IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATIONS 53407, 53409 THROUGH 53420, INCLUSIVE, 53422 THROUGH 53428, INCLUSIVE, 53432, 53433 AND 54134 THROUGH 54138, INCLUSIVE, FILED TO CHANGE THE PLACE OF USE AND MANNER OF USE OF VARIOUS UNDERGROUND PERMITS IN HONEY LAKE VALLEY, WASHOE COUNTY, NEVADA.	SUPPLEMENTAL RULING ON REMAND **#3787A**

GENERAL

I.

This ruling on remand is somewhat abbreviated from Ruling No.3787 signed by the State Engineer on March 1, 1991. The individual applications and individual protests were enumerated in Ruling No. 3787, therefore, the State Engineer will not enumerate them once again. All of the applications before the State Engineer during the hearings of 1990 were not acted upon in Ruling No. 3787. The applications filed to appropriate unappropriated water were held in abeyance and were not part of the appeal by Lassen County, California (Lassen County) and the Pyramid Lake Paiute Tribe of Indians (Tribe), and the intra-basin applications are addressed under separate ruling. Therefore, they are not addressed in this ruling on remand.

II.

All of the applications that are the subject of this ruling were protested by the Tribe, Sierra Army Depot, the Cities of Reno and Sparks, California Department of Fish and Game, County of Modoc California, and Lassen County, except Applications 54134 through 54138, inclusive, which were only protested by the Tribe.

The protests of California Department of Fish and Game and County of Modoc, California are disregarded since they made no appearance at the hearing and offered nothing in support of their protests.

III.

The protests are difficult to summarize but the State Engineer considers all grounds for protest to be irrelevant except those dealing (i) with interference with existing rights or (ii) those that would threaten to prove detrimental to the public interest[1]. No findings are made on whether unappropriated water exists in the source since all of the applications that are the subject of this ruling are applications that seek to change the place and manner of use of water already appropriated.

IV.

Upon notification of the subject parties as required under NRS 533.365(3), a series of administrative hearings were held before the State Engineer beginning on June 21, 1990, and continued to July 19, 1990, and September 10, 1990.[2] The purpose of the hearings was to receive evidence and testimony relevant to the proposed change applications which sought to change the manner of use and the places of use of existing permits to areas outside of the Honey Lake Groundwater Basin. Four applications requesting new appropriations of water within the basin were also considered as were the respective protests to the aforementioned applications.[3] Evidentiary presentations were made by both applicant and protestants and numerous exhibits were received in evidence.[2]

V.

The previous ruling in this matter (Ruling No. 3787 on the inter-basin transfers) was appealed to the Second Judicial District

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[1]NRS 533.370(3).

[2]Transcripts of these administrative hearings before the State Engineer are public record in the office of the State Engineer in Carson City, Nevada. Hereinafter referred to as "Transcript, date, volume and page, figure or table."

[3]Exhibit 1 of the administrative hearings before the State Engineer. Hereinafter referred to as "Exhibit and number."

Court (Court) by Lassen County and the Tribe. On August 31, 1992, the Court entered its Order (Order) remanding the matter to the State Engineer for further findings consistent with the Order. On September 17, 1992, the State Engineer filed with the Court a Motion to Amend Order, requesting that the Court amend its decision on the issue of whether Nevada law allows the change of unperfected water rights.

VI.

After 12 days of testimony from many expert witnesses and 136 exhibits in evidence, the State Engineer can find no reason for further hearings in this matter. The State Engineer makes the following additional findings based on the existing evidence and records in the Office of the State Engineer.

FINDINGS OF FACT

I.

The Tribe protested all of the applications that are the subject of this ruling, in part, on the grounds that under Nevada law these change applications cannot be approved because the original permits had not gone to beneficial use. In its Order, the Court noted the absence in the administrative record of support for the State Engineer's historic practice of granting applications for transfer of unperfected water rights.

During the hearings in 1990, the State Engineer took administrative notice of all of the records in the Office of the State Engineer.[4] Since the first act in 1905,[5] which outlined the mandatory procedure for making an appropriation of water by application to the State Engineer, the Nevada Legislature passed several laws which dealt with change applications. In 1907 the procedure for changing the place of diversion (also referred to as

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[4]Transcript, July 23, 1990, Vol. VI, p. 998.

[5]Act of March 1, 1905, ch. 46, 1905 Nev. Stat. 66.

point of diversion) or manner of use was enacted.[6] In 1913 the law was amended to allow changes in the place of use.[7] The 1939 Legislature enacted the comprehensive groundwater law which specifically made groundwater subject to the provisions of NRS chapter 533.[8]

The following are a few examples of applications to change which were granted shortly after each of the above mentioned amendments or additions to the law. In each case, the underlying water right had not yet been beneficially used.

The State Engineer in 1907 approved Application 558 to change the point of diversion of Permit 132 on Duck Creek. It is clear from the file that the water had never gone to beneficial use under Permit 132.[9]

On October 1, 1917, the State Engineer approved Permit 4418 which changed the place of use of a portion of the water under Permit 812. The purpose of this change application was to irrigate other land "of better quality and better susceptible of irrigation than the eighty acre tract sought to be excluded from said description."[10]

On January 31, 1944, the State Engineer granted Permit 10825 which changed the manner of use of Permit 8830 from irrigation to quasi-municipal use.[11] The proof of beneficial use was filed

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[6]Act of February 26, 1907, ch. 18, § 24, 1907 Nev. Stat. 35.

[7]Act of March 22, 1913, ch. 140, § 59, 1913 Nev. Stat. 208.

[8]Act of March 25, 1939, ch. 178, 1939 Nev. Stat. 274.

[9]Public records in the Office of the State Engineer under Permits 132 and 558.

[10]Public records in the Office of the State Engineer under Permits 812 and 4418.

[11]Public records in the Office of the State Engineer under Permits 8830 and 10825.

showing irrigation of 1 acre of land, however, water rights for irrigation of 40 acres of land were allowed to be changed.

Virtually every State Engineer since the law was enacted in 1907 has approved changes of permits that had not gone to beneficial use. Since each application must be considered on its own merits, past State Engineers must have determined that granting permits to change unperfected rights was consistent with the statutes and legislative intent. During the past 85 years, approximately 5,000 applications to change unperfected water rights have been approved. A few examples are warranted and are attached to this ruling as Appendix 1.

The State Engineer must show great deference to his predecessors' interpretation of Nevada water law. None of the permits previously granted were appealed on the basis that an unperfected right could not be changed. In fact, case law supports the long standing interpretation that a permit is "water already appropriated."[12]

The State Engineer finds that being able to change unperfected rights is the only practicable way that the water law can function. This can best be demonstrated by discussion and example. If the State Engineer grants a permit to drill a well at a particular location for irrigation and the farmer, after considerable investment, drills a dry hole, he cannot prove beneficial use. With the passage of time there may be subsequent filings, and there could be subsequent permits that allocated the perennial yield.[13] It would not be in the public interest to foreclose a permit holder

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[12] Application of Filippini, 66 Nev. 17, 202 P.2d 535 (1949), Town of Eureka v. Office of State Engineer of State of Nevada, 108 Nev. ___, 826 P.2d 948 (1992).

[13] Perennial yield is defined as the amount of water that is naturally recharged by precipitation that can be extracted each year over the long term from a groundwater basin without depleting water from storage.

who has demonstrated good faith and reasonable diligence[14] from changing the point of diversion in an effort to develop a well at a new location in an attempt to put the water to beneficial use in compliance with the statutes and maintain his priority.

The State Engineer must consider a permit as an appropriation if he is to effectively administer the provisions of NRS 533.370(3). As an example, when permits are granted to a municipality for specific points of diversion and place of use, it would be inconceivable that in the future there would be no necessity to change the point of diversion of any well or to expand the municipal boundaries. As a matter of course, municipal boundaries and refinements to distribution systems are constantly being modified. The inability of the municipality to change the point of diversion of water, not put to beneficial use, would limit the development of an efficient distribution system and result in the poor management of the limited water resource. Without the ability to change the place of use, the municipal boundaries could never expand. If the only way to obtain water for additional service areas was through new applications, any permits issued would be subject to prior rights. Therefore, the municipality would have permits junior to all other rights in the basin and could be subject to curtailment if the State Engineer was required to regulate the source based on priority.[15] The State Engineer finds that this would not be in the public interest since the municipality would be proceeding to show good faith and due diligence in putting the water to beneficial use under the permits earlier in time, but may have a necessity to expand its service area.

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[14]NRS 533.395(1).

[15]NRS 534.080(3) and 534.110(6).

II.

The State Engineer finds that a portion of the water under the original permits has been beneficially used. Evidence indicates 5,900 acre feet had been placed to beneficial use by the applicant for irrigation purposes prior to the hearings in 1990.[16]

III.

The Tribe in Petitioners' Opening Brief stated that "allowing changes in unused permit rights rewards speculation in water rights" and "entertaining applications to change the place of diversion, or place or manner of use of water prior to beneficial use encourages speculation."

The change application procedure set out in the Nevada water law[17] does not specifically address speculation. However, the State Engineer relies on NRS 533.395 in considering any change application since the permit to be changed must be in good standing at the time action is taken on the change application. Therefore, the State Engineer must find that the permittee exercised due diligence under the permit being changed or he must cancel the original permit, leaving no right to change. Permits or portions of permits have been cancelled for failure to show due diligence resulting in the denial of change applications.

The State Engineer finds that the requirements of good faith and reasonable diligence under NRS 533.395 provide adequate safeguards against speculation. Therefore, the State Engineer rejects the Tribe's contention that fear of speculation is a reason for disallowing changes of unperfected water rights.

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[16]Exhibit 9, Table 19, p. 119; Table 16, p. 97; and p. 92 model calibration based on 1988 withdrawals and Transcript, September 10 and 11, 1990, Vol. IX, p. 1750.

[17]NRS 533.325, 533.345.

IV.

The Tribe protested all of the subject applications, in part, on the grounds that it would "conflict with the prior and paramount reserved water rights of the Pyramid Lake Paiute Tribe to the groundwater underlying the Smoke Creek Desert portion of the Pyramid Lake Indian Reservation." A search of the State Engineer's records indicates that the Tribe has never filed any claims of reserved water rights in Smoke Creek Desert Groundwater Basin. The State Engineer has no knowledge as to whether any groundwater has been developed in the Smoke Creek Desert Groundwater Basin by the Tribe. Nevertheless, the purpose of this ruling, and the prior ruling on the inter-basin changes, is not intended to adjudicate the reserved rights of the Tribe. The State Engineer finds that if, in fact, the Tribe has reserved rights to groundwater in the Smoke Creek Desert Groundwater Basin, any appropriative rights granted by the State Engineer would be subject to and junior in priority to those reserved rights. Conversely if the Tribe is found not to have reserved rights to groundwater, the appropriative rights addressed in this ruling would only be subject to other rights that may exist at the time of approval.

The U.S. Geological Survey computerized flow model simulated a natural discharge in the Nevada portion of Honey Lake Valley to be 15,000 acre feet annually.[18] In addition, the flow model simulated a discharge (leakage) of 5,500 acre feet to Smoke Creek Desert.[19] Additional evidence gathered by the applicant after the U.S. Geological Survey had completed its data collection phase indicates that either the leakage does not exist or is over

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[18]Exhibit 9, p. 120 and Table 19.

[19]Exhibit 9, p. 92 and Table 19.

estimated.[20] Therefore, the State Engineer finds, as he found in Ruling No. 3787, that in order to be conservative, a lesser amount of water could be exported than could be developed and used within the basin, in order to not interfere with any rights in Smoke Creek Desert if, in fact, any exist.

V.

The Court issued the remand Order on August 31, 1992, in part, to have the State Engineer make additional findings on public interest. The Court made an observation that the Nevada Legislature has not offered any guidance on this issue.[21] However, the Supreme Court has distinguished the interest of the public at large versus private interests.[22] The Court also made a correct observation in noting that public interest is a matter within the discretion of the State Engineer.[23] Although Nevada water law does not define public interest, public interest considerations are found throughout NRS chapters 533, 534 and 540.

The water of all sources above or beneath the ground belongs to the public.[24] Subject to existing rights, all such water may be appropriated for beneficial use as provided in this chapter and not otherwise.[25] The beneficial use of water is hereby declared a public use...[26]

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[20]Exhibits 53, 55 and 58, testimony of William E. Nork, transcript, July 21, 1990, Vol. V, pp. 910 to 930.

[21]Remand Order p. 14 line 23-24.

[22]Primm v. Reno, 70 Nev. 7, 252 P.2d 835 (1953).

[23]Remand Order p. 15 line 4-8.

[24]NRS 533.025.

[25]NRS 533.030(1).

[26]NRS 533.050.

The Legislature has determined that it is the policy of the State of Nevada to continue to recognize the critical nature of the state's limited water resources. It is acknowledged that many of the state's surface water resources are committed to existing uses under existing water rights, and that in many areas of the state the available groundwater supplies have been appropriated for current uses. It is the policy of the State of Nevada to recognize and provide for the protection of these existing water rights. It is also the policy of the state to encourage efficient and non-wasteful use of these limited supplies.[27]

The Legislature further recognizes the relationship between the critical nature of the state's limited water resources and the increasing demands placed on these resources as the population of the state continues to grow.[28]

The Legislature has recognized the use of water for wildlife including the establishment and maintenance of wetlands and fisheries.[29] Springs on which wildlife customarily subsist must be protected.[30] The legislature has encouraged the use of effluent where such use is not contrary to public health, safety or welfare.[31] Water for recreational purposes from either underground or surface sources is declared to be a beneficial use.[32] Livestock

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[27]NRS 540.011(1).

[28]NRS 540.011(2).

[29]NRS 533.023.

[30]NRS 533.367.

[31]NRS 533.024.

[32]NRS 533.030(2).

watering is declared to be a beneficial use[33] and springs and streams on which livestock subsist must be protected.[34]

The Nevada Legislature addresses not allowing the waste of water and allowing rotation amongst users.[35] The law prohibits the pollution and contamination of underground water and directs the State Engineer to promulgate rules to prevent such.[36] The law prohibits the diversion of water when the necessity for its use no longer exists.[37] The State Engineer, therefore, finds that the Nevada Legislature has provided substantial guidance as to what it determines to be in the public interest.

VI.

From the State Engineer's review of the Nevada water law as it identifies the public interest, the State Engineer finds that the following principles should serve as guidelines in his determination of what constitutes "the public interest" within the meaning of NRS 533.370.

1. An appropriation must be for a beneficial use.[38]

2. The applicant must demonstrate the amount, source and purpose of the appropriation.[39]

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[33]NRS 533.490(1).

[34]NRS 533.495.

[35]NRS 533.075 and 533.530(1).

[36]NRS 534.020(2).

[37]NRS 533.045.

[38]NRS 533.030(1).

[39]NRS 533.335.

3. If the appropriation is for municipal supply, the applicant must demonstrate the approximate number of persons to be served and the approximate future requirements.[40]

4. The right to divert ceases when the necessity for the use of the water does not exist.[41]

5. The applicant must demonstrate the magnitude of the use of water, such as the number of acres irrigated, the use to which generated hydroelectric power will be applied, or the number of animals to be watered.[42]

6. In considering extensions of time to apply water to beneficial use, the State Engineer must determine the number of parcels and commercial or residential units which are contained or planned in the area to be developed, economic conditions which affect the ability of the developer to complete application of the water to beneficial use, and the period contemplated for completion in a development project approved by local governments or in a planned unit development.[43]

7. For large appropriations, the State Engineer must consider whether the applicant has the financial capability to develop the water and place it to beneficial use.[44]

8. The State Engineer may cooperate with federal authorities in monitoring the development and use of the water resources of the State.[45]

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[40]NRS 533.340(3).

[41]NRS 533.045.

[42]NRS 533.340.

[43]NRS 533.380(4).

[44]NRS 533.375.

[45]NRS 532.170(1).

9. He may also cooperate with California authorities in monitoring the future needs and uses of water in the Lake Tahoe area and to study ways of developing water supplies so that the development of the area will not be impeded.[46]

10. Rotation in use is authorized to bring about a more economical use of supplies.[47]

11. The State Engineer may determine whether there is over pumping of groundwater and refuse to issue permits if there is no unappropriated water available.[48]

12. He may determine what is a reasonable lowering of the static water level in an area after taking into account the economics of pumping water for the general type of crops growing and the effect of water use on the economy of the area in general.[49]

13. Within an area that has been designated, the State Engineer may monitor and regulate the water supply.[50]

VII.

The State Engineer finds that the prior appropriation doctrine, which is the law in Nevada,[51] not only promotes the beneficial use of water, but prohibits waste and encourages the highest and best use of water by allowing changes in the place and

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[46]NRS 532.180.

[47]NRS 533.075.

[48]NRS 534.110(3).

[49]NRS 534.110(4).

[50]NRS 534.110(6).

[51]The riparian rights doctrine was repudiated in Nevada in 1885 and replaced with doctrine of prior appropriation. Jones v. Adams, 19 Nev. 78, 6 P. 442 (1885).

manner of use.[52] The court made an astute observation in the remand Order in that the demand for water in Washoe County, particularly in the Reno-Sparks area is great and nearly all economically available surface water in the area has been allocated.[53] The State Engineer finds that it is in the public interest to facilitate augmentation of the Reno-Sparks water supply as well as to augment the supply in some of the valleys north of Reno-Sparks that have declining water tables, so long as the other public interest values are not compromised or can be mitigated.

VIII.

The Tribe in Petitioners' Opening Brief brought forth a concern that plant life and wildlife may be impaired as a result of pumping and export of water from Honey Lake Valley.[54]

The State Engineer finds that there was substantial evidence presented to indicate that wildlife would not be impacted as a result of these proposed changes. Testimony was received that showed the high mountain springs used by wildlife to the south and east of the proposed well field were not connected to the alluvial aquifer system.[55] Any lowering of the water table and resulting impact or dying out of phreatophytes, such as greasewood, would result in xerophytic species, such as rabbitbrush and sagebrush

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[52]NRS 533.040, 533.325 and 533.345.

[53]Remand Order p. 1 line 25 through p. 2 line 1.

[54]Tribe's opening brief dated November 25, 1991, p. 20.

[55]Testimony of Don Mahin, Transcript, July 24, 1990, Vol. VII., p. 1317-1319. Also explanation of Elinor Handman co-author of Exhibit 9, Transcript, June 21, 1990, Vol. I. p. 63.

taking the vacated space.[56] Testimony was received that large game animals rely on xerophytes and not phreatophytes for forage.[57]

Therefore, nothing in this record demonstrates that the inter-basin change applications, if approved, would prove detrimental to wildlife and plant life.

IX.

The Tribe in Petitioners' Opening Brief brought forth a concern that wetlands may be impaired as a result of pumping and export of water from Honey Lake Valley. In the matter of these change applications, the State Engineer finds that there is evidence that there will be some wetlands loss in the near vicinity of Fish Springs[58] but the evidence further shows that no loss of wetlands will occur further north at High Rock Springs and Amedee Springs since these are fed from thermal sources and are not part of the hydrologic system near the proposed well field.

X.

The Sierra Army Depot protested a portion of the subject applications in part on the grounds that soils in the southern portion of the depot are described as "blow sand" and the northern part are silts from the old lake bottom. They claim that under a scenario of exportation of 15,000 acre feet, very little groundwater would remain to support evapotranspiration by native plants. The Sierra Army Depot presented no evidence that the playa, or alkalai flat, would be substantially enlarged by the

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[56]Testimony of Charles Salisbury, Transcript, September 10 & 11, 1990, Vol. IX, p. 1734, and testimony of Ed Evatz, Transcript, September 10 & 11, 1990, Vol. IX., p. 1687-1688, 1714-15.

[57]Testimony of Frank Hall, Transcript, July 20, 1990, Vol. IV., p. 750-751.

[58]The wetlands at Fish Springs are depicted on Plate 4, Exhibit 9 and they lie in an area of maximum drawdown caused by pumping as depicted in Exhibit 9 Fig. 30.

pumpage in the Nevada portion of Honey Lake Valley or that a dust hazard presently exists on the base.

There exists a small playa (less than 10 square miles) directly north of the proposed well field.[59] There presently exists Honey Lake, that is often dry, directly west and adjacent to Sierra Army Depot which consists of over 100 square miles.[59] This situation existed prior to any pumping in either state. The State Engineer finds no evidence that the approval of the export of water from the Nevada portion of Honey Lake Valley, 10 miles away from the depot, will aggravate whatever natural dust hazard now exists, nor is there any evidence that this hazard will prove detrimental to the public interest.

XI.

The Sierra Army Depot protested a portion of the applications on the grounds that their potable wells are 8.5 miles from the proposed municipal well field. The nearest point of diversion of the proposed well field is approximately 11 miles from the Sierra Army Depot potable wells.[59] There was no evidence offered by Sierra Army Depot as to how much water they pump or from what depth the water is pumped. Nevada law allows for a reasonable lowering of the water table in allowing appropriations and changes of groundwater.[60]

The U.S. Geological Survey computerized simulation[61] of pumping 15,000 acre feet per year out of the basin determined that less than 10 feet of draw down would occur at the Sierra Army Depot. The State Engineer finds that this is not an unreasonable lowering of the water table.

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[59]Exhibit 9, plate 1.

[60]NRS 534.110(4).

[61]Exhibit 9, Figure 30.

XII.

The Sierra Army Depot protested a portion of the subject applications, in part, on the grounds that:

> (T)he mission at Sierra Army Depot is of a strategic nature and disruption of depot activities could seriously impair the ability of the U.S. Army to support the defense of the United States of America.[62]

As a result of previous changes, the proposed municipal well field is 11 miles from the Sierra Army Depot potable wells. The State Engineer finds that no evidence was presented that this pumping or the export of water would have an impact on the mission of the Sierra Army Depot.

XIII.

The Tribe protested the subject applications, in part, on the grounds that it "would threaten to prove detrimental to the public interest if the implementation of the Honey Lake Water Importation Project is not coordinated and integrated with the outcome of the Truckee River Settlement negotiations..."

The State Engineer finds that there is no evidence in the record that the water pumped from Honey Lake Valley could not or will not be coordinated and integrated with the negotiated settlement on the Truckee River. Other findings in this ruling and the original Ruling No. 3787, however, may prohibit the use of water in the Westpac service area if the sewage would return to the Truckee River.[63]

XIV.

The Tribe and the Cities of Reno and Sparks protested the importation of water into the Truckee Meadows because it would

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[62]Public record in the Office of the State Engineer.

[63]Truckee River water serves the Stead area and partially serves the Silver Lake Water Company both in Lemmon Valley. Presumably the applicant could serve these areas and replace the Truckee River water, freeing up that water for use elsewhere.

impair the endangered cui-ui and threatened Lahontan cutthroat trout, and/or cause the Reno-Sparks Wastewater Treatment Plant to violate its discharge permit. The State Engineer finds that it is not in the public interest to impair the endangered and threatened species at Pyramid Lake or to degrade the quality of the Truckee River. Therefore, the State Engineer finds in this ruling, as he did in the original Ruling No. 3787, that any export of water out of Honey Lake Valley cannot violate any discharge standards or any other standards imposed by any other state, local or federal agency.

XV.

Lassen County protested, in part, on the grounds that it would "increase the potential for impairment of existing rights in California by increasing extractions in Nevada." The State Engineer finds that there was no evidence or testimony offered by Lassen County as to how much water is pumped in California, where the rights are located or from what depths water is pumped. The State Engineer is unaware of any attempt by California or Lassen County to regulate pumping in the California portion of Honey Lake Valley.

Nevada law allows for a reasonable lowering of the water table.[64] The evidence shows that there will be a cone of depression developed around the proposed well field and the western edge of this cone of depression extends into California.[65] There is nothing in the records to indicate that any groundwater rights or domestic wells are within the 10 to 49 feet of drawdown in California. The State Engineer finds that the drawdown in

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[64]NRS 534.110(4).

[65]The U.S. Geological Survey computerized simulation (Exhibit 9, Fig. 30) of pumping 15,000 acre feet annually will cause a few square miles in California to experience 10 feet to 49 feet of drawdown and the remainder will experience less than 10 feet of drawdown.

California is not unreasonable and further finds that pumping from the Nevada portion of Honey Lake Valley will not interfere with any existing rights in California.

XVI.

Given the present discharge quality criteria and wastewater treatment scenario, the State Engineer finds that it would threaten to prove to be detrimental to the public interest to allow this water to be used directly in the Westpac service area as long as the wastewater passes through the Reno-Sparks Wastewater Treatment Plant and discharges to the Truckee River. The State Engineer further finds that if the water is used outside the Westpac service area, or if the wastewater is no longer discharged to the Truckee River or if the treatment plant can treat the water to whatever standard exists then there is no threat to the public interest by the transfer of these water rights. The State Engineer realizes that the Division of Environmental Protection and the U.S. Environmental Protection Agency have the authority to set water quality standards and discharge criteria and relies on those agencies to enforce them.

XVII.

The Petitioners contend in their brief[66] that there are better alternatives to augmenting the water supply for the Truckee Meadows, the North Valleys and Spanish Springs. The State Engineer cannot evaluate all possible alternatives to any particular water project. The applicant, Washoe County, presumably already looked at the various alternatives. The State Engineer finds that he must act on the applications before him and is not in a position to interfere with the decisions and responsibilities of Washoe County. The State Engineer can only look at the applicant's ability to

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[66]Petitioners' Opening Brief p. 21.

finance the project[67] and finds it has the capability to put the water to beneficial use.

CONCLUSIONS

I.

The State Engineer has jurisdiction of the parties and the subject matter of this action.[68]

II.

The State Engineer is prohibited from approving change applications when:[69]

1. The proposed change conflicts with existing rights, or
2. The proposed change threatens to prove detrimental to the public interest.

III.

Substantial evidence in the record supports the conclusion that at least 13,000 acre feet annually can be exported out of Honey Lake Basin without interfering with existing rights.

IV.

The State Engineer concludes that even though there will be minimal wetland loss, there is an overriding public interest value to put this water to its highest and best use by allowing for the export of 13,000 acre feet annually for municipal use.

V.

The State Engineer concludes that it would threaten to prove detrimental to the public interest to allow the water to be used in such a manner as to violate any water quality or discharge standards of water discharging into the Truckee River or to further impair any threatened or endangered species.

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[67]NRS 533.375.

[68]NRS chapter 533 and 534 and Remand Order from Second Judicial District Court, dated August 31, 1992.

[69]NRS chapter 533.370(3).

VI.

The State Engineer concludes that at least 5,900 acre feet has gone to beneficial use under the base permits prior to the hearings of 1990.

RULING

All findings and conclusions in Ruling No. 3787 are hereby incorporated into this ruling except that nothing in these rulings shall be construed to be an adjudication of the reserved rights of the Pyramid Lake Paiute Tribe of Indians. The protests to Applications 53407, 53409 through 53420, inclusive, 53422 through 53428, inclusive, 53432, 53433 and 54134 through 54138, inclusive, are hereby overruled and said applications are hereby approved subject to:

1. Payment of statutory fees.
2. Prior rights including any reserved rights if they are found to exist.
3. A monitoring plan to be approved by the State Engineer which will verify and refine the computerized simulation of pumping and determine drawdowns, water quality changes and to what extent leakage exists from the valley to either Smoke Creek Desert or Pyramid Lake Valley.
4. All effluent discharge standards and any other state, federal or local permits that may be required.

The total combined duty of all of the above permits shall be limited to 13,000 acre feet annually subject to a final judicial determination as to whether unperfected water rights may be changed. If the result of that determination is that you can not change unperfected water rights, the above permits shall be limited

to 5,900 acre feet annually. Totalizing meters shall be installed on all wells and accurate records of diversion shall be maintained and submitted to the State Engineer on a quarterly basis.

Respectfully submitted,

R. MICHAEL TURNIPSEED, P.E.
State Engineer

RMT/bk

Dated this 9th day of October, 1992.

PERMITS ISSUED CHANGING APPROPRIATED WATER IN WHICH BENEFICIAL USE HAD NOT BEEN MADE

APPLICATION TO CHANGE NUMBER	PERMIT DATE	PERMIT # BEING CHANGED	CHANGE OF	STATE ENGINEER
558	10/02/07	132	POD	FRANK NICHOLAS
1787	11/15/10	1475	POD	EMMET BOYLE
4418	10/30/17	812	POU	J.G. SCRUGHAM
7142	11/26/24	7066	POD	ROBERT ALLEN
8488	08/23/28	7776	POU	GEORGE W. MALONE
9843	10/30/35	5719	POD,POU	ALFRED MERRITT SMITH
10825	01/31/44	8830	POD,POU,MOU	ALFRED MERRITT SMITH
14105	01/07/53	10999	POD,POU	HUGH A. SHAMBERGER
19425	02/13/63	1855	POU	ELMO J. DERICCO
21930	02/03/65	19254	POD,POU	GEORGE W. HENNEN
24185	03/19/69	22948	POD	ROLAND D. WESTERGARD
27133	03/16/73	25639	POD,MOU	ROLAND D. WESTERGARD
29421	02/26/76	27383	MOU	ROLAND D. WESTERGARD
40505	08/15/80	29242	POD	WILLIAM NEWMAN
44651	09/19/86	42575	MOU	PETER G. MORROS
53834	07/02/90	36361	POD,POU,MOU	R. MICHAEL TURNIPSEED

MOU = MANNER OF USE, POU = PLACE OF USE, POD = POINT OF DIVERSION

APPENDIX 1