

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

IN THE MATTER OF APPLICATIONS )  
82638T, 82639T, 82640T, 82641T AND )  
82642T FILED TO CHANGE THE POINT OF )  
DIVERSION AND PLACE OF USE OF THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE MASON VALLEY )  
HYDROGRAPHIC BASIN (108), LYON )  
COUNTY, NEVADA. )

**RULING**  
**#6356**

**GENERAL**

**I.**

Application 82638T was filed on March 18, 2013, by Desert Pearl Farms, LLC to change the point of diversion and place of use of 1.238 cubic feet per second (cfs), not to exceed 230.0 acre-feet annually (afa) of water previously appropriated under Permit 67210 for irrigation purposes from January 1 to December 31 of each year. The proposed point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 11, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as being 57.50 acres located within portions of the E $\frac{1}{2}$  E $\frac{1}{2}$  and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.14N., R.25E., M.D.B.&M., the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30 and the W $\frac{1}{2}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing place of use is described as 60 acres located within portions of the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 10, W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 11, T.12N., R.25E., M.D.B.&M.<sup>1</sup>

**II.**

Application 82639T was filed on March 18, 2013, by Desert Pearl Farms, LLC to change the point of diversion and place of use of 0.634 cfs, not to exceed 36.28 afa of water previously appropriated under Permit 67599 for irrigation purposes from January 1 to December 31 of each year. The proposed point of diversion is described as being the same as on Application 82638T. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 11, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as being 9.07 acres located within portions of the E $\frac{1}{2}$  E $\frac{1}{2}$  and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.14N., R.25E.,

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<sup>1</sup> File No. 82638T, official records in the Office of the State Engineer.

M.D.B.&M., the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30 and the W $\frac{1}{2}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing place of use is described as being 57.27 acres within portions of the E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 10 and the W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 11, T.12N., R.25E., M.D.B.&M.<sup>2</sup>

### III.

Application 82640T was filed on March 18, 2013, by Desert Pearl Farms, LLC to change the point of diversion and place of use of 0.571 cfs, not to exceed 130.46 afa, a portion of water previously appropriated under Permit 72402 for irrigation purposes from January 1 to December 31 of each year. The proposed point of diversion is described as being the same as on Application 82638T. The existing point of diversion is described as being located within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as 32.615 acres located within portions of the E $\frac{1}{2}$  E $\frac{1}{2}$  and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.14N., R.25E., M.D.B.&M., the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30 and the W $\frac{1}{2}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing place of use is described as being 20 acres located within the S $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 40 acres within the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 37.4 acres within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 39.5 acres within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 37.3 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 40 acres within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 37.4 acres within the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 19.8 acres within the N $\frac{1}{2}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ , 40 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 38 acres within the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 38 acres within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  and 31.5 acres within the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , all within Section 14, T.12N., R.25E., M.D.B.&M.<sup>3</sup>

### IV.

Application 82641T was filed on March 18, 2013, by Desert Pearl Farms, LLC to change the point of diversion and place of use of 0.113 cfs, not to exceed 36.0 afa of water previously appropriated under Permit 76192 for irrigation purposes from January 1 to December 31 of each year. The proposed point of diversion is described as being the same as on Application 82638T. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 33, T.12N., R.25E., M.D.B.&M. The proposed place of use is described as being 9.0 acres within portions of the E $\frac{1}{2}$  E $\frac{1}{2}$ , and the W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.14N., R.25E., M.D.B.&M., the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30, and the W $\frac{1}{2}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing place of use is described as being located within portions of the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and SE $\frac{1}{4}$  NW $\frac{1}{4}$ , all within Section 33, T.12N., R.25E., M.D.B.&M.<sup>4</sup>

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<sup>2</sup> File No. 82639T, official records in the Office of the State Engineer.

<sup>3</sup> File No. 82640T, official records in the Office of the State Engineer.

<sup>4</sup> File No. 82641T, official records in the Office of the State Engineer.

## V.

Application 82642T was filed on March 18, 2013, by Desert Pearl Farms, LLC to change the point of diversion and place of use of 0.362 cfs, not to exceed 153.588 afa of water previously appropriated under Permit 77719 for irrigation purposes from January 1<sup>st</sup> to December 31<sup>st</sup> of each year. The proposed point of diversion is described as being the same as on Application 82638T. The existing point of diversion is described as being located within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.26E., M.D.B.&M. The proposed place of use is described as being 38.4 acres within portions of the E $\frac{1}{2}$  E $\frac{1}{2}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 36, T.14N., R.25E., and the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 30, and W $\frac{1}{2}$  of Section 31, T.14N., R.26E., M.D.B.&M. The existing place of use is described as being located within the W $\frac{1}{2}$  of Section 19, and the W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 30, T.14N., R.26E., M.D.B.&M.<sup>5</sup>

## VI.

Applications 82633 through 82637 are identical in nature to the aforementioned subject applications, except that they seek permanent changes; and for this reason, are not subject to this ruling.<sup>6</sup>

## VII.

Applications 82638T, 82639T, 82640T, 82641T, and 82642T were protested by Ritter Enterprises, LLC on grounds as summarized below:<sup>1,2,3,4,5</sup>

1. Changes made to the Walker River surface water rights for the Walker River Acquisition Program are reducing aquifer recharge in the Yerington area.
2. If granted these Applications will conflict with the Protestant's water rights *i.e.*, Permit 18806, Certificate 5979, and Permit 27839, Certificate 8755.
3. If granted these Applications will conflict with existing domestic wells.
4. If granted, the applications will unreasonably lower the water table based on its effect on the area economy and economics of pumping water.
5. The applications are in conflict with and will be detrimental to the public interest as further drawdown will cause a strain on the water resource.
6. If granted these Applications will change the point of diversion approximately ten miles to the north. A question exists of whether or not the same aquifer is being utilized in regard to the existing point of diversion, and the proposed point of diversion. The State Engineer should require a basin study to determine aquifer location and water availability.
7. Groundwater appropriations in this area have already been denied. See Application 31742, State Engineer's Ruling No. 2277.

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<sup>5</sup> File No. 82642T, official records in the Office of the State Engineer.

<sup>6</sup> File Nos. 82632, 82633, 82634, 82635, 82636 and 82637, official records in the Office of the State Engineer.

8. Non-supplemental groundwater rights cannot be moved to a new place of use that has existing surface water rights.
9. Groundwater rights previously appropriated as “supplemental to the waters of the Walker River” cannot be moved to a new place of use that has existing surface water rights.
10. The proposed place of use is larger (356.27 acres) than the combined total of acres (186.582 acres)<sup>7</sup> from the existing place of use.
11. The base rights have been abandoned or are subject to forfeiture.
12. The applications cannot be approved for year round use.
13. The hydrologic connection between the surface waters of the Walker River and the underground waters of the Mason Valley et al. should be addressed by the United States District Court for the District of Nevada.
14. If the applications are granted, the permits must contain express conditions to ensure existing appropriations will be satisfied.
15. The Applicant drilled the well 2-3 months ago and is currently using the water under the applications without permits to irrigate approximately 160 acres. The Applicant has filed temporary applications, which have not been approved. The State Engineer should not condone illegal water use by granting these applications.

### **FINDINGS OF FACT**

#### **I.**

If the State Engineer determines that a temporary change of the place of diversion, manner of use or place of use of water already appropriated may not be in the public interest, or may impair the water rights held by other persons, the State Engineer shall give notice of the application as provided in NRS § 533.360 and hold a hearing and render a decision as provided for in NRS Chapter 533.<sup>8</sup> The State Engineer finds that publication and a hearing on Temporary Applications 82638T, 82939T, 82640T, 82641T and 82642T is not required.

#### **II.**

#### **Surface Water Acquisition Program**

The Protestant claims that changes made to the Walker River surface water rights for the Walker River Acquisition Program are reducing aquifer recharge in the Yerington area. The State Engineer finds that Applications 82638T, 82639T, 82640T, 82641T and 82642T request changes in water rights from an underground source and are not part of any surface water acquisition program.

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<sup>7</sup> The State Engineer notes this number is incorrect.

<sup>8</sup> NRS § 533.345(3).

### III.

#### Additional Pumpage

The Protestant asserts that additional pumpage at this location will conflict with the Protestant's existing wells. To fully understand the issue of additional pumpage from these subject applications it is important to understand the purpose of the subject applications themselves. It is also important to understand the difference between a primary groundwater right and a groundwater right that is supplemental to a surface water right (supplemental groundwater right).

In essence, the subject applications are seeking to temporarily replace the existing supplemental groundwater rights with primary groundwater. For definitional purposes, it should be understood that a primary groundwater right is a right that is issued with groundwater as the main source, and is not required to be used in conjunction with any surface water right. Whereas a supplemental groundwater right requires the irrigator to use their surface water rights as the main source and then, if needed, use their groundwater rights to supplement this overall supply. Note though that a general mandate for both these types of rights is the overall water use shall not exceed four acre-feet per acre, regardless of the source and/or sources of the supply.

The subject applications propose to pump 586.328 acre-feet annually of primary groundwater. Currently though, existing at the proposed point of diversion, there is a supplemental groundwater right whose potential maximum pumpage is 1,130.5 acre-feet being Permit 19599, Certificate 5997.

Noting his concern that the potential combined duty of Permit 19599, Certificate 5997 and the subject applications would exceed 4.0 acre-feet per acre, the State Engineer requested a letter from the Applicant detailing more clarification in this matter. In response, the owner of Permit 19599, Certificate 5997 sent a letter dated January 13, 2016, attesting that they would not exercise their water right on the subject property during the calendar year 2016, or any subsequent irrigation season pending transfer to another property.<sup>1</sup>

Moving forward with his additional pumpage analysis, the State Engineer determined what the existing supplemental groundwater right would have be able to pump, and then compared that value with the amount of water the primary groundwater subject applications sought, the difference being the theoretical change in pumping. For practical definitional

purposes, water year 2016 is a year with slightly less than normal surface water.<sup>9</sup> Under these *slightly less than normal* conditions the potential surface water deliveries to this place of use are estimated at slightly less than half of the allotted water right duty. Bearing in mind that with supplemental groundwater rights this surface water must be used in its entirety. The State Engineer finds that the groundwater available to pump under supplemental right Permit 19599, Certificate 5997 during 2016 would be approximately 600 acre-feet. Therefore, exclusive to the 2016 irrigation season the approval of 586.328 acre-feet of primary groundwater under Applications 82638T, 82639T, 82640T, 82641T and 82642T will not significantly affect the groundwater dynamics in this area.

#### IV.

##### **Unreasonable Lowering of Groundwater Levels**

The Protestant next asserts that the applications will substantially lower the groundwater level leading to increased pumping costs in the area. The State Engineer finds that the permit terms of groundwater permits issued in the area provide for a reasonable lowering of the static water level due to other groundwater development. Furthermore, the State Engineer finds that water level measurements conducted by the Division of Water Resources indicate that the static water levels in wells in the area near the proposed point of diversion are in an overall decline. However, similar declines have been observed throughout the valley, suggesting that the cause of this decline is current drought conditions combined with cumulative groundwater pumping. Recent water level decline in the area of the proposed place of use is two feet or less per year, and is expected to recover at the end of the drought. The State Engineer finds, as noted above, the use of water under the applications will not significantly affect the groundwater dynamics in this area.

#### V.

##### **Proposed Place of Use**

The Protestant asserts that the proposed place of use is larger (356.27 acres) than the combined total of acres (146.6 acres) from the existing place of use. And if granted these applications will further strain the groundwater resource in this hydrographic basin.

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<sup>9</sup> United States of America, Natural Resource Conservation Service, Reno, Nevada. (2016, April 01). *Streamflow Forecast Summary*. Retrieved April 30, 2016, from [http://www.wcc.nrcs.usda.gov/ftpref/support/water/SummaryReports/NV/BFfst\\_4\\_2016.pdf](http://www.wcc.nrcs.usda.gov/ftpref/support/water/SummaryReports/NV/BFfst_4_2016.pdf)

The subject applications seek to temporarily change the place of use of the respective base rights. One of the factors evaluated in irrigation change applications is ensuring the acreage described in the existing place of use is greater than, or equal to, the amount of acreage allowed to be irrigated in the proposed place of use; thus preventing the overall expansion of irrigated acreage within the basin. Additionally, a duty of water is also associated with every irrigated acre; and it is the acreage, coupled with that duty, that creates the extent and limit in which that water right may be used. In this way, the overall strain on the groundwater system remains unchanged. The State Engineer finds that although the proposed place of use for Applications 82638T, 82639T, 82640T, 82641T and 82642T is larger than the combined total acres of the existing place of use, this does not enlarge the amount of acreage allowed to be irrigated under these water rights. The proposed place of use serves as a boundary, within which, a maximum of 146.6 acres may be irrigated. Which 146.6 acres are irrigated within the proposed place of use will be identified by the filing of Proof of Beneficial Use.

## **VI.**

### **Aquifer Location and Need for Additional Studies**

The Protestant argues that if granted, the applications will change the point of diversion approximately ten miles to the north and the Protestant questions whether or not the same aquifer is being utilized for the existing point of diversion and the proposed point of diversion.

Water Resource Bulletin No. 38 outlines the extent and boundaries of the valley-fill aquifer within the Mason Valley hydrographic region. Formed by the younger and older alluvium and the younger and older fan deposit, this aquifer is the principal source of groundwater within Mason Valley. The State Engineer finds that the existing points of diversion and proposed point of diversion for Applications 82638T, 82639T, 82640T, 82641T and 82642T are from the same valley-fill aquifer. To that end, the State Engineer finds that he possesses sufficient information concerning the aquifer properties and available water, and that there is no necessity to order further studies.

## **VII.**

### **Prior State Engineer Decisions**

The Protestant asserts that groundwater applications in this area have already been denied by State Engineer's Ruling No. 2277, and therefore, the applications here should be similarly denied.

In Ruling No. 2277, numerous applications were denied on the grounds that the applications requested new appropriations requiring additional water from the underground source. The State Engineer finds that Applications 82638T, 82639T, 82640T, 82641T and 82642T are not seeking new appropriations of underground water, but request changes in the points of diversion and places of use of water previously appropriated. The State Engineer finds that the grounds for denial of the applications in Ruling No. 2277 are not applicable to the subject temporary applications.

## VIII.

### **Supplemental vs. Stand Alone Rights**

The Protestant asserts that groundwater rights previously appropriated as supplemental Walker River surface water rights cannot be moved to a new place of use that has existing surface water rights. Conversely, the Protestant also argues that non-supplemental groundwater rights cannot be moved to a new place of use that has existing surface water rights.

The nature of a groundwater right *i.e.*, stand-alone/primary or supplemental, is an attribute that remains unchanged through the change application process and is based upon the original base right in the water right's lineage. For this reason, the State Engineer must examine the history of a change application's base right prior to a decision so that if an application is permitted, the potential for groundwater pumping is either unchanged or reduced. When groundwater is used as the sole source for irrigation within a given place of use, it is referred to as a stand-alone or primary groundwater right. When a groundwater right irrigates a place of use that also has a surface water right associated with that place of use, the groundwater right is considered supplemental to surface water, meaning the groundwater right supplements a senior surface water right.

When a groundwater right is issued as supplemental to surface water, the groundwater right shall not be utilized until the surface water right falls out of priority or, in the case of storage water, is no longer available. Supplemental groundwater rights are used only to make up the difference between the surface water available and the duty of that acreage. Thus, it is expected that a supplemental groundwater right will not be used to its full allocation. The State Engineer finds that Applications 82638T, 82639T, 82640T, 82641T and 82642T can be traced back to water rights that were originally issued as stand-alone rights; therefore, these Applications are reviewed as such.

works a forfeiture of both undetermined rights and determined rights to the use of that water to the extent of the nonuse. The State Engineer finds that base rights for the subject application have not been certificated, and are all currently in permit status and not subject to forfeiture.

<b>Application No.</b>	<b>Base Right No.</b>	<b>Water Right Status</b>
82638T	67210	Permit
82639T	67599	Permit
82640T	72402	Permit
82641T	76192	Permit
82642T	77719	Permit

**X.**

**Period of Use**

The Protestant next argues the applications should not be approved for year-round use. The following table represents a summary of the subject change applications, the base right, and the period of use associated with each base right.

<b>Application No.</b>	<b>Base Right No.</b>	<b>Base Right Period of Use (Each Year)</b>
82638T	67210	Jan. 1 to Dec. 31
82639T	67599	Jan. 1 to Dec. 31
82640T	72402	Jan. 1 to Dec. 31
82641T	76192	Jan. 1 to Dec. 31
82642T	77719	Jan. 1 to Dec. 31

The State Engineer finds that the subject applications do not seek to change the period of use of the respective base rights.

**XI.**

**Illegal Use**

The Protestant asserts that the Applicant drilled the well 2-3 months ago and is currently using the water under the permanent applications without permits to irrigate approximately 160 acres. The Protestant also alleges that the Applicant has filed temporary applications, which

have not been approved, and that the State Engineer should not condone illegal water use by granting the applications.

Allegations of illegal use are investigated by the State Engineer through enforcement actions handled separately from protested application proceedings. Because enforcement actions proceed separately, the State Engineer makes no determination of illegal use as part of this ruling. However, a current search of State Engineer records revealed no complaints on file concerning allegations of the Applicant's illegal use and there are no enforcement actions pending against the Applicant. Generally speaking, even if an application were filed to correct illegal use as the result of an enforcement action, the State Engineer has historically treated such applications as promoting the public interest to ensure that water users come into compliance with Nevada law. The State Engineer does not condone illegal use of water and notes that other statutory remedies exist to penalize violators; however, the State Engineer finds that denying a water right application to penalize past illegal use is inconsistent with the State Engineer's obligation to ensure water users comply with Nevada law.

## **XII.**

### **Deferral to U.S. District Court**

Lastly, the Protestant asserts that the hydrologic connection between the surface waters of the Walker River and the underground waters of the Mason Valley should be addressed by the United States District Court for the District of Nevada.

The State Engineer finds that the pending change applications concern already appropriated water from an underground source, over which, the State Engineer has jurisdiction. The State Engineer finds that he need not defer to the United States District Court in ruling on the subject applications.

## **CONCLUSIONS OF LAW**

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>10</sup>

### **II.**

If an applicant is seeking a temporary change of place of diversion, manner of use or place of use of water already appropriated, the State Engineer shall approve the application if:<sup>11</sup>

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<sup>10</sup> NRS Chapters 533 and 534.

<sup>11</sup> NRS § 533.345(2).

- (a) The application is accompanied by the prescribed fees;
- (b) The temporary change is in the public interest; and
- (c) The temporary change does not impair the water rights held by other persons.

**III.**

The State Engineer concludes that the subject applications are seeking to temporarily replace the existing supplemental groundwater rights with rights issued as a primary supply. And that together with the pledge from the owner of Permit 19599, Certificate 5997, it is reasonable to presume that the approval of Applications 82638T, 82639T, 82640T, 82641T and 82642T will not unreasonably lower the groundwater levels in the area, further strain the groundwater resource, or create additional pumpage in the hydrographic basin and granting the applications will not impair existing rights.

**IV.**

The State Engineer concludes that Applications 82638T, 82639T, 82640T, 82641T and 82642T are not seeking new appropriations of underground water, but seek to change the points of diversion and places of use of water previously appropriated. The State Engineer concludes that the base rights are in good standing and are not subject to abandonment or forfeiture.

**V.**

The State Engineer concludes that Applications 82638T, 82639T, 82640T, 82641T and 82642T utilize the same valley-fill reservoir (aquifer) at both the existing points of diversion and the proposed point of diversion and that granting the applications will not conflict with existing rights or protectable interests in existing domestic wells as set forth in NRS § 533.024, unreasonably lower the groundwater levels in the area, or further strain the groundwater resource in the hydrographic basin.

**VI.**

The State Engineer concludes that Applications 82638T, 82639T, 82640T, 82641T and 82642T do not change the period of use of their respective base rights, nor do the applications propose to convert primary stand-alone groundwater right to supplemental rights, or vice versa.

**VII.**

The State Engineer concludes that Applications 82638T, 82639T, 82640T, 82641T and 82642T have proposed a place of use that will be finalized by the filing of proof of beneficial use and the permitted place of use is simply a boundary, within which, a maximum of 146.6 acres may be irrigated.

The State Engineer finds the proposed place of use for the subject groundwater applications has appurtenant surface water rights. According to the Walker River Irrigation District Card No. 36166, there are 356.13 acres of surface water righted land associated with Lyon County Assessor's Parcel No. 014-321-031; this parcel is coincident with applications proposed place of use. The surface water rights associated with the parcel include portions of Walker River Decree C-125 Claim Nos. 2, 66 and 138. Furthermore there are Newland acres and storage water available to this parcel as well.

The State Engineer finds that Applications 82638T, 82639T, 82640T, 82641T and 82642T would be used as the primary water supply for the associated place of use.

## IX.

### **Abandonment and Forfeiture**

The Protestant asserts that the base rights have been abandoned or are subject to forfeiture. The State Engineer finds that a water right application may be filed to change the point of diversion, place or manner of use of water already appropriated. Water already appropriated, in reference to a change application, refers to a water right in good standing.

Nevada Revised Statute § 534.090(4) provides that the "right to use underground water whether it is vested or otherwise may be lost by abandonment." Abandonment of a water right is the voluntary "relinquishment of the right by the owner with the intention to forsake and desert it." *In re Manse Spring*, 60 Nev. 280, 108 P.2d 311, 315 (1940). Abandonment is the union of acts and intent; and, under Nevada law is "a question of fact to be determined from all the surrounding circumstances." *Revert v. Ray*, 95 Nev. 782, 786, 603 P.2d 262, 264 (1979); *see also In re Manse Spring*, 108 P.2d at 316 (stating that courts must determine the intent of the claimant to decide whether abandonment has taken place, and in this determination may take non-use and other circumstances into consideration). The State Engineer finds the Applicant has been beneficially using water under the base rights, and is actively pursuing changing the base rights through the pending change applications. Accordingly, there are no facts that would lead the State Engineer to find the base rights have been abandoned.

Nevada Revised Statute § 534.090(1) provides that the failure for five successive years after April 15, 1967, on the part of the holder of any right, whether it is an adjudicated right, an unadjudicated right *or a right for which a certificate has been issued* pursuant to NRS § 533.425, and further whether the right is initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed,

**VIII.**

The State Engineer concludes that adequate separate statutory procedures exist to address alleged violations of Nevada water law and that any alleged violations should be pursued through that process rather than as a protest ground against an application.

**IX.**

The State Engineer concludes that Applications 82638T, 82639T, 82640T, 82641T and 82642T are not part of any surface water acquisition program and that he need not defer to the United States District Court in this matter.

**X.**

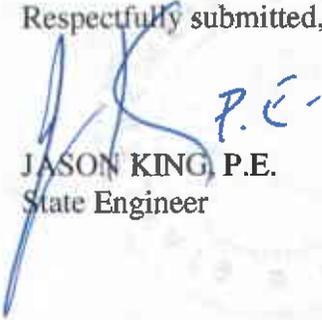
The State Engineer concludes that Applications 82633, 82634, 82635, 82636 and 82637 are all identical in nature to Applications 82638T, 82639T, 82640T, 82641T, and 82642T. These permanent applications and their associated protests are not being considered as part of this ruling.

**RULING**

The protests to Applications 82638T, 82639T, 82640T, 82641T and 82642T are overruled and the Applications are hereby granted subject to:

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

Respectfully submitted,

  
P.E.  
JASON KING, P.E.  
State Engineer

Dated this 16th day of  
August, 2016.