

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

IN THE MATTER OF APPLICATIONS )  
74279, 74349, 74451, 74498, 74518, 74759, )  
74760, 74762, 74866, 74938, 74977, 74987, )  
75046, 75183, 75191, 75242, 75243, 75248, )  
AND 75304 FILED TO CHANGE THE )  
POINT OF DIVERSION AND/OR PLACE )  
OF USE AND/OR MANNER OF USE OF )  
THE UNDERGROUND WATERS OF )  
CARSON VALLEY HYDROGRAPHIC )  
BASIN (105), DOUGLAS COUNTY, )  
NEVADA. )

**RULING**  
**#5791**

**GENERAL**

**I.**

On May 8, 2006, W.R. Technology Park, LLC filed Application 74279 to change the point of diversion of 0.223 cubic feet per second (cfs), not to exceed 3.26 million gallons annually (mga), a portion of the underground water previously appropriated under Permit 63131 in the Carson Valley Hydrographic Basin. The manner of use is for industrial purposes. The place of use is within all that portion of the described land lying east of the Allerman Canal as existing in 1978 described as the S $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  and S $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$  (APN 23-300-18), E $\frac{1}{2}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$  SE $\frac{1}{4}$  (APN 23-480-16 and 97), SE $\frac{1}{4}$  SE $\frac{1}{4}$  (APN 23-480-24) of Section 2, T.12N., R.20E., M.D.B.&M., and NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 11, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 11, T.12N., R.20E., M.D.B.&M. The existing point of diversion is located within NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T.12N., R.20E., M.D.B.&M. Application 74279 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>1</sup>

By letter dated June 12, 2007, the agent for the W.R. Technology Park, LLC indicated that the application only moves the point of diversion from the permitted well on land within the technology park to an existing certificated well (Permit 63132, Certificate 16585), which is located approximately 2,350 feet due south of the well under

<sup>1</sup> File No. 74279, official records in the Office of the State Engineer.

Permit 63131 and is the well actually being used to furnish water to the existing buildings, landscaping and fire protection in the park. Both wells are within the Pine Nut Subarea of the Carson Valley. The Applicant argues that the State Engineer determined there was unappropriated water in the source and that the use did not impair the value of existing rights or threaten to prove detrimental to the public interest at the time the original permits were issued and that the water right is still in good standing. The Applicant alleges that the Tribe has not provided any credible evidence for denying the application and that the most recent USGS Water Budget Report – SIR 2006-5305 contains information which contradicts the reasons for denial in the report submitted by Stetson and Maddox. The Applicant requests the State Engineer review the application and render a decision without holding an administrative hearing.

## II.

On June 5, 2006, Douglas County filed Application 74349 to change the point of diversion and place of use of 0.028 cfs, 4.48 acre-feet annually (afa), a portion of the underground water previously appropriated under Permit 60612 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within all or portions of Sections 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.14N., R.20E., M.D.B.&M., within all or portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, and 18, T.13N., R. 20E., M.D.B.&M. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 25, 26, 27, 34, 35; and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE¼ NE¼ of Section 17, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the SE¼ NE¼ of Section 4, T.12N., R.20E., M.D.B.&M. The remarks in the application indicate that the purpose of the application is to account for the water rights transferred to

Douglas County in support of the final parcel map for Jeff Kirby Homes, Inc. Application 74349 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>2</sup>

### III.

On June 30, 2006, Douglas County filed Application 74451 to change the point of diversion and manner of use of 0.4443 cfs, 47.404 afa (15.447 mga), a portion of the underground water previously appropriated under Permit 66912 in the Carson Valley Hydrographic Basin. The proposed manner of use is for irrigation and domestic purposes. The existing manner of use is for irrigation purposes. The existing place of use is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 17, NE $\frac{1}{4}$  NE $\frac{1}{4}$ , a portion of the NW $\frac{1}{4}$  NE $\frac{1}{4}$  and a portion of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.11N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, T.11N., R.21E., M.D.B.&M. The existing point of diversion is located within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 17, T.11N., R.21E., M.D.B.&M. The section 13 of the application indicates the water will be moved into a well that is completed and drilled to a depth of 1,580 feet with a sanitary seal that extends from ground surface to a depth of 192 feet. Application 74451 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>3</sup>

### IV.

On July 12, 2006, Schwartz Living Trust dated March 10, 1988, filed Application 74498 to change the point of diversion and place of use of 0.016 cfs, 4.04 afa, a portion of the underground water previously appropriated under Permit 58531 in the Carson Valley Hydrographic Basin. The proposed manner of use is for irrigation purposes. The proposed place of use is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14N., R.20E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14N., R.20E., M.D.B.&M. The existing point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. Application 74498 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>4</sup>

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<sup>2</sup> File No. 74349, official records in the Office of the State Engineer.

<sup>3</sup> File No. 74451, official records in the Office of the State Engineer.

<sup>4</sup> File No. 74498, official records in the Office of the State Engineer.

V.

On July 18, 2006, the Indian Hills General Improvement District filed Application 74518 to change the point of diversion and place of use of 0.5 cfs, 109.5 mga of the underground water previously appropriated under Permit 42795 in the Carson Valley Hydrographic Basin. The manner of use remains quasi-municipal. The proposed place of use is described as the East Valley Water Service Area (North County) as adopted by the Douglas County Board of Commissioners on December 21, 2000, under Resolution 2000R-003, and described in more detail on the application. The existing place of use is described as being located within portions of Section 12, T.14N., R.19E., M.D.B.&M., and portions of Sections 6, 7, 8, 17, 18, and 19, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 24, T.14N., R.19E., M.D.B.&M. The existing point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.14N., R.20E., M.D.B.&M. Application 74518 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>5</sup>

VI.

On September 15, 2006, Douglas County filed Application 74759 to change the point of diversion of 0.0093 cfs, 6.72 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the Kynett Family Trust Parcel Map in Genoa (Douglas County LDAs No. 05-104 and 05-105) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74759 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>6</sup>

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<sup>5</sup> File No. 74518, official records in the Office of the State Engineer.

<sup>6</sup> File No. 74759, official records in the Office of the State Engineer.

## VII.

On September 15, 2006, Douglas County filed Application 74760 to change the point of diversion of 0.0015 cfs, 1.12 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the John and Pamela Jackson Parcel Map in Minden (Douglas County LDAs No. 05-091) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74760 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>7</sup>

## VIII.

On September 18, 2006, the Gardnerville Ranchos General Improvement District filed Application 74762 to change the place of use of 1.3316 cfs, 313.12 mga, of the underground water previously appropriated under Permit 55382 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 11, 14, 15, 16, 20, 21, 22, 23, 27, 28, and 29, T.12N., R.20E., M.D.B.&M. The existing place of use is described as all or portions of Sections 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 27, and 28, T.12N., R.20E., M.D.B.&M. The point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed to change the existing place of use to provide service to the Cedar Creek subdivision in the N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 9. Application 74762 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>8</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating the application is merely to better match the place of use to the District's service boundary. The District asserted there will no impact to the use of water in the basin as the Applicant

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<sup>7</sup> File No. 74760, official records in the Office of the State Engineer.

<sup>8</sup> File No. 74762, official records in the Office of the State Engineer.

is not requesting to change the point of diversion or diversion rate and that if there were any impacts upon the Carson River, if any at all, it is not from the filing of the change application.

#### IX.

On October 4, 2006, Douglas County filed Application 74866 to change the point of diversion of 0.0015 cfs, 1.12 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The place of use is the same as that described under Application 74349. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed in support of the Michael E. & Karen L. McGriff Parcel Map in Minden, Nevada (Douglas County LDA No. 04-028) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74866 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>9</sup>

#### X.

On October 23, 2006, the Gardnerville Ranchos General Improvement District filed Application 74938 to change point of diversion and place of use of 0.00025 cfs, 0.18 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 27, and 28, T.12N., R.20E., M.D.B.&M. The existing place of use is described as all or portions of Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14.N., R.19E., M.D.B.&M., all or portions of Sections 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T. 13N., R.19E., M.D.B.&M., all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., Sections 1-36, T.12N., R.20E., M.D.B.&M., Sections 1-36, T.13N., R.20E., M.D.B.&M., all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., Sections 18, 19, 30,

<sup>9</sup> File No. 74866, official records in the Office of the State Engineer.

and 31, T.14N., R.21E., M.D.B.&M., Sections 6, 7, 18, 19, 30 and 31, T.13N., R.21E., M.D.B.&M., Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 8, T.12N., R.20E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. The remarks section of the application indicates that the application is filed to correct a clerical error, to complete the transfer of water to support the balance of Rainshadow Ranch – Phase I (formerly known as Aloha Ranch, Phase I) Subdivision Map in Douglas County (PD No. 04-002) The application, together with Application 73888 will transfer a total of 20.16 afa of water from the Town of Minden to the District to allow for future service to 18 new parcels. Application 74938 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>10</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating the application is for a very small amount, 160 gallons per day, that the protest amounts to harassment and intimidation, that there is no way that the claims of the Tribe can be measured or justified and that the protest should be overruled and the application granted without a hearing.

## XI.

On October 30, 2006, the Gardnerville Ranchos General Improvement District filed Application 74977 to change point of diversion and place of use of 0.0041 cfs, 3.0 afa, a portion of the underground water previously appropriated under Permit 71302 in the Carson Valley Hydrographic Basin. While the application does not indicate it is a change in manner of use, the existing manner of use is municipal and the proposed manner of use is indicated as quasi-municipal. The proposed place of use is described as being located within all or portions of Sections 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 27, 28, and 29, T.12N., R.20E., M.D.B.&M. The existing place of use is described as 0.75 acres within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. The existing point of diversion is described as being

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<sup>10</sup> File No. 74938, official records in the Office of the State Engineer.

located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. Application 74977 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>11</sup>

The agent for the Applicant filed a response to the Tribe's protest indicating that the day care facility provides water by means of an underground well source at the existing point of diversion; however, due to maintenance obligations and liability associated with a private water system being used for public use, water service was requested to be provided by the District. The District required the dedication of water rights and the change application was filed to transfer those rights to the District's Well #6. It is the District's understanding that the day care center would have to abandon their existing well under requirement from the Bureau of State Health Protection Services. The proposed transfer would move the point of diversion approximately 500 feet from its existing location, the new point of diversion is not closer to the Carson River and there will be no impacts on the Carson River by the granting of the change application.

## XII.

On October 31, 2006, Douglas County filed Application 74987 to change the point of diversion and place of use of 0.0031 cfs, 2.24 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The proposed place of use is described as being located within portions of Sections 9, 10, 14, 15, 16, 21, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E. M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 15, T.12N., R.19E., M.D.B.&M. (Sheridan Acres Fire Station Well). The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.13N., R.20E., M.D.B.&M. (Minden

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<sup>11</sup> File No. 74977, official records in the Office of the State Engineer.

Well No. 4) The remarks section of the application indicates that the application is filed in support of the David V. & Diana Lynn Troutner Parcel Map in Minden (Douglas County LDAs No. 05-081) and that water rights are being transferred from the Town of Minden to Douglas County and changed under the application for future service to the new parcels. Application 74987 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>12</sup>

### XIII.

On November 9, 2006, Douglas County filed Application 75046 to change the point of diversion of 0.236 cfs, 42.566 afa, a portion of the underground water previously appropriated under Permit 65311 in the Carson Valley Hydrographic Basin. The manner of use is for quasi-municipal purposes. The existing place of use is within all or portions of the Sections 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, T.14N., R.20E., M.D.B.&M., within all or portions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, and 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. (South Airport Well). The existing point of diversion is located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T.14N., R.20E., M.D.B.&M. (Heybourne Well). Application 75046 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>13</sup>

### XIV.

On December 14, 2006, Steven and Barbara Sikora filed Application 75183 to change the point of diversion, place of use and manner of use of 11.20 afa, a portion of the underground water previously appropriated under Permit 23614, Certificate 7334 in the Carson Valley Hydrographic Basin. The proposed manner of use is for quasi-municipal purposes and the existing manner of use is irrigation and domestic. The proposed place of use is described as the Gardnerville Ranchos General Improvement District, more specifically as portions of Sections 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 27, and 28, T. 12N., R.20E., M.D.B.&M. The existing place of use is described as being located within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.12N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.12N., R.20E., M.D.B.&M. (Well #6). The existing point of diversion is located

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<sup>12</sup> File No. 74987, official records in the Office of the State Engineer.

<sup>13</sup> File No. 75046, official records in the Office of the State Engineer.

within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.12N., R.20E., M.D.B.&M. Application 75183 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>14</sup>

**XV.**

On December 15, 2006, Doug H. Lippincott filed Application 75191 to change the point of diversion and place of use of 0.0848 cfs, 25.96 afa, a portion of the underground water previously appropriated under Permit 62690 in the Carson Valley Hydrographic Basin. The manner of use is described as being for irrigation and stock water purposes within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.19E., M.D.B.&M. The existing place of use is described as being located within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NW $\frac{1}{4}$  and the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.12N., R.19E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.20E., M.D.B.&M. Application 75191 was timely protested by the Pyramid Lake Paiute Tribe of Indians.<sup>15</sup>

**XVI.**

On January 9, 2007, Bently Family Limited Partnership filed Application 75242 to change the point of diversion of 0.383 cfs, 186.07 acre-feet seasonally, of the underground water previously appropriated under Permit 43782, Certificate 12476 in the Carson Valley Hydrographic Basin. The manner of use is irrigation within portions of the NE $\frac{1}{4}$  of Section 19, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, and NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13N., R.20E., M.D.B.&M.<sup>16</sup> The remarks section of the application indicates that the purpose of the application is to move the point of diversion of a certificated supplemental ground-water right into an existing irrigation well on the Bently property. Application 75242 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

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<sup>14</sup> File No. 75183, official records in the Office of the State Engineer.

<sup>15</sup> File No. 75191, official records in the Office of the State Engineer.

<sup>16</sup> File No. 75242, official records in the Office of the State Engineer.

### XVII.

On January 9, 2007, Bently Family Limited Partnership filed Application 75243 to change the point of diversion of 0.383 cfs, 186.07 acre-feet seasonally, of the underground water previously appropriated under Permit 43783, Certificate 12477 in the Carson Valley Hydrographic Basin. The manner of use is irrigation within portions of the NE $\frac{1}{4}$  of Section 19, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 18, NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, and NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 20, T.13N., R.20E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13N., R.20E., M.D.B.&M.<sup>17</sup> The remarks section of the application indicates that the purpose of the application is to move the point of diversion of a certificated supplemental ground-water right into an existing irrigation well on the Bently property. Application 75243 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

### XVIII.

On January 10, 2007, Duncan M. Getty filed Application 75248 to change the point of diversion, place of use and manner of use of 0.0345 cfs, not to exceed 25.0 afa, of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The proposed manner of use is commercial and the existing manner of use is municipal. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T.13N., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.13N., R.20E., M.D.B.&M. The existing point of diversion is

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<sup>17</sup> File No. 75243, official records in the Office of the State Engineer.

located within the SE¼ NW¼ of Section 30, T.13N., R.20E., M.D.B.&M.<sup>18</sup> The remarks section of the application indicates the water will be used for an existing commercial nursery. Application 75248 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

### **XIX.**

On February 2, 2007, Douglas County filed Application 75304 to change the point of diversion of 0.0207 cfs, not to exceed 15.0 afa, a portion of the underground water previously appropriated under Permit 60638 in the Carson Valley Hydrographic Basin. The manner of use is for municipal purposes. The existing place of use is within all or portions of the Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, and 36, T.14N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, T.13N., R.19E., M.D.B.&M., within all or portions of Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 36, T.12E., R.19E., M.D.B.&M., within Sections 1 through 36, T.12N., R.20E., M.D.B.&M., within Sections 1 through 36, T.13N., R.20E., M.D.B.&M., within all or portions of Sections 5, 6, 7, 8, and 13 through 36, T.14N., R.20E., M.D.B.&M., within Sections 18, 19, 30, and 31, T.14N., R.21E., M.D.B.&M., within Sections 6, 7, 18, 19, 30, and 31, T.13N., R.21E., M.D.B.&M., and within Sections 6, 7, 18, 19, and 30, T.12N., R.21E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ NW¼ of Section 12, T.12N., R.20E., M.D.B.&M. (Douglas County Sunrise Estates Well #2). The existing point of diversion is located within the SE¼ NW¼ of Section 30, T.13N., R.20E., M.D.B.&M. (Minden Well #4).<sup>19</sup> The remarks section of the application indicates that the application was filed to support the Old Saw Mill Industrial Park, LLC Subdivision Map (LDA 06-016) with water rights being transferred from the Town of Minden to Douglas County to allow for future service to the new parcels. Application 75304 was timely protested by the Pyramid Lake Paiute Tribe of Indians.

### **XX.**

Applications 74279, 74349, 74451, 74498, 74518, 74759, 74760, 74762, 74866, 74938, 74977, 74987, 75046, 75183, 75191, 75242, 75243, 75248, and 75304 were

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<sup>18</sup> File No. 75248, official records in the Office of the State Engineer.

<sup>19</sup> File No. 75304, official records in the Office of the State Engineer.

protested by the Pyramid Lake Paiute Tribe (Tribe) on the following grounds as summarized below. All protest claims do not apply to all applications, but in the interest of brevity the protest grounds are summarized:

1. Granting the application would threaten to prove detrimental to the public interest in light of the over-appropriation of the ground water available in the basin resulting in the inability of the perennial yield to serve existing permits and commitments with ground water, and in light of the obligations of the State Engineer pursuant to NRS chapters 533, 534 and 278 to require that there be adequate plans to protect existing uses and commitments of ground water and to exercise all appropriate authority and discretion to control over-demand on the source and to protect both the public and other right holders of surface-water and ground-water rights. (All applications)
2. Granting the application and subsequent development of ground water for industrial, quasi-municipal, or municipal purposes would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest by depleting flow in the Carson River to the Newlands Project thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which would impact Pyramid Lake and its fishery. (All applications)
3. Granting the application would threaten to prove detrimental to the public interest in that it requests to move water rights that have not been put to beneficial use, and therefore amounts to a request for a new and additional appropriation of ground water in a designated, over-appropriated basin. (Application 74349)
4. The application requests water for irrigation as the primary use and domestic as the secondary use. The application is defective and should be denied or returned for correction as it does not indicate the number of persons to be served and the future requirement of the domestic use is not provided as required by NRS § 533.340. (Application 74451)
5. Granting the application would threaten to prove detrimental to the public interest in that it requests to move water rights to a point of diversion that is nearer to an

- area previously flagged by the State Engineer in Order #904 as an area requiring curtailment of water appropriation. (Application 74349)
6. The water rights have been forfeited and/or abandoned. (Applications 74451, 74498)
  7. The application is deficient in that it does not sufficiently identify the location of the existing place of use. (Application 74498)
  8. The transfer threatens to prove detrimental to the public interest by extending and/or expanding the water deliveries to outside the irrigation season. (Application 75183)
  9. The request is for a full duty transfer, rather than the consumptive use amount, which in this basin is established as 2.5 afa, and thus, amounts to a request for a new appropriation in a basin that is designated and over-appropriated. (Application 75183)
  10. The application is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. (74498)
  11. Granting the applications would threaten to prove detrimental to the public interest in ways that are not yet known by the Protestant, but which may arise before the applications are actually considered by the State Engineer. (All applications)
  12. Granting the application would threaten to prove detrimental to the public interest. (All applications)

#### **XXI.**

By letter dated April 13, 2007, the Tribe indicated that the main reasons it filed protests against these applications is that the Tribe is concerned that: (1) the committed ground-water resources of the Carson Valley Hydrographic Basin greatly exceed the annual recharge; (2) under existing circumstances, the State Engineer is not able to certify the availability of ground water in the basin to serve subdivisions or other municipal, industrial or commercial uses; and (3) the use of ground water in the hydrographic basin by junior appropriators conflicts with and interferes with the senior surface-water storage and diversion rights of downstream water users.<sup>20</sup>

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<sup>20</sup> File No. 74349, official records in the Office of the State Engineer.

## **FINDINGS OF FACT**

### **I.**

On April 17, 2007, the State Engineer held a pre-hearing meeting in order to bring the parties together to discuss an approach to resolution of the applications and related protests. Nevada Revised Statute § 533.365(3) provides that the State Engineer shall consider the protests, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved. Nevada Revised Statute § 533.375 provides that before either approving or rejecting an application, the State Engineer may require the filing of information as will enable him to guard the public interest properly. By notice dated April 24, 2007, the State Engineer ordered the Protestants to serve on all parties and the State Engineer by June 25, 2007, evidence in support of their protest claims. The Applicants were then provided until July 25, 2007, the opportunity to serve any evidence they wished to provide in answer or rebuttal to the protests and in support of their applications.

The State Engineer reviewed all of the information filed by the parties and the State Engineer determined that an evidentiary hearing was not warranted and he could act on the applications with the information that had been filed. The State Engineer originally indicated that he was providing the parties the opportunity to present final oral argument; however, the Tribe later had a conflict with the agreed upon dates for hearing and requested the date of the oral argument be moved. The State Engineer, noting the difficulty of scheduling the many parties to this action, cancelled the oral argument, instead providing the parties the opportunity to file a written closing argument.

### **II.**

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the Tribe is not an interested person under NRS § 533.265 and not entitled to file a protest, not having any water right affected by Application 74279 nor having any legally cognizable right or interest in the subject matter of the application.

The State Engineer has addressed this standing argument in prior rulings.<sup>21</sup> In State Engineer's Interim Ruling No. 3825, the State Engineer addressed an argument presented by an applicant in which it asserted that many of the protestants lacked

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<sup>21</sup> See, State Engineer's Interim Ruling In the Matter of Protested Applications 74283, et al., dated July 2, 2007, official records in the Office of the State Engineer.

standing to participate in the administrative process unless they held an existing water right in the proposed source of supply, or the application would conflict with an existing water right, or they had the legal capacity to sue to vindicate the public interest. In its argument, the applicant relied on the doctrine of legal standing in the judicial context. The applicant argued that “person interested” within the meaning of NRS § 533.365(1) is one having the requisites of standing as the term is used in the law of parties. The State Engineer found that:

[a]lthough analogies exist between the concepts of judicial standing and administrative standing, the State Engineer refuses to adopt the applicant’s narrow construction of ‘person interested’ to determine who may participate in the upcoming hearings. Standing before the courts involves both constitutional limitations on courts’ jurisdiction and judge-made prudential limitations on the exercise of that jurisdiction. The State Engineer, on the other hand, is not bound by these limitations.

Standing requirements for administrative agencies are less restrictive than the law of judicial standing.<sup>22</sup> Administrative standing analysis begins with the scheme intended and devised by the legislature.

The Nevada Legislature enacted NRS 533.365(1) which provides that “[a]ny person interested” may protest an application for the appropriation of water within 30 days of the last publication of the notice advertising the application. The Legislature also established criteria for the State Engineer’s approval or rejection of an application, providing as follows:

Where there is no unappropriated water in the proposed source of supply, or where the proposed use or change conflicts with existing rights, or threatens to prove detrimental to the public interest, the state engineer shall reject the application and refuse to issue the permit asked for.<sup>23</sup>

Thus, these criteria furnish the bases upon which any person interested may protest.

The applicant suggests that protestants under NRS 533.365(1) are similar to objectors under NRS 533.145. NRS 533.145 requires that, in order to object to a preliminary order of determination in an adjudication, a person must claim a interest in the stream system “under vested right or permit from the state engineer.” In contrast to the statute dealing with

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<sup>22</sup> *ECEE, Inc. v. Fed. Energy Regulatory Comm’n*, 645 F.2d 339, 349-350 (5th Cir. 1981); *Koniag, Inc. Village of Uyak v. Andrus*, 580 F.2d 601, 606 (D.C.Cir.), *cert. denied*, 439 U.S. 1052 (1978).

<sup>23</sup> NRS § 533.370(3).

objectors, the Legislature did not restrict protestants to persons holding title to water rights. If the Legislature had intended to impose limitations analogous to those in NRS 533.145, it would have prescribed such limitations in the statutory provision governing protests, NRS 533.365(1).

As previously indicated, Nevada water law requires that the State Engineer consider public interest in deciding whether to approve an application to appropriate water.<sup>24</sup> Contrary to the applicant's position, the statutory scheme in no way limits those who have standing to assert the public interest to the Attorney General and certain other public agencies. If the Legislature intended that only certain public officials or public agencies could raise public interest considerations in protests, it would have enacted language to this effect.

The State Engineer has consistently interpreted NRS 533.365(1) to allow virtually any existing water right holder, member of the public, or governmental entity who has timely protested an application to be heard on its concerns.<sup>25</sup>

The State Engineer finds Nevada's statutory scheme does not limit protestants to only those who hold similar types of water rights in the basin of interest. The State Engineer finds if the Legislature had intended that protestants be limited as argued by W.R. Technology Park, LLC it would have enacted language to this effect and it has not; therefore, the request to dismiss on these grounds is overruled.

### III.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the Tribe is not properly appearing before the State Engineer since Robert C. Maddox and Associates is not authorized or competent to act as either agents or attorneys in the matter affecting the water rights in the Carson Valley or on the Carson River, or in any proceeding adversely affecting W.R. Technology Park, LLC. The State Engineer finds the Applicant provides no reasoning or authority for this claim, or analysis in support of the claim, and the allegation appears frivolous; therefore, the request to dismiss on these grounds is overruled.

### IV.

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<sup>24</sup> NRS § 533.370(3) (The State Engineer notes this section of the statute has changed since the time of this ruling and others have been enacted.)

<sup>25</sup> State Engineer's Interim Ruling No. 3825, dated August 26, 1991, official records in the Office of the State Engineer.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that the subject waters have been duly appropriated under Nevada water law and the State Engineer has already made the determination that there is no detriment to the public or any adverse impacts on existing rights, and therefore, the protests should be dismissed. The Town of Minden argues that the issue of availability of water in the source was thoroughly reviewed when the underlying permits were granted and it was at that time that it would have been appropriate to have protested the availability of water.

The State Engineer agrees with the Applicants that if the Protestant had any issue with the initial granting of these ground-water rights, they should have protested the applications when the notice of original application was made. However, this does not prevent a protestant from alleging there is no unappropriated water available at the specific point of diversion of a proposed change or that the use of water under a proposed change may conflict with existing rights or threaten to prove detrimental to the public interest; therefore, the request to dismiss on these grounds is overruled.

#### V.

Applicant W.R. Technology Park, LLC in its Response and Request to Dismiss argues that there is no legal connection between the water rights claimed by the Tribe in the Truckee River and any ground-water rights in the Carson Valley, and accordingly, the Tribe's protest is without legal justification and must be disregarded and dismissed. The Applicant also alleges that the protest is not based on any demonstrable or existing right, or on any showing of harm or detriment, and has no cognizable grounds of support, and must be disregarded and dismissed. The Tribe's protests allege that granting these applications and subsequent development of ground water for industrial, quasi-municipal, or municipal purposes would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Indian Reservation was created and to the public interest. Further, it would impact Pyramid Lake and its fishery by depleting flow in the Carson River, thereby reducing inflows to Lahontan Reservoir to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows.

The Tribe has been decreed the two most senior water rights on the Truckee River, those being Claims 1 and 2. The State Engineer is not aware of any time water has not been available under those rights nor does OCAP trump those claims. The Tribe was

also permitted the unappropriated water in the Truckee River pursuant to State Engineer's Ruling No. 4683.<sup>26</sup> In this ruling, it was found that to remove the unappropriated flow from the river that in the past would have been available for the endangered and threatened species in Pyramid Lake would conflict with the Endangered Species Act and threaten to prove detrimental to the public interest. However, in that ruling, the State Engineer made it very specific that he was only granting the Tribe water for the "high flows in excess of decreed or existing water rights on the system..." He noted that in some years there would be no water available under the permits and in other years when there is flooding on the river, there would be a substantial quantity of water available. The State Engineer found that the rights granted to the unappropriated water in the Truckee River can only be exercised in those years where there are high flows in the river in excess of all decreed rights. This ruling did not change the fact that there are other decreed rights on the system, such as the right of the Newlands Project under Claim 3 of the Truckee River Decree. In its protests, the Tribe makes no claim that its decreed and permitted water rights will be harmed and cannot make such a claim. Claim 3 has a decreed right to take water from the Truckee River over to Lahontan Reservoir. As noted in State Engineer's Ruling No. 5185,<sup>27</sup> which permitted the Tribe to change Claims 1 and 2 to instream flow, that just because others had the benefit of using someone else's water when not used does not create in that other user a right to the water to the detriment of the decreed user. The same logic applies here. Just because water is allowed to be diverted to the Newlands Project under Claim 3 does not in itself mean there is harm to the Tribe's rights or the public interest. There is a decreed right to divert water to Lahontan. The State Engineer finds the Tribe has not made a legal connection between water rights claimed by the Tribe in the Truckee River and any ground-water rights in the Carson Valley, and accordingly, the request to dismiss the Tribe's protest claim is granted.

## VI.

The central issue raised by the Tribe's protests is its assertion that the permitted and certificated ground-water rights in the Carson Valley Hydrographic Basin far exceed the estimated perennial yield, and as such, the pumping of ground water is or will be

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<sup>26</sup> State Engineer's Ruling No. 4683, dated November 24, 1998, official records in the Office of the State Engineer.

<sup>27</sup> State Engineer's Ruling No. 5185, dated December 6, 2002, official records in the Office of the State Engineer.

taking Carson River surface water that is claimed by senior water right holders in the Newlands Project; thus, the use of ground water is impacting existing rights. It should be noted that the Tribe is not a senior water right holder on the Carson River and does not have any existing decreed right to Carson River surface water. The Tribe also protested all the applications on the grounds that granting the applications would threaten to prove detrimental to the public interest for other reasons. One reason being that the over-appropriation of the ground water available in the basin results in the inability of the perennial yield to serve existing permits and commitments with ground water. Another reason being, that the obligation of the State Engineer pursuant to NRS chapters 533, 534 and 278 to require that there be adequate plans to protect existing uses and commitments of ground water. And finally, that the State Engineer should exercise his authority and discretion to control the demand on the water source and to protect both the public and other right holders of surface-water and ground-water rights.

As analyzed below, the State Engineer does not agree with the Tribe that the Carson Valley is “severely over-appropriated” and does not agree the basin requires the type of investigation and regulation sought by the Tribe and overrules the protest claim. The State Engineer finds that the Carson Valley is one of the most studied and regulated basins in the state of Nevada and State Engineers have undertaken many activities that reflect the active management taking place in the basin.

For management and water planning purposes, the United States Geological Survey (USGS) and the Nevada Division of Water Resources (Division) have divided the State of Nevada into 256 groundwater basins and sub-areas, each of which is identified by a name and number. Contained within these basins, is a subset of groundwater basins that are classified as designated ground-water basins.<sup>28</sup> The first ground-water basin to attain designated status was the Las Vegas Artesian Basin, a portion of which was designated by Alfred Merritt Smith by State Engineer’s Order No. 175, issued on January 10, 1941. Since this initial order, 118 additional ground-water basins have been designated in part or in their entirety.<sup>29</sup> The intent of these designation orders was to provide a mechanism that allowed additional administration of the state’s water resources

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<sup>28</sup> Designated Groundwater Basins of Nevada Map, 1:750,000, September 2003, official records in the Office of the State Engineer.

<sup>29</sup> Hydrologic Basin Abstract Summary Book, official records in the Office of the State Engineer.

to be emplaced on a basin-by-basin basis. This was accomplished through subsequent orders, rulings and decisions issued by a succession of State Engineers. The Carson Valley Hydrographic Basin was first designated in 1977, as a basin being in need of additional administration.<sup>30</sup> Shortly after this designation order, the State Engineer denied several requests for large appropriations of water for quasi-municipal and irrigation purposes, by ruling.<sup>31</sup> Over the years, various State Engineers have denied a total of 179 applications seeking to appropriate additional underground water within the basin.<sup>32</sup> In 1985, the State Engineer further designated a portion of the basin known as the Johnson Lane area because conditions of pollution from septic tanks warranted that no additional water rights be allowed for appropriation and that no change applications be allowed to move existing water rights into the designated area.<sup>33</sup>

The Division spends a significant amount of time in the Carson Valley area performing fieldwork. Pumpage inventories have been conducted since 1987 to monitor the quantity of water pumped in the Carson Valley Hydrographic Basin. In conjunction with this field work, the Division enforces permit compliance and investigates any improper use of ground water. Also, water levels are measured at selected sites and field investigations are conducted throughout the year as needed.

When water rights are dedicated for municipal use, the dedication policy of the Division is designed to cover the maximum amount of water ever anticipated to be used and actual use has been demonstrated to be less than the total amount dedicated. Relinquishments of water rights are also required for domestic well subdivisions even though domestic wells normally are exempt from the permitting provisions of Nevada water law. Finally, the Division has consistently performed its obligation to protect existing rights, and to assure water is available for development, through signatory authority over subdivision maps.

It should be noted that water level data collected by the Division fail to indicate any significant declining trends that would support the allegation that the basin is

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<sup>30</sup> State Engineer's Order No. 684, dated June 14, 1977, official records in the Office of the State Engineer.

<sup>31</sup> State Engineer's Ruling Nos. 2229, 2066, 2279 and 2280, dated August 2, 1977, October 26, 1977, November 23, 1977, and November 23, 1977, respectively, official records in the Office of the State Engineer.

<sup>32</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Carson Valley Hydrographic Basin (105), October 4, 2007, official records in the Office of the State Engineer.

<sup>33</sup> State Engineer's Order No. 904, dated August 14, 1985, official records in the Office of the State Engineer.

“severely over-appropriated.”<sup>34</sup> In addition, annual surface-water discharges as measured at the USGS gage for the Main Stem of the Carson River near Carson City actually increased over 4% for the 30-year period of 1976 through 2005 when compared to the prior 30-year period.<sup>35</sup>

The State Engineer finds the Tribe is mistaken in its allegation that the State Engineer has not performed his obligations in regards to management of the water resource in Carson Valley. In regards to the assertion that the basin is over-appropriated, the State Engineer finds the burden of proof is upon whoever seeks the declaration, be it the State Engineer, a private party, a protestant, or an applicant. The State Engineer further finds that the Tribe did not prove its claim that Carson Valley is “severely over-appropriated” and an analysis of the data collected by the Division, such as, pumpage inventories and water levels, also refute this claim.

## VII.

In its closing brief, the Tribe presented a new argument alleging that the State Engineer should recognize a distinction between "potential" and "actual" ground-water recharge, citing to State Engineer's Ruling No. 2197 and the Nevada Supreme Court case of *Griffin v. Westergard*, 96 Nev. 627 (1980) in support of this proposition. The State Engineer finds the Tribe completely misinterprets and misapplies the analysis in that ruling and supreme court decision to assert that the ground water available for appropriation in Carson Valley is what they term the "actual recharge", which is in essence only the ground-water that discharges to the river. They consider the "potential recharge" to be the total recharge due to precipitation and runoff. They assert that ground-water recharge that is lost due to phreatophyte and bare soil evapotranspiration is not "actual recharge" and is not available to appropriate. The Tribe references the 1986 study by Maurer as evidence for their interpretation. However, in that study, Maurer only suggests that recharge as computed by the Maxey-Eakin method may not be spatially distributed as computed by the method, specifically, that recharge is not likely to occur on the valley floor in close proximity to the river or where the water table is shallow. He

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<sup>34</sup> Water Level Data for Carson Valley Hydrographic Basin (105), official records in the Office of the State Engineer.

<sup>35</sup> Douglas County, Exhibit 3, *Evaluation of Available Stream Flow Data for the Carson River and Review of Random Lithologic Records of Drilled Wells within the Carson Valley, Douglas County, Nevada*, prepared by R.O. Anderson Engineering, Inc. in collaboration with Turnipseed Engineering, Ltd. ("the County's Report:"), p. 8.

acknowledges that the method is intended for use on a basin scale, and the actual location of recharge is not specified. He further notes that recharge on the valley floor of "wet" basins such as the Carson Valley is probably more than estimated by the method.<sup>36</sup> The State Engineer's decision in Ruling No. 2197 found that under natural steady state conditions the ground-water recharge from precipitation that is not lost through evapotranspiration (ET) would most likely be discharged to the river. To pump more than the natural ET would result in the potential capture of some of the discharge to the river, thereby reducing river flows. Thus, by pumping more ground water than the natural ET, river water would likely be drawn into the ground-water system and, since the river was fully appropriated, to allow any more to be appropriated would interfere with existing rights. If the State Engineer were to accept the Tribe's argument that all water discharged by ET is not part of the water available for appropriation, the only water left is that water discharged to the river which the Tribe asserts is currently appropriated by senior water rights users. Thus, not one drop of water could be appropriated in any ground-water basin along the Carson River, a proposition the State Engineer finds is without support and in error.

Nevada Revised Statute § 533.020 provides that subject to existing rights underground waters are subject to appropriation for beneficial use. In State Engineer's Ruling No. 2197, it was found that any consumptive withdrawal **in excess of the natural recharge from precipitation** will either deplete the ground-water reservoir or cause additional surface water to percolate into the ground-water reservoir. The State Engineer finds even in basins with some hydrologic connection to a river there is ground water that may be appropriated, and that amount is at least equal to the total natural recharge from precipitation and runoff. The State Engineer finds State Engineer's Ruling No. 2197 simply states that the subject basin was fully appropriated. The State Engineer in no way agrees with the Tribe's analysis of Ruling No. 2197, and discounts the Tribe's argument of what constitutes "actual" versus "potential" ground-water recharge.

### VIII.

The Tribe's analysis (prior to its closing brief argument that was overruled above as to potential recharge and actual recharge) of the perennial yield and committed resources in the Carson Valley Hydrographic Basin presents a very simple straight line

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<sup>36</sup> Maurer, D.K., 1986, U.S. Geological Survey Water resources Investigations Report 86-4328, pp. 34-36.

analysis without any consideration of the various other factors that go into any analysis of water use and availability in the basin.<sup>37</sup> The Tribe argues that the perennial yield of the Nevada portion of the basin is 35,000 afa, the total committed Nevada ground-water rights are approximately 96,500 acre-feet, which includes approximately 45,500 acre-feet of ground-water rights that are supplemental to surface-water rights.<sup>38</sup> Thus, it argues that the committed ground-water rights for the Nevada portion of the Carson Valley Hydrographic Basin exceed the annual recharge or perennial yield by more than 60,000 acre-feet resulting in its determination that the valley is “severely over appropriated.”

The Tribe’s evidence indicates that the amount of ground water pumped from the Nevada portion of the basin has increased from about 20,000 afa in the early 1990s to about 30,000 afa in 2001, 2002 and 2003, to more than 34,000 afa in 2004.<sup>39</sup> The Tribe argues that since the annual level of pumping is close to, and may already exceed the annual recharge, the 19 change applications should be denied on the grounds that the water is not available for appropriation or use, and granting the applications would threaten to prove detrimental to the public interest.

In response, Douglas County and Doug Lippincott<sup>40</sup> argue that the Tribe’s claims are without evidentiary support and merit. The County alleges that the 2006 report of Douglas K. Maurer and David Berger titled *Water Budgets and Potential Effects of Land and Water-Use Changes in Carson Valley, Douglas County, Nevada, and Alpine County, California*<sup>41</sup> established that: (1) the net ground-water pumping average for 1990 to 2005 was 15,000 to 18,000 acre-feet, well below any annual estimate of recharge; (2) the total annual net ground-water pumping in the Carson Valley is almost entirely offset by decreases in evapotranspiration occasioned by changes in land use and decreases in the use of surface and ground water for irrigation occasioned by increases in the use of effluent for irrigation; and (3) the pumping and use of ground water in the Carson Valley

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<sup>37</sup> PLPT, *See*, Report of Stetson Engineers and Robert C. Maddox and Associates in Support of the Protests of the Pyramid Lake Paiute Tribe of Indians to 19 Applications to Change Carson Valley Hydrographic Basin Groundwater Rights, dated May 22, 2007. (Tribe/Stetson Report.) Binder A.

<sup>38</sup> PLPT, Binder B, Tab 4, Binder C, Tab 1, Binder A, Tab 4.

<sup>39</sup> PLPT, Binder A, Tab 4 and Binder B, Tabs 5 and 6.

<sup>40</sup> *See*, Doug H. Lippincott’s Response and Rebuttal to the Protest of the Pyramid Lake Paiute Tribe of Indians to Application No. 75191.

<sup>41</sup> USGS Scientific Investigations Report 2006-5305 (“2006 USGS Report”). PLPT, Binder B, Tab 19 and Douglas County, Exhibit 2.

basin has not adversely affected the flow of the Carson River.<sup>42</sup> They allege that with respect to the flow of the Carson River, annual surface-water discharges as measured at the USGS gage for the Main Stem of the Carson River near Carson City actually **increased** over 4% for the 30-year period of 1976 through 2005 when compared to the prior 30-year period.<sup>43</sup>

Applicants argue that the annual recharge or perennial yield for the Carson Valley Basin is estimated to be 35,000 to 56,000 afa and there is no support for the Tribe's assertion that the Nevada portion of the Carson Valley basin has an annual recharge of 35,000 afa.<sup>44</sup> The County argues that the 35,000 acre-foot number cited in the Deputy State Engineer's Power Point presented as Water Allocation in Carson Valley was merely illustrative. The Applicants argue that between 1987 and 2005, except for 2004 (an extremely dry year), the maximum amount of Carson Valley ground water pumped in any one year never exceeded 30,000 acre-feet, and the amount of water pumped in 2004 (34,561 acre-feet) was still less than the lowest estimated range of natural recharge.<sup>45</sup> Additionally, the net pumping average between 1990 and 2005 was 15,000 to 18,000 afa, well below any estimates of perennial yield, with net pumping being defined as ground-water pumping less estimated return flow and secondary recharge. They argue that while it is true that 94,533 acre-feet of ground water is appropriated within the basin,<sup>46</sup> 45,484 acre-feet (45 percent) are supplemental to surface water for irrigation, and these supplemental rights are only pumped sporadically and mainly during dry years and only for irrigation purposes, and these supplemental rights cannot be converted to other manners of use and will revert to the source if use of the surface-water right ceases. Douglas County argues that the most relevant fact for the State Engineer's consideration is that the basin is not over-drafted and that annual replenishment is more than adequate to meet existing needs,<sup>47</sup> as actual net pumpage is consistently less than half the estimated perennial yield of the basin.

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<sup>42</sup> Douglas County, Exhibit 2.

<sup>43</sup> Douglas County, Exhibit 3, *Evaluation of Available Stream Flow Data for the Carson River and Review of Random Lithologic Records of Drilled Wells within the Carson Valley, Douglas County, Nevada*, prepared by R.O. Anderson Engineering, Inc. in collaboration with Turnipseed Engineering, Ltd. ("the County's Report"), p. 8.

<sup>44</sup> Douglas County, Exhibit 2, p. 59.

<sup>45</sup> Douglas County, Exhibit 2, p. 42, Table 18.

<sup>46</sup> Douglas County, Exhibit 4.

<sup>47</sup> Douglas County, Exhibit 2, pp. 58-59.

In response, the Tribe argues that the Applicants' evidence is based on averages and does not address water use on a month-to-month or year-to-year basis, it is most concerned with pumping in low flow years and periods because that is when the most Truckee River diversions to Lahontan Reservoir occur, much more supplemental water is pumped for irrigation during dry periods and there has been a significant increase in ground-water pumping in Carson Valley in the last five years and the effect of this pumping is masked by use of data using a longer 16-year average.

The State Engineer finds the perennial yield of the Carson Valley Hydrographic Basin is equal to the natural recharge from precipitation and runoff. Because the Carson Valley is a stream dominated basin, it is difficult to effectively capture ground-water evapotranspiration. Therefore, the State Engineer has determined in such basins that the best measure of perennial yield is ground-water recharge, rather than ground-water ET discharge, as used in closed basins throughout the state. Ground-water recharge in Carson Valley has been estimated by three USGS studies. In 1975 Glancy and Katzer estimated recharge at 41,000 afa. In 1986, Maurer re-estimated recharge to be 49,000 afa and in 2006, Maurer and Berger estimated 22,000 to 40,000 afa of recharge. The perennial yield of the basin was revised following Maurer's 1986 paper, and is considered to be 49,000 afa. While it is true that the total annual duty of all permitted, certificated and claims of vested ground-water rights in the Carson Valley equals approximately 96,600 acre-feet of this total approximately 53,000 acre-feet are for irrigation with approximately 45,500 acre-feet of that total being supplemental to surface-water rights. Of the approximately 51,000 acre feet of non-supplemental water rights, 33,958 acre-feet are for municipal use. Actual and projected consumptive ground water use is below the perennial yield of the basin. Irrigation consumptive use has been estimated to be 2.6 acre feet per acre, or approximately 65% of the pumping rate for a crop of alfalfa with an application rate of 4.0 acre-feet per acre. A simple water balance analysis may make it appear that the Carson Valley is over-appropriated; however, that type of analysis does not take into account many other factors that reduce water use, such as how the importation of effluent recharges the ground-water basin or is used in lieu of permitted water rights, the recharge from septic tanks, non-consumptive uses such as wildlife for the fish hatchery, recharge from irrigation ditches or allocation requirements for subdivisions that ensure that such water use never exceeds the permit limits. These

factors must be considered in a full and complete analysis of whether or not a basin is over-appropriated.

During the 2005 water year, 27,405 acre-feet of ground water was pumped. Of the 53,168 acre-feet permitted for irrigation and the 33,958 permitted for municipal use only 9,904 acre-feet and 9,533 acre-feet, respectively, were pumped. It should be noted that some of these permitted water rights have been relinquished for domestic well development.<sup>48</sup> Like the Tribe's analysis, these pumpage figures do not take into consideration any factors such as secondary recharge through irrigation, septic tanks or the increased use of imported effluent for irrigation in Carson Valley.

While approximately 51,000 acre-feet in stand alone permanent ground-water rights have been approved, a review of the pumpage inventories show the maximum amount of ground-water ever pumped from the basin has never exceeded the lower end of estimated recharge for the basin. As noted in Douglas County's evidence, the net pumping average between 1990 and 2005 was 15,000 to 18,000 afa and is well below the accepted estimate of perennial yield; thus, the State Engineer finds the Tribe's unduly simplistic analysis is not sufficient to support its claims that the Carson Valley Hydrographic Basin is "severely over-appropriated" or that the basin is over-pumped. The Tribe argues that its concern focuses on low water years and it does not like long-term averages and wants analysis on a month-to-month basis, a proposition the State Engineer finds unduly burdensome, unrealistic and unnecessary for the proper management of the basin. The State Engineer further finds that the applications before him are changes of existing water rights and the applications do not seek new appropriations of water, but rather the applications seek only to change the point of diversion, place of use and manner of use of existing permitted water rights within the Carson Valley Hydrographic Basin.

#### IX.

The Tribe alleges that the State Engineer has not developed a comprehensive plan or taken other actions pursuant to his broad regulatory authority under NRS chapter 534 to restrict ground-water withdrawals to no more than the average annual recharge and until that is accomplished the State Engineer should not take any action on pending

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<sup>48</sup> *Carson Valley Groundwater Pumpage Inventory Water Year 2005*, Nevada Division of Water Resources, official records in the Office of the State Engineer.

applications that would authorize, promote or encourage any further dependence on this “severely over-committed resource” or facilitate the use of ground-water rights that, as a practical matter, may not and should not be satisfied. The Tribe reminds the State Engineer of his responsibilities under NRS § 278.377(1)(b) pursuant to which the State Engineer must certify the availability of water for proposed subdivisions, and that due to the over-appropriation of the Carson Valley and the absence of regulations limiting withdrawals to not more than the average annual recharge, the availability of ground water for proposed subdivisions cannot be certified. Therefore, the State Engineer should not take any actions that authorize, promote, encourage or facilitate any additional use of ground water in Carson Valley for subdivisions or for other municipal, industrial or commercial development. Additionally, the Tribe argues, but did not assert as a protest claim, that since the maximum amount of ground water pumped during any one year during the period from 1987 to 2005 is 34,561 acre-feet there is good reason to believe that ground-water rights have not been put to beneficial use during the preceding five or more years strongly suggesting that a substantial amount of Carson Valley water rights should be cancelled or forfeited.

Douglas County argues that the Tribe’s protest claim that the State Engineer must initiate a comprehensive process and investigation before granting the County’s applications is not supported by Nevada water law. The County cites to State Engineer’s Ruling No. 5726 at page 23 to argue there is no provision in Nevada water law authorizing the comprehensive process urged by the Tribe before the granting of the County’s applications. As to the Tribe’s general assertions as to cancellation or forfeiture, Douglas County argues that the possibility that there may be water rights in the Carson Valley subject to cancellation or forfeiture is not a basis for denying its change applications.

The State Engineer finds Douglas County misapplied the analysis in State Engineer’s Ruling No. 5726 as that protest issue is not the same argument being presented in this case. Ruling No. 5726 was addressing a protest claim about comprehensive planning, which is not the same argument being presented by the Tribe, which is that the ground-water basin should be regulated under the provisions of NRS § 533.110 and 533.120 and ground-water withdrawals restricted to senior priority rights prior to any additional change applications being granted that support growth that will be

dependent on ground-water rights. The State Engineer finds that if he believed it was warranted, he could regulate a basin prior to granting any change applications, but does not believe it is warranted in the Carson Valley as pumpage does not exceed the range of natural recharge and there is no basis for the restriction of ground-water use in the Carson Valley at this time. The State Engineer finds if ground-water rights not under consideration in this ruling are subject to a forfeiture declaration that is a process separate from the change applications under consideration here and does not prevent action on these applications. The State Engineer finds applications for an extension of time to file proof of completion of works or proof of beneficial use are used to address the reasonable diligence of placing water to beneficial use, but diligence has been reviewed occasionally upon the filing of a change application. If basin regulation was warranted, a tool available to the State Engineer is to call for proofs of beneficial use, but the State Engineer does not have that concern in this basin. Additionally, the cancellation of water rights in the Carson Valley that are not under consideration in this ruling is not at issue in this ruling, as those water right holders have not had notice of the assertion. The State Engineer finds he does not agree that the Carson Valley Hydrographic Basin is "severely over-appropriated" and does not agree that the basin is in need of regulation by priority. The State Engineer finds that the provisions of NRS chapter 278 may be applicable under some of these applications if subdivision maps have been filed, but as discussed, the State Engineer does not agree that the Carson Valley is severely over-appropriated under all the facts. The State Engineer finds the Tribe did not provide any factually specific evidence as to any application under consideration in this ruling and did not provide any substantial evidence to support its protest allegations.

**X.**

The Tribe broadly asserts that the surface and ground waters of the Carson River are hydrologically connected and that the pumping and use of the ground water reduces the flow of surface water in the Carson River, thereby affecting the amount of water that is captured and impounded in Lahontan Reservoir. The State Engineer has already dismissed the Tribe's protest on a legal connection between the ground water in Carson Valley and the Tribe's water rights in the Truckee River, but for completeness of analysis will still comment on the evidence presented by the Tribe.

The Tribe's evidence consists of mainly general evidence, some is specific to Carson Valley, but most of it is just generalized information about the interconnection of ground water and surface water. The evidence specific to Carson Valley includes a 1986 U.S. Geological Survey Report titled *Geohydrology and Simulated Response to Ground-Water Pumpage in Carson Valley, A River Dominated Basin in Douglas County, Nevada, and Alpine County, California*.<sup>49</sup> The conclusions of that report indicate that "[s]imulations of **hypothetical** (emphasis added) pumping increases in several areas of the valley (table 13) indicate that Carson River outflow is directly affected by the increased pumping, owing to the extensive flood-irrigation system that provides recharge to replenish ground water in the shallow aquifer system. . . . The response of the Carson River outflow to increased ground-water pumping may be a gradual decrease in mean annual flow over many years' time. However, annual variation in precipitation and river outflow may mask changes in Carson River outflow due to ground-water pumpage."<sup>50</sup>

Simulations indicated that changes in land use from agricultural to urban on the east side of Carson Valley can affect Carson River outflows, ground-water levels, and storage to a greater degree than an increase in pumping can. In this area, development of the flood-irrigation system in years past caused water levels to rise above those existing before the land was put into production. Thus, removal of irrigation would cause a return to pre-development water levels and a decrease in leakage from the surface-water system, along with an increase in Carson River outflow.<sup>51</sup>

This report noted that the relatively unstressed nature of the ground-water reservoir at that time would probably require additional refinements and adjustments to the model when pumpage increases or land use changes.<sup>52</sup>

The same issue was again addressed in 1995 in a U.S. Geological Report titled *Results of Hypothetical Ground-Water Pumping in Carson Valley, a River-Dominated Basin in Douglas County, Nevada, and Alpine County, California*.<sup>53</sup> (Emphasis added.) The hypothetical scenarios in this report all assigned a pumpage of 100,000 acre-feet per year, notably far in excess of any amount of water pumped, and did not take into account any secondary recharge of pumped water or recharge from effluent imported into the

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<sup>49</sup> PLPT Binder A, Tab 1.

<sup>50</sup> *Id.* at 104.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Id.* at 105.

<sup>53</sup> PLPT, Binder A, Tab 3.

basin. The ultimate conclusion of this report is based on this hypothetical pumping which is far removed from the reality of existing pumping.

The latest U.S. Geological Survey Report titled *Water Budgets and Potential Effects of Land and Water-Use Changes for Carson Valley, Douglas County, Nevada, and Alpine County, California*,<sup>54</sup> as argued by Douglas County, supports a finding that the total annual net ground-water pumping is almost entirely offset by decreases in evapotranspiration occasioned by changes in land use and decreases in the use of surface and ground water for irrigation occasioned by increases in the use of effluent for irrigation.<sup>55</sup> Douglas County's and Doug Lippincott's evidence indicates that there have not been decreases in the surface flow of the Carson River, but rather annual surface-water discharges as measured at the USGS gage for the Main Stem of the Carson River near Carson City have increased over 4% for the 30-year period of 1976 through 2005 when compared with the prior 30-year period.<sup>56</sup>

The State Engineer finds the Tribe did not provide any factually specific evidence as to any application under consideration in this ruling affecting river flows. The Tribe did not present any evidence as to the physical characteristics of the aquifer or degree of hydraulic connection between the Carson River and the ground-water aquifer or how these change applications might affect river flows. The State Engineer finds the currently available scientific data establish that the annual ground-water pumping in the Carson Valley has not diminished measured annual stream flow in the Carson River, and therefore, has not affected the available surface-water supplies to downstream water-right holders and overrules the Tribe's protest.

## XI.

The Tribe argues that granting Application 74349 would threaten to prove detrimental to the public interest in that it requests to move water rights that have not been put to beneficial use, and therefore amounts to a request for a new and additional appropriation of ground water in a designated, over-appropriated basin. The Tribe's argument is that Application 74349 seeks to change the point of diversion and place of use of a portion of the water appropriated under Permit 60612, which was filed in 1994 to

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<sup>54</sup> PLPT, Binder B, Tab19.

<sup>55</sup> Douglas County, Exhibit 2, p. 59.

<sup>56</sup> Douglas County, Exhibit 3, p. 3 and Lippincott's Response.

change the place of use of water appropriated under Permit 57659. Application 57659 was filed in 1992 to change the place of use of water appropriated under Permit 42924, which was filed in 1980 to change the point of diversion of water appropriated under Permit 38748. Application 38748 was filed in 1979 for a new appropriation of ground water, proof of beneficial use was originally due in 1981 and to date has not been filed. Thus, the total quantity of water originally permitted has never been placed to beneficial use. The Tribe argues that Permit 60612 was granted for 845.26 acre-feet annually and the State Engineer's 2005 Carson Valley Pumpage Inventory<sup>57</sup> shows that less than 200 acre-feet has been used for each year between 2001 and 2005. There have been approximately 25 extensions of time for filing proof of beneficial use, and thus, the State Engineer should deny Application 74349 and cancel or forfeit the remaining water that has not been put to beneficial use.

Douglas County argues there is no basis for cancellation and this is not the proper forum. It argues that the water right has been maintained in good standing and NRS § 533.395 provides the State Engineer with the process to cancel permits if he believes a permittee is not proceeding in good faith and with reasonable diligence in perfecting an appropriation, a process which the State Engineer has not sought.

The State Engineer finds that the doctrine of forfeiture applies to perfected water rights, that is those that have been placed to beneficial use and that portion of the protest allegation is overruled.

The State Engineer finds the law provides greater flexibility to municipalities in holding water rights for future growth. Nevada Revised Statute § 533.395(5) provides that when a project or integrated system is comprised of several features, work on one feature of the project or system may be considered in finding reasonable diligence has been shown in the development of water rights for all features of the entire project or system. Nevada Revised Statute § 533.395(6) provides that when water is appropriated by a political subdivision of this State or a public utility to serve the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to NRS chapter 278 or a plan approved by the State Engineer, the State Engineer must consider that in granting extensions of time. The State Engineer's Office has worked with Douglas County over

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<sup>57</sup> PLPT, Binder A, Tab 4.

the years and has asked Douglas County to relinquish water rights in support of parcel divisions that will be served by domestic wells. Douglas County's Master Plan indicates that a very large portion of the Carson Valley is the current and future service area and change applications as proposed here are being used to service that growth. The State Engineer finds municipal water purveyors must be allowed some latitude to plan for growth and overrules the protest claim that the Application should be denied and the remaining water rights cancelled.

## XII.

The Tribe alleges that granting Application 74349 would threaten to prove detrimental to the public interest in that it requests to move water rights to a point of diversion that is nearer and possibly within the area previously flagged by the State Engineer in Order No. 904 as an area requiring curtailment of water appropriation.

Douglas County responded by indicating that partially due to Order No. 904, community water service to users within the Johnson Lane subarea is now primarily delivered through the County's East Valley Water System.<sup>58</sup> The County indicates that the point of diversion proposed under Application 74349 is not within the areas described in the Order, but rather seeks to transfer water rights into the County's airport well and the airport well is not within the designated subarea.<sup>59</sup>

The proposed point of diversion under Application 74349 is described as being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.13N., R.20E., M.D.B.&M. In Township 13 North, Range 20 East, Order No. 904 designates the NW $\frac{1}{4}$  and the W $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 1, all of Sections 2, 3, and 4; the NE $\frac{1}{4}$  and the E $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 10; the N $\frac{1}{2}$  of Section 11 and the W $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 12 lying within the natural drainage basin of Carson Valley. The State Engineer finds this designated area does not include the proposed point of diversion under Application 74349 and the protest claim is overruled.

## XIII.

Within a designated basin, the State Engineer is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.<sup>60</sup> The

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<sup>58</sup> Douglas County, Exhibit 6, Douglas County Master Plan Chapter, map of Carson Valley water system service area.

<sup>59</sup> Douglas County, Exhibit 7.

<sup>60</sup> NRS § 534.120.

application of this provision of the NRS to the Carson Valley Hydrographic Basin is evidenced by State Engineer's Order No. 904. Order No. 904 describes and further designates a portion of the Carson Valley Hydrographic Basin also known as the Johnson Lane area. Within this further designated area, the State Engineer placed additional restrictions on ground water withdrawals. Specifically, applications seeking to appropriate water or to change the point of diversion of an existing water right outside the area to a new point of diversion within the Johnson Lane area will be denied. A review of Application 74498 and its supporting maps show that the water sought for change under Permit 58531 has a point of diversion located outside of the designated Johnson Lane area, while the proposed point of diversion under Application 74498 falls well within this area.

The State Engineer finds that to approve Application 74498 would violate State Engineer's Order No. 904; therefore, the requested change cannot be considered.

#### **XIV.**

As to Application 74451, the Tribe argues that the application is defective and should be denied or returned for correction as it does not indicate the number of persons to be served and the future requirement of the domestic use is not provided as required by NRS § 533.340. The State Engineer finds NRS § 533.340(3) addresses municipal use and Application 74451 is for irrigation and domestic use and overrules the protest claim.

#### **XV.**

The Tribe protested Applications 74451 and 74498 on the grounds that the water rights have been forfeited and/or abandoned. However, the Tribe later changes this to an allegation of cancellation or forfeiture. In its Report of Stetson Engineers, the Tribe argues that the water right that Applications 74451 and 74498 seek to change should be cancelled or forfeited on the ground that the water has not been put to beneficial use.

Douglas County argues that China Spring has been physically constrained from using its water by the design and corrosion in its existing irrigation well. Additionally, that China Spring has undergone significant expansion during the past five years and has been subject to such severe water rationing that at times water has been trucked in to serve the water needs of the facility. It indicated that a new well has been drilled that will allow it to beneficially use the water under Application 74451. Douglas County provided evidence that the static water level in the well drilled for Application 74451 at the China Spring regional treatment center is at an elevation of 5,300 feet, and the Carson River, 1

mile west of China Spring, is at an elevation of 5,100 feet. Moreover, the new well appears to be located within a “structural block which has a water level somewhat independent of the structural block to the east and west.”<sup>61</sup> Douglas County filed proof of beneficial use of a portion of the water under Permit 66912, that being 0.217 million gallons annually and Application 74451 seeks to move the balance of the water.

The State Engineer finds Applications 74451 and 74498 were not protested on the grounds that the base rights should be cancelled and the protest claim is overruled.

The State Engineer finds that the doctrine of forfeiture only applies to perfected water rights, that is, water that has been placed to beneficial use. Application 74451 seeks to move the water that has not yet been placed to beneficial use under Permit 66912; therefore, the State Engineer finds the doctrine of forfeiture is inapplicable and the protest claim as to forfeiture is overruled. The State Engineer finds Douglas County has filed extensions of time under the base rights which Application 74451 seeks to change and has drilled a new well in order to place the water to beneficial use demonstrating a lack of intent to abandon the water and the Tribe did not provide any specific evidence in support of a claim of abandonment and that portion of the protest allegation is overruled.

As to Application 74498, it seeks to change water permitted under Permit 58531 for irrigation purposes. The State Engineer finds that Permit 58531 changed water that had been placed to beneficial use and certificated under Permit 24696. Proof of beneficial use under Permit 58531 was first due to be filed in December 1998; however, extensions of time have been granted until December 2007. The State Engineer finds the doctrine of forfeiture is not applicable under Permit 58531 as the water right has not been perfected. The State Engineer finds the Permittee under Permit 58531 filed proof of completion for the drilling of the well in April 2005. The last two requests for extensions of time indicated that water lines are being installed and planting was to commence in April 2007. The State Engineer finds the Permittee under the base right that Application 74498 seeks to change has demonstrated steps being taken to place the water to beneficial use demonstrating a lack of intent to abandon the water and the Tribe did not provide any specific evidence in support of a claim of abandonment and that portion of the protest allegation is overruled.

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<sup>61</sup> Douglas County, Exhibit 5, p. 11.

**XVI.**

The Tribe alleges that Application 74498 is deficient in that it does not adequately and sufficiently identify the location of the existing place of use. The State Engineer finds a stripping map is not required for Application 74498 because the base right, Permit 58531, is in permit status. The proof of beneficial use under Permit 58531 is not due until December 2, 2007. The 1.01-acre portion of Permit 58531 to be stripped by Application 74498 can come from anywhere within the proposed place of use of Permit 58531. When the proof of beneficial use is filed under Permit 58531, the Permittee will be required to submit a proof of beneficial use map illustrating the location of the 8.99 acres remaining under Permit 58531. The State Engineer finds the protest issue without merit and it is overruled.

**XVII.**

As to Application 75183, the Tribe protested on the grounds that the transfer threatens to prove detrimental to the public interest by extending and/or expanding the water deliveries to outside the irrigation season. The State Engineer finds the Tribe did not provide any evidence in support of this protest claim; therefore, it is overruled.

**XVIII.**

As to Application 75183, the Tribe protested on the grounds that the request is for a full duty transfer, rather than the consumptive use amount, which in this basin it argues is established as 2.5 afa, and thus, amounts to a request for a new appropriation in a basin that is designated and over-appropriated.

The State Engineer defines consumptive use of a crop as that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use does not include any water that falls as precipitation directly on the place of use or water lost due to inefficiencies or waste during the irrigation process. The consumptive use of a crop is equal to the crop evapotranspiration less the precipitation amount that is effective for evapotranspiration by the crop.

The State Engineer's consumptive use estimate for Carson Valley is based on the Penman-Monteith short reference evapotranspiration and crop coefficient approach for estimating growing season crop evapotranspiration, similar to methods of the California Irrigation Management Information System (CIMIS). The standardized methods are

described by the American Society of Civil Engineers<sup>62</sup> and the Food and Agriculture Organization of the United Nations,<sup>63</sup> and in this case a crop of alfalfa is simulated with a growing season from the last killing frost to the first killing frost. Weather data used for the analysis were obtained in Carson Valley from a micrometeorological station operated from 2003-2004 by the U.S Geological Survey over a field of alfalfa.<sup>64</sup> The mean annual growing season for Carson Valley was estimated from the National Weather Service (NWS) Minden weather station (265191) to be from April 17 and October 24, using the period of record minimum temperature 50-percentile probability at 20° F. Using these methods, the State Engineer estimates the alfalfa crop evapotranspiration during the growing season in Carson Valley to be 2.8 feet per year.

Effective precipitation as defined by the Natural Resource Conservation Service (NRCS) National Engineering Handbook<sup>65</sup>(NEH) is the part of precipitation that can be used to meet the evapotranspiration of growing crops. The NRCS NEH outlines an empirical method for computing the effective precipitation based on 22 studies. Using the mean daily precipitation for the period of record at the NWS Minden weather station as reported by the Western Regional Climate Center, and applying the NRCS effective precipitation method during the growing season and monthly soil water balance during the non-growing season, the estimated mean annual effective precipitation is 0.2 feet per year.

Therefore, the State Engineer finds the net annual consumptive use of irrigated areas in Carson Valley is 2.6 feet per year, being 65 percent of the established duty of 4.0 feet per year. The State Engineer finds that he has the authority under NRS 532.120, Section 3.3, to limit changes in manner of use from irrigation to quasi-municipal to the consumptive use portion only and hereby exercises this authority in regards to Application 75183. Specifically, the State Engineer finds that Application 75183 will be limited by the terms of its permit to an initial withdrawal equal to the consumptive use portion until such time that the permittee can prove that additional recharge back to the basin is occurring, if any.

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<sup>62</sup> State Engineer's Office, The ASCE Standardized Reference Evapotranspiration Equation, 2005.

<sup>63</sup> State Engineer's Office, FAO Irrigation and Drainage Paper No. 56. Crop Evapotranspiration: Guidelines for Computing Crop Water Requirements, 1998.

<sup>64</sup> Maurer and others, (2006). Rates of Evapotranspiration, Recharge from Precipitation Beneath Selected Areas of native Vegetation, and Streamflow Gain and Loss in Carson Valley, Douglas County, Nevada, and Alpine County, California. U.S. Geological Survey, Scientific Investigations Report 2005-5288.

<sup>65</sup> State Engineer's Office, Irrigation Water Requirements, 2003.

**XIX.**

The Tribe alleges that use of water under the applications would threaten to prove detrimental to the Tribe, to the purposes for which the Pyramid Lake Paiute Indian Reservation was created and the public interest by depleting flows in the Carson River and thereby reducing inflows to Lahontan Reservoir, and because of the legal and physical connection between ground water and surface water in the basin, to the detriment of senior water right holders in the Newlands Project who are entitled to divert Truckee River water to make up for insufficient Carson River flows, which would impact Pyramid Lake and its fishery. The Tribe presented no evidence specific to this ground-water basin to support this protest claim, but rather merely asserts the ground water and surface water are hydrologically connected and that use of ground water in Carson Valley reduces the flow of surface water in the Carson River

The Tribe's evidence found in Binder B, Tab 9, indicates that "In its natural state, recharge to the ground water system is balanced by discharge. That discharge occurs as base flow to streams, as spring flow, as evapotranspiration (ET) from vegetation (phreatophytic plants)...," but it provides no evidence specific to this case as to what portion of the recharge may be base flow to the Carson River. The same exhibit indicates that the capture of discharge occurs as either a reduction in the ET of plants or a reduction in the ground-water discharge to surface water bodies. The Tribe's evidence includes the most current report on water budgets and water use for the Carson Valley, which indicates that "[t]he decrease in ET and in the use of streamflow and ground water for irrigation would tend to increase outflow of the Carson River from Carson Valley, offsetting the decrease in outflow caused by ground-water pumping without changes in land use predicated by previous studies of water budget for Carson Valley."<sup>66</sup> This 2006 report indicates that the largest water-budget component in the Carson Valley is ET.<sup>67</sup>

This same report notes that growth and development in Carson Valley is causing concern over the continued availability of water resources to sustain such growth and the use of ground water may affect outflow of the Carson River; however, it also indicates

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<sup>66</sup> PLPT, Binder B, Tab 19, p. 1.

<sup>67</sup> PLPT, Binder B, Tab 19, p. 15.

that for the water years 1990-2005 the net ground-water pumping was 15,000 – 18,000 acre-feet,<sup>68</sup> which is far below any estimate of perennial yield.

The State Engineer finds that unsubstantiated general claims of interference are not sufficient to prevent the granting of change applications. The State Engineer finds the evidence provided in PLPT, Binder B, Tab 19 that indicates that changes in land use in the Carson Valley is likely to cause an increase in streamflow in the Carson River, not a decrease. The State Engineer finds that even though ground water may outflow to surface water that does not necessarily mean that the ground water belongs to the surface water source. The State Engineer finds the Tribe did not provide sufficient evidence to support its protest claims and the claims are hereby overruled.

**XX.**

The Tribe alleged that granting the applications would threaten to prove detrimental to the public interest in ways that are not yet known to it, but which may arise before the applications are actually considered by the State Engineer. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled.

**XXI.**

The Tribe alleged that granting the application would threaten to prove detrimental to the public interest. The State Engineer finds that NRS § 533.365 provides that a protest must set forth with reasonable certainty the ground of the protest, which shall be verified by the affidavit of the protestant, his agent or attorney and this protest ground does not set forth its ground with reasonable certainty and is thereby overruled.

**CONCLUSIONS**

**I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>69</sup>

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<sup>68</sup> PLPT, Binder B, Tab 19, p. 43.

<sup>69</sup> NRS chapters 533 and 534.

## II.

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:<sup>70</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with protectible interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

## III.

The State Engineer concludes that the Protestant did not provide sufficient evidence to support denial of the applications under consideration in this ruling.

## IV.

Application 74498 seeks to change the point of diversion and place of use of a portion of water previously appropriated under Permit 58531. The existing point of diversion is outside the area designated by the State Engineer under Order No. 904, but Application 74498 would move this existing point of diversion to a new point of diversion located within the described and designated area. Pursuant to State Engineer's Order No. 904, the State Engineer concludes that Application 74498 must be denied.

## V.

The State Engineer concludes that change Applications 74279, 74349, 74451, 74518, 74759, 74760, 74762, 74866, 74938, 74977, 74987, 75046, 75183, 75191, 75242, 75243, 75248, and 75304 will not conflict with existing rights and protectible interests in existing domestic wells, and will not threaten to prove detrimental to the public interest.

## VI.

Nevada Revised Statutes chapters 533 and 534 provide for the appropriation of ground water. Recharged water is defined as water that reaches or percolates into an aquifer system through natural processes, by secondary recharge as a result of beneficial use or artificially through facilities specifically constructed for that purpose. Nevada Revised Statute § 534.020 provides that all underground waters belong to the public and subject to existing rights are subject to appropriation. The *Alpine Decree*, which

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<sup>70</sup> NRS § 533.370(5).

adjudicated the waters of the Carson River, did not include ground water as water tributary to the Carson River. The State Engineer concludes that ground water from sources other than any Carson River leakage that may or may not occur within the Carson Valley is subject to appropriation even though there may be some connection to the surface water of the Carson River.

**RULING**

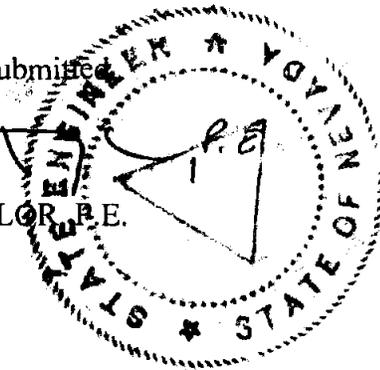
Application 74498 is hereby denied on the grounds that its approval would violate State Engineer's Order No. 904.

The protests are hereby overruled and Applications 74279, 74349, 74451, 74518, 74759, 74760, 74762, 74866, 74938, 74977, 74987, 75046, 75183, 75191, 75242, 75243, 75248, and 75304 are approved subject to:

1. Existing water rights;
2. Payment of the statutory permit fee;
3. For Application 75183 only: Permit terms and conditions that initially limit its annual duty of water to its consumptive use portion only.

Respectfully submitted,

  
TRACY TAYLOR, B.E.  
State Engineer



TT/jm

Dated this 23rd day of

October, 2007.