

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

IN THE MATTER OF APPLICATIONS)
77430, 77431, 77432 AND 77433 FILED TO)
CHANGE THE POINT OF DIVERSION)
AND/OR PLACE OF USE OF PORTIONS)
OF THE PUBLIC WATERS OF AN)
UNDERGROUND SOURCE PREVIOUSLY)
APPROPRIATED WITHIN THE SMITH)
VALLEY HYDROGRAPHIC BASIN (107),)
LYON COUNTY, NEVADA.)

RULING

#6246

GENERAL

I.

Application 77430 was filed on September 30, 2008, by Preppy Vision LLC to change the point of diversion and place of use of 0.34 cubic feet per second (cfs), not to exceed 161.32 acre-feet annually (afa), of a portion of the underground water previously appropriated under Permit 20014, Certificate 7460, within the Smith Valley Hydrographic Basin. The proposed point of diversion is located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. The existing point of diversion is located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. The proposed manner and place of use is for irrigation purposes described as being located within portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16; the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. (total irrigated acreage of 179.46 acres). The existing place of use is described as being located within portions of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 19; and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. (Total irrigated acreage of 40.33 acres to be stripped.)¹

II.

Application 77431 was filed on September 30, 2008, by Preppy Vision LLC to change the point of diversion and place of use of 0.39 cfs, not to exceed 184.8 afa, of a portion of the underground water previously appropriated under Permit 20014, Certificate 7460, within the

¹ File No. 77430, official records in the Office of the State Engineer.

Smith Valley Hydrographic Basin. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.10N., R.24E., M.D.B.&M. The existing point of diversion is described as being located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. The proposed manner and place of use is for irrigation purposes described as being located within portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.10N., R.24E., M.D.B.&M. (total irrigated acreage of 174.95 acres). The existing place of use is described as being located within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7 and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 18, T.10N., R.24E., M.D.B.&M. (Total irrigated acreage of 46.2 acres to be stripped.)²

III.

Application 77432 was filed on September 30, 2008, by Preppy Vision LLC to change the point of diversion and place of use of 1.836 cfs, not to exceed 556.52 afa, of a portion of the underground water previously appropriated under Permit 26883, Certificate 9280, within the Smith Valley Hydrographic Basin. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.10N., R.24E., 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 17, T.10N., R.24E., M.D.B.&M. The proposed manner and place of use is for irrigation purposes described as being located within portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 16; the NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and the NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M. (total irrigated acreage of 179.46 acres). The existing place of use is described as being located within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7, the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.10N., R.24E., M.D.B.&M. (Total irrigated acreage of 139.13 acres to be stripped.)³

IV.

Application 77433 was filed on September 30, 2008, by Preppy Vision LLC to change the place of use of 2.308 cfs, not to exceed 699.8 afa, of a portion of the underground water

² File No. 77431, official records in the Office of the State Engineer.

³ File No. 77432, official records in the Office of the State Engineer.

previously appropriated under Permit 26883, Certificate 9280, in the Smith Valley Hydrographic Basin. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.10N., R.24E., M.D.B.&M. The existing point of diversion is located within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, T.10N., R.24E., M.D.B.&M. The proposed manner and place of use is for irrigation purposes described as being located within portions of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 8; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and the NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.10N., R.24E., M.D.B.&M. (total irrigated acreage of 174.95 acres). The existing place of use is described as being located within portions of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 7; the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17; and the NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, T.10N., R.24E., M.D.B.&M. (Total irrigated acreage of 174.95 acres to be stripped.)⁴

V.

Application 77430 was timely protested by Dreyer Ranches, LLC on the following grounds:

There was no Desert Creek Decree C-125 Claim #173 used during the 2008 irrigation season. The applications for permits #20014 and #18435 both state that, "This well water will supplement decreed water from Desert Creek."

The decreed water was routed around and thru [sic] the ranch and piped into the Saroni Canal. The Irrigation Wells under permit 20014 and 18435 are pumping directly into the pivot which does not allow for the surface water to be used on the 458 (approx.) Acres.

There could be more than normal decline in the static water levels and the water level on my irrigation well could be lowered if this practice should continue.

By not applying surface water to help recharge the ground, this requires more pumping and could cause my irrigation well to have a lower water level. By using the Desert Creek Decree surface water it only requires pumping about half the water, more or less, from the underground supply.

The Protestant requested that the application be denied until both the surface and supplemental well waters are used together as stated in the applications to Permit 20014, Certificate 7460 and Permit 18435, Certificate 5844.¹

⁴ File No. 77433, official records in the Office of the State Engineer.

VI.

Applications 77430, 77431, 77432 and 77433 were timely protested by SV Development, LLC & R.N. Fulstone Company requesting that the applications be denied on the following grounds:

The application as filed with supporting map is confusing and difficult to follow. The engineering permit and state records indicate that 20014 permit is supplemental to 18435 and the Walker River decree claim #173. The applicant requests moving 40.33 acres to 179.46 acres, therefore this will be an expansion of acres irrigated for permit 20014. This expansion is not in the public interest nor is there adequate existing availability of water for an expansion of use. This could also affect other existing water rights in the area. Last year there was no evidence that Walker River decree water was put on land permitted by 20014. 20014 is supplemental to the Walker River Decree as stated in its Application for a Permit on file in the State Engineers office. No movement of this permit should be allowed until there is evidence that surface water is being applied to the existing place of use of permit 20014.

The confusion extends to applications 77431, 77432 and 77433. The map does not show where Walker River decree is currently used or will be applied, with a maximum acreage irrigated of 453.91 acres from all sources of water. Permit 20014, 26883 and 18435 are supplemental to the surface decree as stated by the original applications and engineering files. These permits are all within the description of the decree. Through historical time there seems to have been a change in how these permits have been used. There is a need to comply with the original intent of the permits. If these permits were used in this fashion, I would have no problem accepting current and future change applications that meet those restrictions.

Ground water in local areas around the applicant are lower. There has been a greater than normal decline in static water levels in recent years. At least two domestic wells in close proximity to the applicant had to be re-drilled because they went dry. One of the Applicants wells' (26883) static water level was as high as 107 feet in 1988 and as low as 247 feet in 2005. The lowering of the static level is an issue that all permit owners should address.

VII.

Applications 77430, 77431, 77432 and 77433 were timely protested by FIM Corp. on the grounds as summarized below:

1. There was no evidence that surface water from Desert Creek Decree C-125 Claim No. 173 was used during the 2008 irrigation season. The applications for Permit Nos. 18435, 20014 and 26883 state that, "This water (well water) will supplement decreed water from Desert Creek."
2. The decreed water was routed around and thru [sic] the ranch and piped into the Saroni Canal. The irrigation wells under Permit Nos. 18435, 20014 and 26883 are

pumping directly into the pivots which does not allow for the surface water to be used on the approximately 458 acres.

3. There could be more than normal decline in the static water level and the water level on our five irrigation wells could be lowered if this practice should continue.
4. By not applying surface water to help recharge the ground, this requires more pumping and could cause our five irrigation wells to have a lower water level. By using the Desert Creek Decree surface water it only requires pumping about half the water, more or less, from the underground supply.

The Protestant requested that the application be denied until both the surface and supplemental well waters are used together as stated in the applications to Permit 18435, Certificate 5844, Permit 20014, Certificate 7460, and Permit 26883, Certificate 9280.^{1,2,3,4}

FINDINGS OF FACT

I.

Nevada Revised Statute (NRS) § 533.365(3) provides that it is within the State Engineer's discretion to determine whether a public administrative hearing is necessary to address the merits of a protest to an application to appropriate the public waters of the state of Nevada. The State Engineer finds that in the case of protested Applications 77430, 77431, 77432, and 77433 there is sufficient information contained within the records of the Office of the State Engineer to gain a full understanding of the issues and a hearing on this matter is not required.

II.

Upon review of the Applications and supporting maps, the State Engineer finds that the point of diversion and place of use of the Applications are located within the designated Smith Valley Hydrographic Basin; therefore, the Applications are subject to State Engineer's Order Nos. 245 and 1159 that regulate the basin.^{5,6}

⁵ State Engineer's Order No. 245, June 27, 1960, official records in the Office of the State Engineer.

⁶ State Engineer's Order No. 1159, February 1, 2000, official records in the Office of the State Engineer.

III.

A. *Explanation of Existing Water Rights*

The waters of Desert Creek are tributary to the Walker River and are administered under the *Walker River Decree* in the U. S. District Court, for the District of Nevada. Desert Creek water decreed to the Pacific Coast Joint Stock Land Bank, Successor to G. M. Terry, successor to Hunnewill Land and Livestock Company on page 49 of the Decree (Claim 173) have priorities of 1860 for diverting 4.00 cfs of water for the irrigation of 250 acres and 1864 for diverting 5.30 cfs of water for the irrigation of 330 acres; the total irrigated acres under this claim is 580 acres. The decreed place of use is described as the W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, all of Section 17; the NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18; the E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 19; and the NW $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, T.10N., R.24E., M.D.B.&M.⁷ The described place of use is approximately 1,320 acres, within which, the 580 acres of decreed water may be used.

Permit 18435, Certificate 5844 was applied for on November 19, 1959, for 5.0 cfs of underground water for the irrigation of 615 acres east of the Nevada State Route 338 and Nevada State Route 829 Junction. Under the "Remarks" section of the application (Question 11) the applicant stated "[t]his water will supplement decreed water from Desert Creek." Permit 18435 was certificated February 23, 1965, for 4.0 cfs, but not to exceed 1,449.4 acre-feet per season (afs) for the irrigation of 603.5 acres lying east of State Route 338. The permitted and certificated places of use are within the decreed place of use for Claim 173. The Applicant is listed as the current owner of record of a portion of Permit 18435, Certificate 5844 being 3.0045 cfs, 1,088.67 afa for the irrigation of 453.30 acres.⁸

Permit 20014, Certificate 7460 was applied for on July 28, 1961, for 5.0 cfs of underground water for the irrigation of 650 acres east, north and west of the Nevada State Route 338 and Nevada State Route 829 Junction. Under the "Remarks" section of the application (Question 11) the applicant stated "[t]his water will supplement decreed water from Desert Creek. [sic] and water from well under application No. 18435." Permit 20014 was certificated October 28, 1970, for 2.89 cfs, but not to exceed 1,367.6 afa for the irrigation of 341.9 acres lying west of the Nevada State Route 338 (a portion lying north of the Nevada State Route 338

⁷ *Petition for Modification of Decree*, filed and approved April 17, 1970, in the *U.S. v. Walker River Irr. Dist.*, in Equity No. C-125(D. Nev. 1924); copy maintained in File No. 77430, official records in the Office of the State Engineer.

⁸ File No. 18435, official records in the Office of the State Engineer.

and Nevada State Route 829 Junction). None of the land described in the certificated place of use is in common with the land described as being the place of use of Permit 18435, Certificate 5844. All land described in the certificated place of use is within the decreed place of use for Claim 173, except the land described as being located within portions of the S½ SE¼ of Section 7, being 22.5 acres total. The Applicant is listed as the current owner of record of a portion of Permit 20014, Certificate 7460 being 2.033 cfs, 969.60 afa for the irrigation of 242.40 acres.⁹

Permit 26883, Certificate 9280 was applied for August 8, 1972, for 5.0 cfs of underground water for the irrigation of 800 acres north of the Nevada State Route 338 and Nevada State Route 829 Junction, and east of the Nevada State Route 338. Under the “Remarks” section of the application (Question 12) the applicant stated “Water from this well will be co-mingled with water from wells under permits No. 18435 and 20014.” Permit 26883 was certificated October 17, 1978, for 5.0 cfs for the irrigation of 379 acres (1,516 afa). A portion of the described certificated place of use is supplemental to Permit 18435, Certificate 5844, being 147 acres after accounting for prior abrogation of portions of the Certificated right lying east of the Nevada State Route 338. A portion of the described place of use is also supplemental to Permit 20014, Certificate 7460, being 46.2 acres (north of the Nevada State Route 338 and Nevada State Route 829 Junction). All lands described in the certificated place of use are within the decreed place of use for Claim 173 except the land described as being located within portions of the S½ SE¼ of Section 7, being 50 acres total. The Applicant is listed as the current owner of record of a portion of Permit 26883, Certificate 9280 being 4.216 cfs, 1,278.40 afa for the irrigation of 319.60 acres.¹⁰

Preppy Vision LLC owns the majority of land covered by decree Claim 173. Three parcels include 550.03 acres of land east of Nevada State Route 338 (Lyon County Assessor’s Parcel Number [APN] 10-741-57), 226.37 acres north of the Nevada State Route 338 and Nevada State Route 829 Junction, including Section 7 (APN 10-741-56) and 255.90 acres west of the Nevada State Route 338 and Nevada State Route 829 Junction (APN 10-741-44). The portion of Walker River Decree right is 485.50 acres that can be irrigated within the 1,032.3 total

⁹ File No. 20014, official records in the Office of the State Engineer.

¹⁰ File No. 26883, official records in the Office of the State Engineer.

acres owned by Preppy Vision LLC, except that portion of APN 10-741-56 located within the S½ SE¼ of Section 7.¹¹

When groundwater from a specific well or point of diversion is used as the sole source for a place of use, it is commonly referred to as a “stand-alone” right. When used in combination with surface water (and in some instances with groundwater from another point of diversion), the right is considered “supplemental”; meaning, the groundwater right supplements, or is supplemented by, water from another source used on the same place of use. When a groundwater right is issued as supplemental to a surface water source, it is expected that the groundwater permit will not be utilized until the surface water becomes unavailable, and then only used to make up the difference between the surface water available and the right allowed. Thus, it is expected that a supplemental groundwater right will not be used to its full allocation, because supplemental groundwater rights are primarily used for the purpose of insuring that irrigated land can receive its full duty of water when surface water rights cannot be satisfied due to some circumstance that is beyond the control of the irrigator, such as drought. In a normal water year, it is expected that the supplemental groundwater right would be utilized very little or not at all, but in a drought year, it is expected that some portion of the groundwater right would be utilized.

As described previously, Claim 173 was decreed for 580 irrigated acres within a 1,320 acre area. The large difference in irrigated acreage and allowed place of use offers the irrigator the flexibility to rotate irrigation with the surface water within the place of use each irrigation season, so long as the total acres irrigated that season does not exceed the maximum allowed acreage. Permits 20014 and 26883 were permitted and certificated to supplement the Claim 173 surface water but also included acreage in excess of the Claim 173 surface water acreage and acreage being located within a portion of the S½ SE¼ of Section 7, which is outside the decreed place of use.

B. Effect of Applications 77430 and 77432

Applications 77430 and 77432 seek to change the point of diversion and place of use of groundwater rights under existing Permits 20014 and 26883 to the existing well under Permit 18435 for use in a center-pivot system irrigating a total of 179.46 acres. The Applicant proposes

¹¹ Summary of Ownership APN sheet located in File No. 18435, official records in the Office of the State Engineer.

to leave a portion of groundwater rights under Permit 20014, Certificate 7460 in place for a low-pressure full circle irrigation system served by the well under Permit 20014. This entire pivot is within the place of use of Walker River Decree Claim 173 surface water, and all but small portions totaling 1.34 acres located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 20 (0.58 acres) and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 17 (0.76 acres) is within the place of use of Permit 18435, Certificate 5844.^{1,3}

Application 77432 is removing both 116.58 acres from irrigation under Permit 26883, Certificate 9280 that is supplemental to Permit 18435, Certificate 5844, and also 22.55 acres from irrigation under Permit 26883, Certificate 9280 that is not supplemental to Permit 18435, Certificate 5844, and moving this acreage to a place of use that is supplemental to 18435, Certificate 5844.³

Application 77430 seeks to remove 40.33 acres (161.32 afa) from Permit 20014, Certificate 7460, which is not supplemental to another groundwater right, and to move it to the same place of use as Application 77432. However, the Applicant is only an owner of record of 124.79 afa within that place of use, or the equivalent to irrigate 31.19 acres at 4 acre-feet per acre. Applications 77430 and 77432 will only allow for irrigation of 168.63 acres within the proposed place of use at the duty rate of 4 acre-feet per acre.^{1,3}

In summary, if the change applications are approved then water rights on this pivot will be Decree Claim 173 surface water; existing Permit 18435, Certificate 5844 groundwater (covering the entire place of use except for 1.34 acres as explained above); Permit 26883, Certificate 9280 groundwater as changed by Application 77432 (137.44 acres); and Permit 20014, Certificate 7460 groundwater as changed by Application 77430 (31.19 acres). The 31.19 non-supplemental acres removed from Permit 20014, plus the 22.55 non-supplemental acres removed from Permit 26883 within APN 10-741-56, less the 1.34 acres within the proposed place of use not covered by Permit 18435 equals 52.40 acres that were originally not supplemental to another groundwater right, which will become supplemental to existing groundwater rights.

C. Effect of Applications 77431 and 77433

Applications 77431 and 77433 will reconfigure the existing groundwater rights under Permits 20014 and 26883 to a double low-pressure center pivot full-circle system served by the well under Permit 26883, Certificate 9280. There will also be an 11.17-acre area remaining

within the NW¼ NW¼ of Section 17 that will be irrigated from the well under Permit 26883, Certificate 9280, but will not be within center pivot areas.^{2,4}

Of Permit 20014, Certificate 7460, 46.2 acres are supplemental to Permit 26883, Certificate 9280, but Application 77431 has the same place of use as Application 77433; thus, the water right will remain supplemental to Permit 26883, Certificate 9280 as changed by Application 77433 and no expansion of acreage will occur.

D. Groundwater that is Supplemental to Decreed Surface Water

As stated earlier, Claim 173 was for 580 acres within an approximate 1,320 acre place of use. The Applicant's position is that any groundwater issued by the Office of the State Engineer in excess of the decreed surface water acreage must have been issued as stand-alone groundwater. There are several facts that support the Applicant's position.

First, the Office of the State Engineer approved change Applications 61987 and 75697, which abrogated portions of Permit 20014, Certificate 7460 by stripping water from a portion of the existing place of use without any requirement that the new permits be supplemental to surface water under the Decree or other surface water. This indicates that the Office of the State Engineer has considered at least these portions of Permit 20014, Certificate 7460 to be stand-alone groundwater.

Second, there is no indication in the terms of the permits or certificates that would indicate that the Office of the State Engineer considered Permits 20014 and 26883 to be wholly supplemental to Claim 173, and the permits could not physically have been entirely supplemental because portions of the place of use were allowed outside of the decreed place of use of Claim 173 (those portions within the S½ SE¼ of Section 7).

Third, a letter dated January 7, 1966, from the Office of the State Engineer appears to give some insight into the issuance of Permit 20014. The letter states:

We have received your letter of January 4, 1966 regarding your Application 20014. In a letter of January 22, 1963 you were advised that water granted under permits for land within the Smith Valley Artesian Basin was being limited to supplemental use on lands of existing water rights. At that time we requested that you advise us of the acreage you proposed to irrigate under Application 20014 that did not have existing water rights. This resulted in a question regarding the place of use of some of your surface water rights. Action on your Application 20014 was deferred pending clarification of this matter.

A recent evaluation of the groundwater situation in Smith Valley resulted in a decision to allow pending applications without limiting the place of use to

areas on which there are existing rights. We, therefore, intend to issue a permit under Application 20014 for 650 acres, as indicated on the application, upon receipt of the \$37.50 permit fee. Clarification of the place of use of existing surface water rights is no longer a consideration as far as Application 20014 is concerned but you may still wish to correct the apparent discrepancy.

It should be noted that although the remarks on Application 20014 indicated the water was to be supplemental to Decree water, the above letter indicates that this issue was considered and that a decision was made to issue the permit inclusive of groundwater that was not supplemental to surface water. Or stated another way, the permit was not limited only to supplemental use on lands with existing surface water rights. Although there is no similar letter within Application 26883, there are office notes within that file that show the Office of the State Engineer was aware that there was some surface water within the proposed 800-acre place of use of Application 26883; however, this permit was similarly not limited to the existing surface water acreage as evidenced by the issuance of the permit for the entire 800 acres requested, which is greater than the 580 acres of surface water acreage available at that time.^{9,10}

It should also be noted that from the mid-1960s to the mid-1970s the State Engineer issued permits appropriating groundwater for irrigation purposes. At times these were issued to supplement Walker River decree water rights, but at other times they were issued as the sole-source water right. An example that resembles Permit 20014 is Application 25506, which requested an appropriation of groundwater to both supplement land being irrigated from the West Walker River and for the sole-source irrigation of other lands. Permit 25506 was issued in 1970, and Certificate 8424 was issued in 1975; the place of use included both decreed and non-decreed lands.¹² It was in 1977 that the State Engineer began denying water right applications for irrigation purposes in the Smith Valley Hydrographic Basin, and it wasn't until 1997 that State Engineer's Order 1126 was issued limiting new appropriations from the groundwater basin to certain preferred uses; applications for new appropriations for irrigation purposes were to be denied.

The determination of whether a groundwater right is supplemental to a surface water right is usually a straight forward process. For example, assume that a 40-acre parcel of land has existing surface water rights at 4.0 acre-feet per acre. If a groundwater right is later issued for that same 40-acre parcel of land for the same manner of use, the groundwater right is considered

¹² File No. 25506, official records in the Office of the State Engineer.

supplemental to the surface water right by place of use, and will typically contain a limitation of 4.0 acre-feet per acre from any and all sources. The fact that the groundwater is supplemental does not need to be specifically noted in the terms of the permit or certificate. The issue of Permits 20014 and 26883 is complicated by the fact that the surface water is allowed by the Decree to move within a larger place of use and that the groundwater rights were issued for acreage in excess of the maximum acreage that could be irrigated by the surface water. Although the remarks on Applications 20014 and 26883 indicated supplemental use, the other evidence as discussed above, show that the permits were not limited to supplemental use only and were issued for more acreage than allowed by Claim 173.

The Applicant has groundwater rights for the irrigation of a total of 852.10 acres. Of these 852.10 acres, 453.30 acres are under Permit 18435, with 117.00 of those acres supplemental under Permit 26883. The remaining 398.80 acres are under Permits 20014 and 26883, which share 46.20 acres in common. As discussed above, a total of 485.50 acres under Claim 173 is allowed within the land owned by the Applicant. Thus, of the 852.10 acres of groundwater rights, 485.50 acres are supplemental to decreed surface water and 366.60 acres are not supplemental to decreed surface water.

Except for those portions of the existing and proposed places of use within Sections 7 and 8, all of the existing place of use and proposed place of use is within the place of use of Claim 173. Of the groundwater right acreage outside the decreed place of use, less acreage is left outside the decreed place of use after the proposed changes than is existing; therefore, the groundwater rights remain sufficient to serve as supplemental rights to the surface water.

The State Engineer finds that Permits 20014 and 26883 were issued only partially supplemental to Claim 173 surface water. The State Engineer finds that the Applicant's position that Permits 20014 and 26883 can be changed as proposed, is supported by the evidence as discussed above. The State Engineer finds that Applications 77430 through 77433 will allow for a more efficient and effective use of the Applicant's water rights.

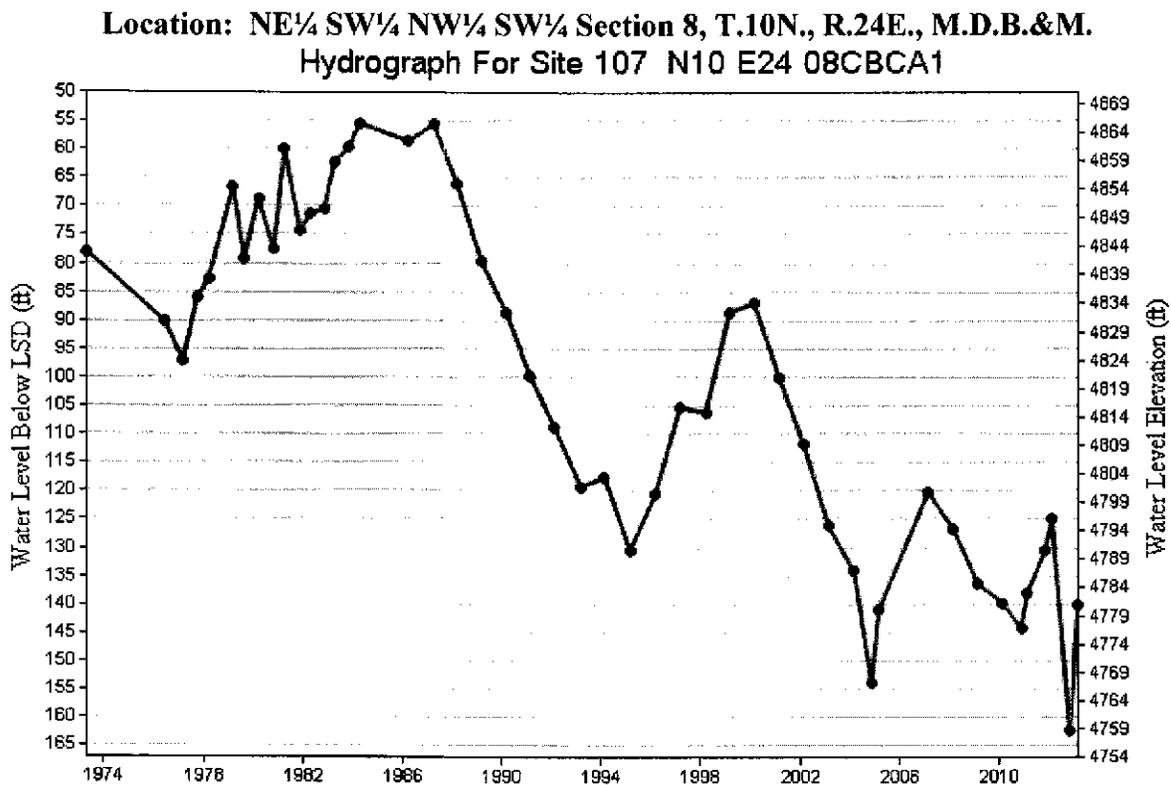
IV.

A protest ground alleges that the approval of the change applications will result in the expansion of acreage to an amount greater than originally intended under the water rights. A review of the proposed changes and the associated maps show that the proposed changes in all cases move water rights to acreage on which other water rights already exist, except for 1.34 acres as described previously; therefore, no expansion of acreage will result. The total acreage

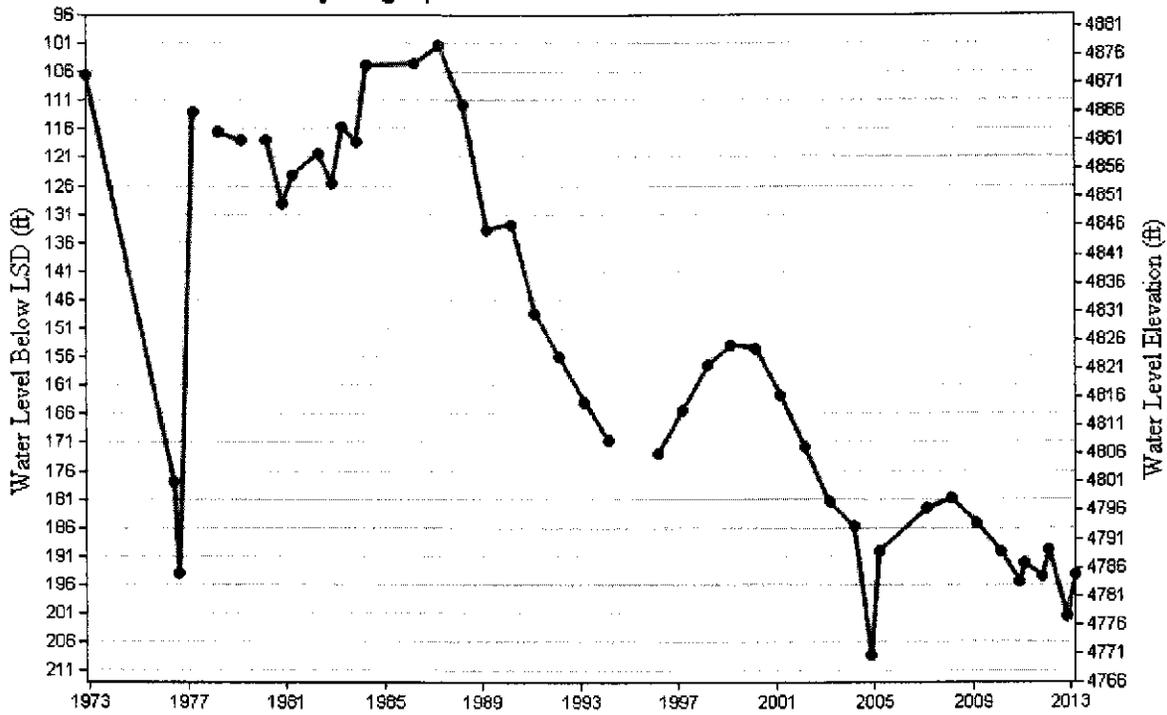
allowed under the existing groundwater rights owned by the Applicant is 852.10 acres, and the resulting total acreage after approval of the subject change applications would be 799.70 acres. This reduces the total acres allowed to be irrigated under the groundwater rights by 52.40 acres. As a result, the duty rate for this number of acres within the proposed place of use changes from 2.4 acre-feet per acre under Permit 18435 to 4.0 acre-feet per acre under Permits 18435, 20014 (as changed by Application 77430) and 26883 (as changed by Application 77433). In other words, this reduces the stand-alone acreage by 52.40 acres (from 366.60 acres to 314.20 acres). The State Engineer finds the proposed changes will not result in an expansion of acreage beyond what is allowed by the existing permits and the Decree.

V.

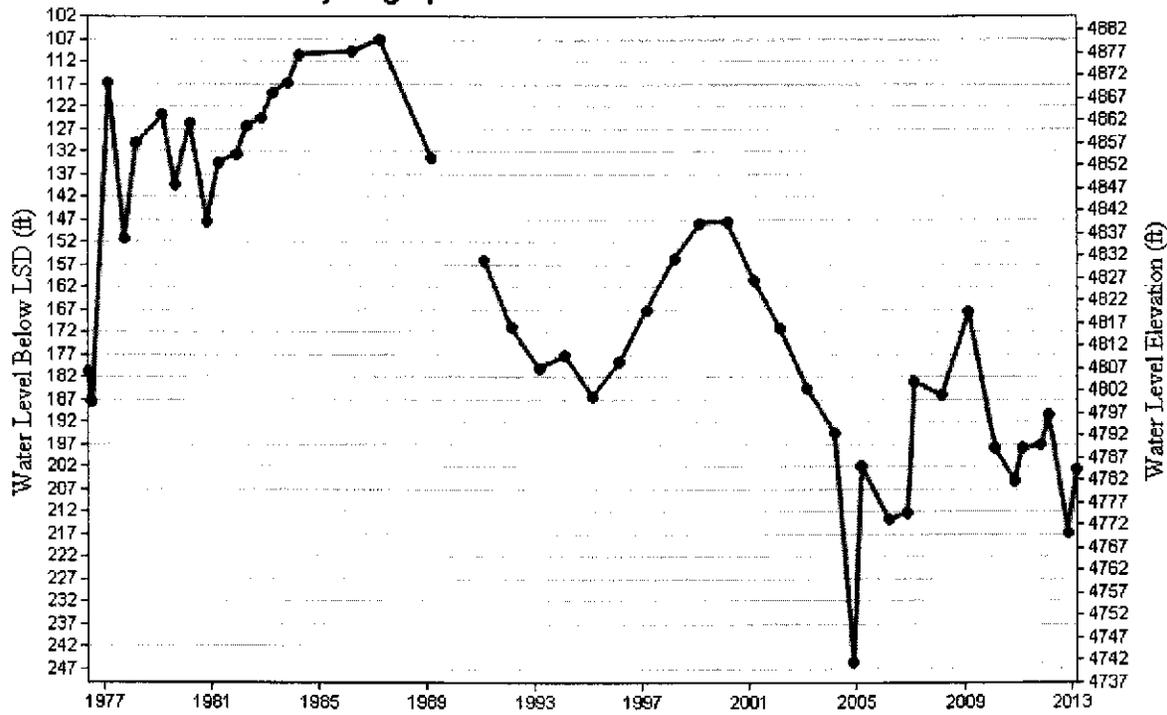
Water level measurements conducted by this Office indicate that the static water levels in wells in the area near the proposed points of diversion indicate an overall decline from the mid-1970s to present; however, the lowest measurements appear to be around 2004 to 2006, with water levels rising significantly in 2010. The current trend is that water levels are rising or leveling off in the last three years, accounting for recent drops as attributable to the current drought conditions. The well locations and water level measurements examined are as follows:



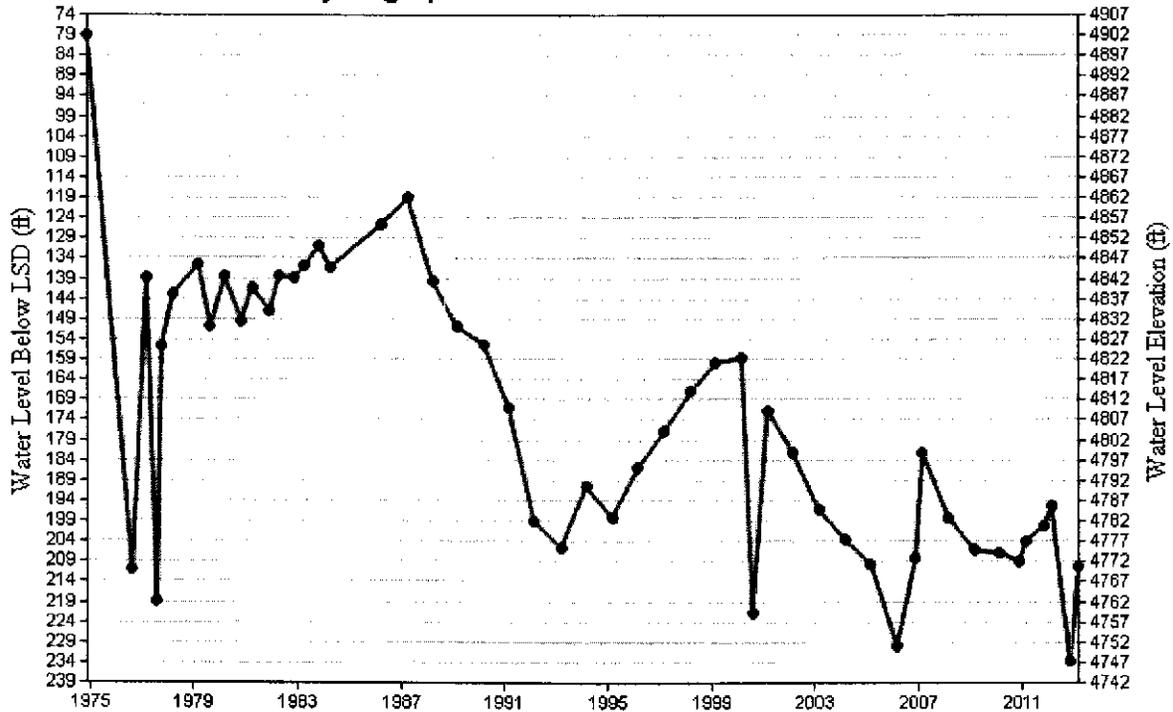
**Location: SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 16, T.10N., R.24E., M.D.B.&M.
Hydrograph For Site 107 N10 E24 16ACCC1**



**Location: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 17, T.10N., R.24E., M.D.B.&M.
Hydrograph For Site 107 N10 E24 17CCAA1**



Location: SE¼ SW¼ NE¼ NW¼ Section 18, T.10N., R.24E., M.D.B.&M.
Hydrograph For Site 107 N10 E24 18BACD1



The Protestants allege that there has been a general lowering of the water table in the general vicinity and note that two nearby domestic wells needed to be deepened. They also allege that the Applicant is not using its decreed surface water and is instead relying solely on its groundwater, which may be a contributing factor in the lowering of the water table. The change applications do not propose to increase the amount of groundwater that may be pumped under existing Permits 18435, 20014, and 26883. In addition, the proposed changes should result in less groundwater pumping than would be allowed under the existing water rights because 52.40 acres under Permits 20014 and 26883 would be moved from non-supplemental use to supplemental use on the 179.46-acre center pivot system, as explained previously.

The State Engineer finds that approval of the change applications would not increase the demand on the groundwater resource of the basin; therefore, approval will not conflict with existing groundwater rights nor threaten to prove detrimental to the public interest.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.¹³

II.

The State Engineer is prohibited by law from granting a permit under a change application that requests to appropriate the public waters where:¹⁴

- 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 protectable interests in existing domestic wells as set forth in NRS § 533.024; or
- D. the proposed use or change threatens to prove detrimental to the public interest.

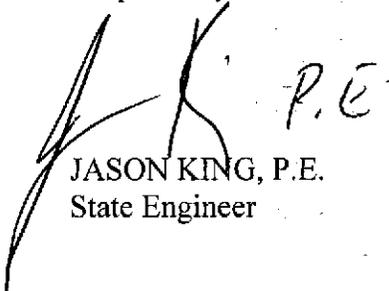
III.

Based on the findings of fact, the State Engineer concludes that the granting of Applications 77430, 77431, 77432 and 77433 will neither increase demand on the groundwater resource nor expand acreage authorized for irrigation; therefore, approval of Applications 77430, 77431, 77432 and 77433 will not conflict with existing rights nor threaten to prove detrimental to the public interest.

RULING

The protests are overruled and Applications 77430, 77431, 77432 and 77433 are hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,



JASON KING, P.E.
State Engineer

Dated this 17th day of
December, 2013.

¹³ NRS Chapters 533 and 534.
¹⁴ NRS § 533.370(2).