

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

IN THE MATTER OF CHANGE)
APPLICATIONS 66334 - 66339,)
INCLUSIVE, CHANGE APPLICATIONS)
66976 - 66990, INCLUSIVE, AND)
CHANGE APPLICATIONS 66992 -)
66997, INCLUSIVE, AND 66999 FILED)
TO APPROPRIATE THE UNDERGROUND)
WATERS WITHIN LOWER MEADOW VALLEY)
WASH HYDROGRAPHIC BASIN (205),)
LINCOLN COUNTY, NEVADA.)

RULING

#5167

GENERAL

I.

Application 66334 was filed on May 5, 2000, by Mildred M. Breedlove c/o Robert C. & Vivian Lewis to change the place of use of 1.94 cubic feet per second (cfs), not to exceed 180 acre-feet annually (afa), a portion of the water previously appropriated under Permit 17749, Certificate 6390. The proposed manner of use is for irrigation and domestic purposes within the SW $\frac{1}{4}$ of Section 21, E $\frac{1}{2}$ of Section 22, E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 27, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 28, NE $\frac{1}{4}$ of Section 29, all within T.14S., R.66E., M.D.B.&M. The point of diversion is described as being located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, T.12S., R.65E., M.D.B.&M.¹ Change Application 66997 proposes to change point of diversion, place and manner of use of the water requested to be changed under Application 66334.

Application 66335 was filed on May 5, 2000, by C.P. Breedlove, Jr. c/o Robert C. & Vivian Lewis to change the place of use of 1.93 cfs (135 afa), a portion of the water previously appropriated under Permit 19153, Certificate 6391. The proposed manner of use is for irrigation and domestic purposes within the same place of use as identified under Application 66334. The point of diversion is described as being located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of

¹ Exhibit No. 2, public administrative hearing before the State Engineer, February 5-6, 2002. Hereinafter exhibits will be referred to solely by their exhibit number and the Transcript by page number.

Section 12, T.12S., R.65E., M.D.B.&M.² Change Application 66996 proposes to change the point of diversion, place and manner of use of the water requested to be changed under Application 66335.

Application 66336 was filed on May 5, 2000, by Donald Lee Bradshaw c/o Robert C. & Vivian Lewis to change the point of diversion and place of use of 4.19 cfs (802.855 afa), a portion of the water previously appropriated under Permit 20212, Certificate 6030. The proposed manner of use is for irrigation and domestic purposes within the same place of use as identified under Application 66334. The proposed point of diversion is described as being located within NE¼ NW¼ of Section 13, T.12S., R.65E., M.D.B.&M.³ Change Application 66998 proposes to change point of diversion, place and manner of use of the water requested to be changed under Application 66336.

Application 66337 was filed on May 5, 2000, by Otelia Henrie c/o Robert C. & Vivian Lewis to change the point of diversion and place of use of 2.47 cfs (460.95 afa), a portion of the water previously appropriated under Permit 21443, Certificate 7304. The proposed manner of use is for irrigation and domestic purposes within the same place of use as identified under Application 66334. The proposed point of diversion is described as being located within NE¼ NW¼ of Section 13, T.12S., R.65E., M.D.B.&M.⁴ Change Application 66994 proposes to change point of diversion, place and manner of use of the water requested to be changed under Application 66337.

Application 66338 was filed on May 5, 2000, by Mark, Delbert & Theron Stewart c/o Robert C. & Vivian Lewis to change the point of diversion, place of use and manner of use of 0.97 cfs(192 afa), a portion of the water previously appropriated under Permit 29606, Certificate 10964. The proposed manner of use is for irrigation and domestic purposes within the same place of use as

² Exhibit No. 3.

³ Exhibit No. 4.

⁴ Exhibit No. 5.

identified under Application 66334. The proposed point of diversion is described as being located within NE¼ NW¼ of Section 13, T.12S., R.65E., M.D.B.&M.⁵ Change Application 66995 proposes to change point of diversion, place and manner of use of the water requested to be changed under Application 66338.

Application 66339 was filed on May 5, 2000, by Jensen's Palisade, Inc., c/o Robert C. & Vivian Lewis to change the point of diversion and place of use of 3.73 cfs (1,104 afa), a portion of the water previously appropriated under Permit 31098, Certificate 9840. The proposed manner of use is for irrigation and domestic purposes within the same place of use as that identified under Application 66334. The proposed point of diversion is described as being located within NE¼ NW¼ of Section 13, T.12S., R.65E., M.D.B.&M.⁶ Change Application 66992 proposes to change the place and manner of use of 1.865 cfs (552 afa), a portion of the water requested to be changed under Application 66339, and Application 66999 proposes to change the point of diversion, place or manner of use of 1.865 cfs (552 afa), a portion of the water requested to be changed under Application 66339.

II.

Applications 66334 through 66339, inclusive, were timely protested by Roger Dieleman on the grounds that the existing permits had not been used beneficially for five or more consecutive years, and that the applicants are attempting to sever the underground water from the surface water.⁷

III.

Applications 66334 through 66339, inclusive, were timely protested by U.S.D.I. Bureau of Land Management on the grounds that the applications were not going to be used for the irrigation and domestic purposes listed, but to supply industrial water to a

⁵ Exhibit No. 6.

⁶ Exhibit No. 7.

⁷ Exhibit No. 34.

power plant, that the interdependence of surface waters in Meadow Valley Wash to underground aquifers is not known at the source from which the water will be diverted, that the use of water may have a cumulative draw down, and there are perhaps unknown significant impacts to surface water resources and critical habitat of threatened and endangered species.⁸

IV.

Application 66976 was filed on December 4, 2000, by the Moapa Valley Water District ("MVWD") to change the point of diversion, place of use and manner of use of 0.40 cfs (192.5 afa) of the water previously appropriated under Permit 27904, Certificate 9027. The proposed manner of use is for municipal and domestic purposes within Sections 8, 9, 13-17, 21-26, 35, 36, T.14S., R.65E., Section 1, T.15S., R.65E., Sections 15, 16, 19-23, 26-36, T.14S., R.66E., Sections 1-6, 9, 12, T.15S., R.66E., Sections 6-8, 14-17, 21-28, 34-36, T.15S., R.67E., Section 31, T.15S., R.68E., Sections 1-3, 10-14, 24, 25, T.16S., R.67E., and Sections 6, 7, 17-20, 30, 31, T.16S., R.68E., M.D.B.&M., the service area of the Moapa Valley Water District. The proposed point of diversion is described as Well #1 and as being located within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.12S., R.65E., M.D.B.&M.⁹

Application 66977 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 3.0 cfs (275 afa) of the water previously appropriated under Permit 56477. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #1 and as being located within NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.12S., R.65E., M.D.B.&M.¹⁰

Application 66978 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use

⁸ Exhibit No. 33.

⁹ Exhibit No. 8.

¹⁰ Exhibit No. 9.

of 1.025 cfs (600 afa) of the water previously appropriated under Permit 56478, Certificate 15552. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #2 and as being located within SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 1, T.12S., R.65E., M.D.B.&M.¹¹

Application 66979 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.0975 cfs (70.587 afa) of the water previously appropriated under Permit 65137. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #3 and as being located within NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹²

Application 66980 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.17 cfs (400 afa) of the water previously appropriated under Permit 56479, Certificate 15553. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #3 and as being located within NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹³

Application 66981 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 5.0 cfs (1,580 afa) of the water previously appropriated under Permit 56480, Certificate 15848. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #4 and as being located within NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁴

¹¹ Exhibit No. 10.

¹² Exhibit No. 11.

¹³ Exhibit No. 12.

¹⁴ Exhibit No. 13.

Application 66982 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.613 cfs (270 afa) of the water previously appropriated under Permit 56481, Certificate 15554. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #5 and as being located within SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁵

Application 66983 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.36 cfs (135 afa) of the water previously appropriated under Permit 56486. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #5 and as being located within SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁶

Application 66984 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.305 cfs (44.25 afa) of the water previously appropriated under Permit 56489, Certificate 15555. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #5 and as being located within SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁷

Application 66985 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.1674 cfs (8.25 afa) of the water previously appropriated under Permit 65136. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is

¹⁵ Exhibit No. 14.

¹⁶ Exhibit No. 15.

¹⁷ Exhibit No. 16.

described as Well #5 and as being located within SW¹/₄ NW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁸

Application 66986 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.20 cfs (25 afa) of the water previously appropriated under Permit 65138. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #5 and as being located within SW¹/₄ NW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.¹⁹

Application 66987 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.0 cfs (375 afa) of the water previously appropriated under Permit 56485. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #6 and as being located within NW¹/₄ SW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.²⁰

Application 66988 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.40 cfs (125 afa) of the water previously appropriated under Permit 65139. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #6 and as being located within NW¹/₄ SW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.²¹

Application 66989 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.83 cfs (135 afa) of the water previously appropriated under Permit 56487. The proposed manner of use is for municipal and

¹⁸ Exhibit No. 17.

¹⁹ Exhibit No. 18.

²⁰ Exhibit No. 19.

²¹ Exhibit No. 20.

domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #7 and as being located within SW¹/₄ SW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.²²

Application 66990 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.97 cfs (300 afa) of the water previously appropriated under Permit 56677, Certificate 15556. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #7 and as being located within SW¹/₄ SW¹/₄ of Section 12, T.12S., R.65E., M.D.B.&M.²³

Application 66992 was filed on December 4, 2000, by the MVWD to change the place of use and manner of use of 1.865 cfs (552 afa), a portion of the water requested to be changed under Application 66339, which changed the point of diversion and place of use of a portion of the water previously appropriated under Permit 31098, Certificate 9840. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #8 and as being located within NE¹/₄ NW¹/₄ of Section 13, T.12S., R.65E., M.D.B.&M.²⁴

Application 66993 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 2.0 cfs (450 afa) of the water previously appropriated under Permit 56482. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #8 and as being located within NE¹/₄ NW¹/₄ of Section 13, T.12S., R.65E., M.D.B.&M.²⁵

²² Exhibit No. 21.

²³ Exhibit No. 22.

²⁴ Exhibit No. 24.

²⁵ Exhibit No. 25.

Application 66994 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 2.47 cfs (460.95 afa) of the water requested to be changed under Application 66337, which changed the point of diversion and place of use of a portion of the water previously appropriated under Permit 21443, Certificate 7304. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #9 and as being located within SW¹/₄ NW¹/₄ of Section 13, T.12S., R.65E., M.D.B.&M.²⁶

Application 66995 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 0.97 cfs (192 afa) of the water requested to be changed under Application 66338, which changed the point of diversion and place and manner of use of a portion of the water previously appropriated under Permit 29606, Certificate 10964. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #10 and as being located within NW¹/₄ NW¹/₄ of Section 25, T.12S., R.65E., M.D.B.&M.²⁷

Application 66996 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.93 cfs (135 afa) of the water requested to be changed under Application 66335, which changed the place of use of a portion of the water previously appropriated under Permit 19153, Certificate 6391. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #10 and as being located within NW¹/₄ NW¹/₄ of Section 25, T.12S., R.65E., M.D.B.&M.²⁸

²⁶ Exhibit No. 26.

²⁷ Exhibit No. 27.

²⁸ Exhibit No. 28.

Application 66997 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.94 cfs (180 afa) of the water requested to be changed under Application 66334, which changed the place of use of a portion of the water previously appropriated under Permit 17749, Certificate 6390. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #10 and as being located within NW¼ NW¼ of Section 25, T.12S., R.65E., M.D.B.&M.²⁹

Application 66998 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 4.19 cfs (802.855 afa) of the water requested to be changed under Application 66336, which changed the point of diversion and place of use of a portion of the water previously appropriated under Permit 20212, Certificate 6030. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #11 and as being located within SW¼ NW¼ of Section 25, T.12S., R.65E., M.D.B.&M.³⁰

Application 66999 was filed on December 4, 2000, by the MVWD to change the point of diversion, place of use and manner of use of 1.865 cfs (552 afa), a portion of the water requested to be changed under Application 66339, which changed the point of diversion and place of use of a portion of the water previously appropriated under Permit 31098, Certificate 9840. The proposed manner of use is for municipal and domestic purposes within the same service area identified under Application 66976. The proposed point of diversion is described as Well #12 and as being located within SW¼ SW¼ of Section 25, T.12S., R.65E., M.D.B.&M.³¹

²⁹ Exhibit No. 29.

³⁰ Exhibit No. 30.

³¹ Exhibit No. 31.

V.

Applications 66976 through 66999, inclusive, were timely protested by Roger Dieleman on the grounds that the existing permits had not been used beneficially for five or more consecutive years, the water will not be used on the lands to which the water rights are presently appurtenant, the State must be cautious to preserve water for the beneficial use of landowners, both now and in the future, and the applications are changing the use from irrigation to municipal.³²

VI.

Applications 66976 through 66999, inclusive, were timely protested by U.S. Bureau of Land Management and the U.S. National Park Service on various grounds, including:

- the use of the water together with other use of the deep carbonate water sources in the region may have a cumulative draw down effect with ensuing unknown significant impacts to critical habitat of threatened and endangered species;

- the amount of the cumulative draw down of this and other wells proposed for the deep carbonate aquifer needs further investigation, beyond just modeling;

- studies on springs link them to deep carbonate water sources;

- storage in nearby aquifers could be depleted and water levels in those aquifers could decline;

- the committed resources in the Lower Meadow Valley Wash hydrographic basin in the amount 29,680 acre-feet far exceed the estimated perennial yield of 5,000 acre-feet, which resulted in the State Engineer designating the basin on November 24, 1982, for additional administration;

- Federal water rights senior in priority could be impacted and are entitled to protection;

- State Engineer's Ruling No. 2793 determined that in a basin

³² Exhibit No. 36.

that is already over-appropriated, further consumptive use would conflict with existing rights and threaten to prove detrimental to the public interest;

- allowing the MVWD to change any more than the historic consumptive use of the underlying irrigation water right would constitute, in effect, a new appropriation in an over-appropriated basin, and power plant use represents a 100% consumptive use with no return flow to the underlying aquifer.³³

At the administrative hearing, the State Engineer was presented with a Stipulation between the applicants and the Federal agencies that contemplated that if the Stipulation is accepted the protests are withdrawn.³⁴

The Stipulation indicates that the MVWD's applications are for a combined maximum duty of 4,550 acre-feet annually, that the MVWD asserts that withdrawal of 4,550 acre-feet annually will not have an adverse impact on the water rights and resources of concern to the Federal Bureaus, that the MVWD proposes to monitor the groundwater withdrawals and if no adverse impacts are detected, increase the withdrawal from the proposed wells from an initial amount of 4,000 acre-feet annually up to a total of 4,550 acre-feet per year. Additionally, that the MVWD has agreed to offset any difference in the current duty of existing water rights to be changed and the natural historic consumptive use by retiring or otherwise relinquishing existing ground and/or surface water rights in Meadow Valley Wash upstream of Rox. The Federal Bureaus assert in the Stipulation that the proposed groundwater withdrawals from Meadow Valley Wash in the vicinity of Rox pose a risk of adversely impacting federal rights and resources, including depletion of the alluvial aquifer in the vicinity of the proposed wells, degradation of wetlands adjacent to the proposed wells, loss of habitat for species listed under the Endangered

³³ Exhibit Nos. 37 and 38.

³⁴ Exhibit No. 41.

Species Act and impacts to springs at Lake Mead National Recreation Area. The Federal Bureaus further assert that the maximum amount that can be permitted under the change applications is that amount equal to the consumptive use of the existing rights.

The Stipulation contemplates the inclusion of a Monitoring, Management and Mitigation Plan for Future Permitted Groundwater Development in Meadow Valley Wash³⁵ into the terms and conditions of any permits issued by the State Engineer.

The State Engineer finds the Stipulation is between the applicants and the Federal agencies, and is not binding on him, but will be respected and considered in this decision.

VII.

Applications 66976 through 66999, inclusive were timely protested by the Southern Nevada Water Authority; however, those protests were withdrawn by letter dated January 29, 2002.³⁶

VIII.

Applications 66976 through 66999, inclusive were timely protested by the Moapa Band of Paiute Indians; however, those protests were withdrawn by letter dated February 4, 2002.³⁷

IX.

Pursuant to the provision of NRS § 533.363, the Board of Commissioners of Lincoln County recommended the State Engineer deny the applications based on its belief that the exportation of a major block of water from Lincoln County to Clark County would be a significant detriment to Lincoln County and its residents by preventing the reuse of irrigation water for other beneficial uses and removing the possibility of future development of groundwater within the Lincoln County portion of Lower Meadow Valley Wash.

³⁵ Exhibit A to Stipulation.

³⁶ File No. 66976, official records in the Office of the State Engineer.

³⁷ File No. 66976, official records in the Office of the State Engineer.

Further, concern was expressed as to their effect on the tax base and water resources of Lincoln County.³⁸

X.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held with regard to the protested applications on February 5-6, 2002, at Carson City, Nevada, before representatives of the Office of the State Engineer.³⁹

FINDINGS OF FACT

I.

In the Notice of Hearing,⁴⁰ the State Engineer instructed the applicants to address whether any of the water rights requested to be changed were supplemental to any surface water rights. At the public administrative hearing, it was noted that some of the water rights requested to be changed are not only supplemental to surface water rights, but also some are supplemental to other groundwater rights.

The applicants submitted two exhibits at the public administrative hearing,⁴¹ that delineated the supplemental and non-supplemental water rights sought to be changed. Those exhibits were revised after the hearing⁴² and submitted along with letters dated March 7, 2002, and April 24, 2002,⁴³ in which 4,580 acre-feet annually was established as the quantity of non-supplemental ground water sought to be changed. The State Engineer agrees with the applicants' conclusions as to supplemental and non-supplemental water rights, and finds that the total quantity of

³⁸ Exhibit No. 32.

³⁹ Exhibit No. 1 and Transcript, public administrative hearing before the State Engineer, February 5-6, 2002.

⁴⁰ Exhibit No. 1.

⁴¹ Exhibit Nos. 47 and 48.

⁴² Amended Exhibit Nos. 47 and 48.

⁴³ File No. 66334, official records in the Office of the State Engineer.

non-supplemental water rights sought to be changed equals 4,580 acre-feet annually under the applications before him.

II.

These various applications ultimately request a change in manner of use from irrigation to municipal use within the service area of the Moapa Valley Water District. In this case, that municipal use is initially to serve a power plant for 25 years.⁴⁴ The use of water by the power plant will be a totally consumptive use thereby eliminating any secondary recharge to the groundwater basin that would have taken place had the water been used for irrigation. The State Engineer finds the total quantity appropriated under the water rights requested to be changed is not available, but rather, the loss of that secondary recharge must be accounted for under the applications.

A witness for the applicants, who was qualified as a hydrologist and not an irrigation expert, testified that if approximately 950 acre-feet were withdrawn from the 4,580 acre-feet of water rights requested to be changed, and that 950 acre-feet was then relinquished to the system it would cover any secondary recharge that would have occurred under the prior irrigation use.⁴⁵ By letter dated March 7, 2002, legal counsel for the applicants indicated said expert indicated that secondary recharge would range between 460 and 920 acre-feet annually. The 950 acre-feet amounts to approximately a 21% return to the groundwater system meaning a consumptive use of 3,630 acre-feet annually of the 4,580 acre-feet requested for change.

In the analysis of water demand, the State Engineer is using a figure of 30% for secondary recharge from irrigation applications. This figure is derived by taking a consumptive use value of 3.5 acre-feet per acre application rate at 5.0 acre-feet per acre, which corresponds to the 30% return flow. The

⁴⁴ Transcript, pp. 57-58.

⁴⁵ Transcript, pp. 273-275.

consumptive use value is based on the Alpine Decree, which uses a consumptive use value of 2.5 acre-feet per acre for lands in Northern Nevada.⁴⁶ However, in the southern townships, the State Engineer attributes an additional acre-foot consumptive use to the longer growing season and higher temperatures on average. This value was checked by determining the moisture requirement for alfalfa, in the general area of the applications, which is a common crop grown in Nevada, and confirming the use of 3.5 acre-feet per acre.⁴⁷

The State Engineer finds he does not accept the mere testimony that in Southern Nevada there is 79% consumptive use, particularly since no evidence was provided to support that figure other than a mere assertion in testimony by a witness not qualified in the area. The State Engineer finds based on a return flow of 30% for secondary recharge, and a maximum usage of 4,580 acre-feet annually, there would be a total of 1,374 acre-feet annually returned to the groundwater system as recharge from irrigation, leaving 3,206 acre-feet annually of consumptive use available to be changed under these change applications.

III.

By letter dated March 7, 2002, as amended by letter dated April 24, 2002, the MVWD offered to withdraw existing surface and ground water rights and the corresponding applications to change the groundwater portion of those rights to address the secondary recharge that would no longer take place when the water was removed from irrigation use.⁴⁸ The withdrawals indicated are as follows:

- A portion of Application 66994, being 148.2 acre-feet annually, together with those portions of Permit 5942, Certificate

⁴⁶ Final Decree, U.S. v. Alpine Land and Reservoir Co., Civil No. D-183 (D. Nev. 1980).

⁴⁷ Ames Irrigation Handbook, W.R. Ames Company, Table III-1, p. CR-4, 1967.

⁴⁸ File No. 66976, official records in the Office of the State Engineer.

1686, and Permit 21443, Certificate 7304, comprising 20.8 acres within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, and 8.84 acres within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, both within Section 27, T.9S., R.67E., M.D.B.&M.

- All of Application 66998, originally seeking 802.855 acre-feet annually together with the following described base rights:

- 10.847 acres, together with portions of certificated Permits 31098 and 48491, located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14;

- 7.025 acres located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 14, being portions of certificated Permits 20212, 31098 and 48491;

- 32.74 acres within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 5461, 20212, 31098 and 48491;

- 19.836 acres within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 20212, 31098 and 48491;

- 36.983 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 5461, 20212 and 48491;

- 21.281 acres within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 20212 and 48491;

- 26.136 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 5461, 48491 and 20212; and

- 17.562 acres within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11, being portions of certificated Permits 20212 and 48491.

Total: 172.418 acres (times 5.0 afa = 862.09 afa)

The concept presented by the applicants are to retire water rights to assure the groundwater basin will stay in the same balance as if irrigation were still taking place.

The State Engineer finds in his review of the withdrawal a few minor corrections were necessary. There were two acres requested to be withdrawn that by earlier correspondence were not intended to be part of the project and would remain under irrigation. The State Engineer finds he will accept the withdrawal of the water rights in the amount of 170.418 acres, but

as discussed below will only allow a credit for the consumptive use. In other words, the withdrawal of the 170.418 acres will be given a credit of 596.5 acre-feet annually. The State Engineer finds that the 3,206 acre-feet annually of consumptive use provided for above, and the 596.5 acre-feet credited under the withdrawal allows for the transfer of 3,802 acre-feet annually under the change applications. The State Engineer finds by limiting the transfer of the irrigation rights to their historic consumptive use provides for keeping the basin in the same balance as it was when the waters were used for irrigation purposes because, the new use for power plant purposes will be a total consumptive use. The State Engineer finds to allow the applicants to have more water than the historic consumptive use is in essence allowing for a new appropriation of ground water under a priority, which the applicants does not possess. The State Engineer finds the withdrawals as requested in the letters dated March 7, 2002, as amended by letter dated April 24, 2002, with minor corrections do address the issue and no supplemental groundwater rights are being changed, and taking into account the consumptive use portion of the acreage offered for withdrawal the amount of water that can be changed is 3,802 acre-feet annually.

IV.

Applications 66334 through 66339, inclusive, were timely protested by Roger Dieleman on the grounds that the existing permits had not been used beneficially for 5 or more consecutive years, and that the applicants are attempting to sever the underground water from the surface water.

Applications 66976 through 66999, inclusive, were timely protested by Roger Dieleman on the grounds that the existing permits had not been used beneficially for 5 or more consecutive years, the water will not be used on the lands to which the water rights are presently appurtenant, the State must be cautious to preserve water for the beneficial use of landowners, both now and

in the future, and the applications are changing the use from irrigation to municipal. Mr. Dieleman was present at the public administrative hearing, but presented no substantial evidence to support his contentions regarding failure to use the water for 5 or more consecutive years.⁴⁹

The State Engineer finds protestant Roger Dieleman did not present clear and convincing evidence as to non-use of the water rights requested to be changed for five consecutive years. The State Engineer finds it is true the water rights are not going to be used on lands to which they are presently appurtenant, but does not see how that presents a relevant issue for review when change applications are provided for under Nevada Water Law. The State Engineer finds Nevada is a prior appropriation state and water rights are not "preserved for future landowners." The State Engineer finds no evidence was presented as to the protestant's issue with changing the manner of use from irrigation to municipal, and changes in manner of use are permitted under Nevada Water Law. The State Engineer finds that supplemental water rights cannot be severed and changed independently; however, the applicants addressed that issue with the proposal to withdraw certain rights from the change applications.

V.

The Board of Commissioners of Lincoln County recommended the State Engineer deny the applications based on its belief that the exportation of a major block of water from Lincoln County to Clark County would be a significant detriment to Lincoln County and its residents by preventing the reuse of irrigation water for other beneficial uses and removing the possibility of future development of groundwater within the Lincoln County portion of Lower Meadow Valley Wash. Further, concern was expressed as to the change applications effect on the tax base and water resources of Lincoln County.

⁴⁹ Transcript, pp. 18-28.

The Lincoln County Water Plan indicates that the County itself hopes to export water out of Lincoln County.⁵⁰

Lincoln County could become a water wholesaler by developing infrastructure to transport water across the county to locations within the county or to locations outside of county boundaries. One possible scenario would be to move water from Lincoln County to the Mesquite area. The County could also import water from adjacent counties, use the water internally or export the water outside of its boundaries.

Apparently, Lincoln County's concern is that someone other than itself will move the water. The rights being sought to be changed under these applications are existing water rights that already allow for the appropriation of ground water from this hydrographic basin.

Testimony was provided that \$1,011.62 is paid in property taxes related to the existing places of use of the water rights being sought to be changed.⁵¹ The State Engineer finds these change applications will not substantially reduce the tax base of Lincoln County. The State Engineer finds the applications are not changing the hydrographic basin from which the points of diversion are already permitted; therefore, it does not change the analysis of how much water is available for appropriation from that particular groundwater basin.

VI.

In the last 13 years, significant filings have been made in areas of Southern Nevada that are underlain by carbonate-rock aquifers. These filings have been addressed in various rulings

⁵⁰ A Water Plan for Lincoln County, Final Plan March 20, 2001, p. 38, official records in the Office of the State Engineer.

⁵¹ Transcript, p. 136.

and in reactions by the Nevada Legislature.⁵² The State Engineer has similar concerns with these applications as to whether they will appropriate alluvial water or will attempt to draw water from the regional carbonate-rock aquifer system, and whether the appropriation of the water will eventually impact spring discharges and existing water rights. These applications request appropriation from a well field that consists of 12 wells, but in a fairly concentrated area, and an area that may be hydrologically connected to the Muddy River Springs area, or other areas of spring discharge. The State Engineer has spoken repeatedly as to the need for additional study of the entire carbonate-rock aquifer system, but has specifically addressed the region from which these waters are appropriated.

The State Engineer finds the monitoring, management and mitigation plan attached as Exhibit A to the Stipulation for Dismissal of Protests between the MVWD and the Federal Bureaus is a good starting point, but he is not and will not be a signatory to said Stipulation, instead reserving to himself all authority and discretion he deems necessary for the management of the groundwater resources of the State of Nevada. The State Engineer finds in addition to those requirements set forth in Exhibit A, that he specifically wants monitoring measurements in both the carbonate and alluvial aquifers between the new points of diversion and the Muddy River Springs Area. The State Engineer finds the applicants are to submit a specific monitoring plan that includes this provision. The State Engineer finds that if the parties to the Muddy Springs Monitoring Plan that are not a participant here do not agree to the joining of the two monitoring

⁵² State Engineer's Ruling No. 4243, dated October 27, 1995, State Engineer's Ruling No. 4542 dated June 19, 1997, State Engineer's Ruling No. 5008, dated March 20, 2001, State Engineer's Order No. 1169, dated March 8, 2002, State Engineer's Ruling No. 5115, dated April 18, 2002, State Engineer's Ruling No. 5132, dated June 12, 2002, official records in the Office of the State Engineer.

plans, that does not relieve the applicants of the requirement of a monitoring plan under these applications.

VII.

The State Engineer finds the applications for irrigation are being granted only for the purpose of allowing the municipal change applications to be processed.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁵³

II.

The State Engineer is prohibited by law from granting a permit under an application to change the public waters where⁵⁴:

- 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 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 the proposed changes as limited do not conflict with existing rights.

IV.

The State Engineer concludes the proposed changes will not conflict with protectible interests in domestic wells.⁵⁵

V.

The State Engineer concludes the proposed changes will not threaten to prove detrimental to the public interest.

⁵³ NRS chapters 533 and 534.

⁵⁴ NRS Chapter 533.370(3).

⁵⁵ See letter of January 22, 2001, File No. 66997, official records in the Office of the State Engineer.

VI.

The State Engineer concludes that Protestant Roger Dieleman did not present substantial evidence to support his protest claims and did not provide clear and convincing evidence as to his claims of non-use for five consecutive years in his attempt to invoke a claim of forfeiture under NRS § 534.090.

VII.

The State Engineer concludes that Protestant Dieleman's issue of severing the supplemental ground water from the surface water rights was addressed and resolved.

VIII.

The State Engineer concludes the issues raised by the Federal Bureaus were addressed by the limitation of the changes to the historical consumptive use, and the required monitoring plan. The State Engineer concludes his authority with regard to monitoring, management and mitigation is not limited by the Stipulation between the applicants and the Federal Bureaus.

IX.

The State Engineer concludes the issues raised by Lincoln County do not support denial of changes of existing water rights for water already appropriated from this groundwater basin.

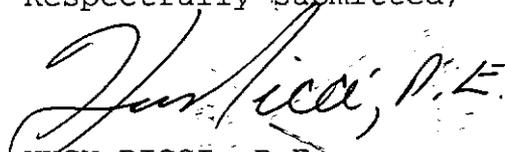
RULING

The protests to Applications 66334, 66335, 66337, 66338, 66339, inclusive, and Applications 66976 - 66990, inclusive, Applications 66992 - 66997, 66999, inclusive, are hereby overruled in part and upheld in part. Application 66336 is hereby denied on the grounds that the withdrawal removed the base water right that it sought to change. The applications are granted in the amount of 3,802 acre-feet annually subject to:

1. Clear title in the name of the Moapa Valley Water District for the rights requested to be changed and those being withdrawn being provided and processed by the Office of the State Engineer before any permits will issue;

2. Existing rights;
3. Payment of statutory fees;
4. Approval by the State Engineer of a monitoring, management and mitigation plan.

Respectfully submitted,


HUGH RICCI, P.E.
State Engineer

HR/SJT/jm

Dated this 24th day of
October, 2002.