered important recharge areas for any of the aquifers and the potential decline in water level in the shallow aquifer in response to the removal of irrigation within the area is reasonable.

¹⁹ Declaration of Douglas K. Mauer and Declaration of David E. Prudic, File No. 67180, official records in the Office of the State Engineer.

²⁰ Declaration of Carol A. Grenier, File No. 67180, official records in the Office of the State Engineer.

²¹ Transcript, p. 192, June 27-28, 2000, public administrative hearing before the State Engineer.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.²²

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where:²³

- A. the proposed use or change conflicts with existing rights;
- B. the proposed use or change conflicts with protectible interests in domestic wells as set forth in NRS § 533.024; or
- C. the proposed use or change threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that conclusions reached in State Engineer's Ruling Nos. 4979 and 5078 are applicable and are hereby adopted and incorporated herein.

IV.

The State Engineer concludes that the granting of these applications will not conflict with existing rights, conflict with protectible interests in domestic wells as set forth in NRS § 533.024 or threaten to prove detrimental to the public interest.

²² NRS chapters 533 and 534.

²³ NRS § 533.370(3).

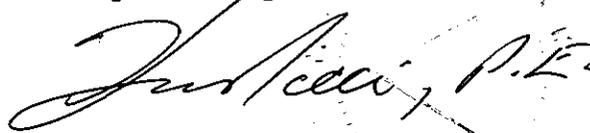
RULING

The protests to Applications 67180, 67216, 67229, 67230, 68040 and 68041 are hereby overruled and the applications granted for the 2.99 acre-feet per acre requested for transfer and subject to:

1. the payment of statutory permit fees;
2. existing water rights.

No ruling is made on the attempted reservation of the 0.51 acre-feet per acre, because no attempt has been made to move that water; therefore, it is not ripe for decision.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 10th day of
April, 2003.

EXHIBIT No. 1

Exhibit A describes the Stillwater National Wildlife Refuge, as consisting of all Federally-owned or Federally-controlled lands within:

In T.21N., R. 32E., M.D.B.& M. - Sections 2 through 11, Sections 14 through 22, Sections 27 through 34.

In T.21N., R.31E., M.D.B.& M. - all Sections.

In T.20N., R.32E., M.D.B.& M. - Sections 3 through 10, Sections 16 through 21, Sections 29 and 30.

In T.20N., R.31E., M.D.B.& M. - all Sections.

In T.19N., R.31E., M.D.B.& M. - Sections 2 through 11, Sections 14 through 22, Sections 27 through 33.

In T.19N., R.30E., M.D.B.& M. - Section 13 - all those portions of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ lying east of Stillwater Slough; Section 24 - NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$.

Exhibit No. 2

Exhibit B describes the Carson Lake Area as consisting of:

In T.16N., R.29E., M.D.B.& M. - tract 37; Section 1 lots 3 to 6, inclusive, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$; Section 2 lots 1, 2 and 5 to 10, inclusive, S $\frac{1}{2}$ SE $\frac{1}{4}$; Section 3 lots 3, 4, and 6 to 9, inclusive, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and SE $\frac{1}{4}$; Section 4 lots 1, 2 and 5 to 7, inclusive, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$; Section 5 lots 1 to 4, inclusive, S $\frac{1}{2}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$; Section 6 lots 1 to 3, inclusive, and lots 8, 11, 12, 14 and 17, S $\frac{1}{2}$ SE $\frac{1}{4}$.

In T.17N., R.29E., M.D.B.& M. - tract 37; tract 38; tract 40; Section 9 lots 4, 6, 8 and 10; Section 19 lots 1 to 4, inclusive.

In T.18N., R.29E., M.D.B.& M. - Section 35, S $\frac{1}{2}$ SE $\frac{1}{4}$.

In T.16N., R.30E., M.D.B.& M. - Section 5 lots 3 to 6, inclusive, and lots 11 and 12, SW $\frac{1}{4}$; Section 6, lots 1 to 21, inclusive, and SE $\frac{1}{4}$.

In T.17N., R.30E., M.D.B.& M. - tract 37; Section 5 lots 3 and 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$; Section 6 lots 1 to 5, inclusive, and lots 9 to 12, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$; Section 7 lot 4, and lots 7 to 12, inclusive, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NE $\frac{1}{4}$; Section 8 W $\frac{1}{2}$; Section 17 W $\frac{1}{2}$; Section 18 lots 1 to 4, inclusive; Section 19 lot 1; Section 20 lots 1 to 4, inclusive; E $\frac{1}{2}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$; Section 29 lots 1 to 4, inclusive, E $\frac{1}{2}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$; Section 30 lot 1; Section 31 lots 1, 2, and 6 to 9, inclusive; Section 32 W $\frac{1}{2}$.