

Case No. 84739

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA  
STATE ENGINEER, et al.

Appellants,

vs.

LINCOLN COUNTY WATER  
DISTRICT, et al.

Respondents.

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Appeal from the Eighth Judicial District Court, Clark County  
District Court Case No. A-20-816761- C  
(Consolidated with Case Nos. A-20-817765-P, A-20-818015-P, A-20-817977-P,  
A-20-818069-P, A-20-817840-P, A-20-817876-P, A-21-833572-J)

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**RULE 26.1 DISCLOSURE - SNWA**

The undersigned counsel of record certifies that the Southern Nevada Water Authority is a governmental agency and a political subdivision of the State of Nevada.

Dated this 8th day of February 2023.

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**RULE 26.1 DISCLOSURE – STATE ENGINEER**

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### **RULE 26.1 DISCLOSURE – CBD**

The undersigned counsel of record certifies that the Center for Biological Diversity is a nonprofit organization that has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

Dated this 8th day of February 2023.

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**RULE 26.1 DISCLOSURE – MVIC**

The undersigned counsel of record certifies that MUDDY VALLEY IRRIGATION COMPANY is a Nevada Corporation. It has no parent corporations, and no public company owns 10% or more of its stock.

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## **SUMMARY OF ARGUMENT**

Nevada is the driest state in the nation, and its water is a precious natural resource that belongs to the public. The Legislature gave the State Engineer authority over all of Nevada's water resources, including the power to allocate Nevada's groundwater and surface water for beneficial use, and manage historically derived problems, including over-appropriation and over-use. Under this authority, the State Engineer has a duty to protect the public's water and protect senior rights. To do so, the State Engineer must have the authority to first identify *sources of water* and *how much water is available for beneficial use* in those sources.

Order 1309 did just that by identifying the source of the water and the sustainable quantity of available water in the Lower White River Flow System Hydrographic Basin ("LWRFS"). Order 1309 identifies the groundwater basins that share a source of supply that is also the headwaters of the Muddy River and determined a sustainable level of pumping from that groundwater supply. The only question ripe for review is whether the State Engineer was authorized to make these factual findings. Order 1309 neither reprioritized existing water rights nor made any management decisions about limiting the use of existing rights in the LWRFS.

A plain reading of NRS 534.110(6) authorizes Order 1309. A harmonious reading of multiple statutory obligations of the State Engineer confirms that interpretation. Where the groundwater supply in *any basin* appears to be over-appropriated, the Legislature expressly mandated that the State Engineer, through

NRS 534.110(6), investigate whether the annual replenishment of that supply can meet all water rights. Respondents fail to explain how the State Engineer can accomplish the mandates of NRS 534.110(6) without accurately identifying the water resources in the LWRFS. In fact, many of the State Engineer's duties are logically predicated on the State Engineer's accurate identification of the sources of water and amount of water therein. Ignoring the best available science, as the district court suggested, would be reckless and detrimental to senior surface water right holders, an endangered species, and the sustainability of the water supply.

Given empirical evidence from decades of groundwater pumping, including a aquifer test designed to determine water availability in the area, the plain language of NRS 534.110(6) required *every basin* in the LWRFS to be investigated for an accurate identification of the groundwater supply and the quantity of water available for use. As scientists and stakeholders have known for over 50 years, virtually all the groundwater supply in the LWRFS is from a single aquifer. Since the quantity of water that is available from that single groundwater supply could not be scientifically isolated amongst sub-basins, the State Engineer properly identified a sustainable pumping level for the entire LWRFS.

When Order 1309 is understood in the proper context – as factual findings and not a re-prioritization of water rights or decisions about how to manage the resource – Order 1309 should be upheld.

## ARGUMENT<sup>1</sup>

### **I. Despite Respondents' Unsupported Claims, Order 1309 Only Addressed Threshold Factual Findings, And This Court's Review Should Be Limited To Whether The State Engineer Was Authorized To Make Those Findings.**

Respondents continue to make unsubstantiated claims that the State Engineer included management directives in Order 1309.<sup>2</sup> The language in Order 1309 makes clear that the State Engineer was true to his word and only addressed factual issues in this first phase of the water administration process. This distinction is critical because it properly crystalizes for the Court the ultimate issue ripe for decision in this appeal. To avoid issuing an advisory opinion without the proper record, this Court's review should focus on the *actual* joint administrative action the State Engineer took, not what Respondents erroneously claim.<sup>3</sup>

After determining (1) the geographic extent of a shared water source and (2) the amount of groundwater that can be pumped from that source without further

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<sup>1</sup> Respondents incorrectly claim Southern Nevada Water Authority ("SNWA") and Muddy Valley Irrigation Company ("MVIC") "are not properly considered Appellants in this matter." Resp'ts' Answering Br. at 1 n.1. The Court already rejected that argument. Order Denying Mot. to Dismiss at 5-6. The fact that the State Engineer, SNWA and MVIC agreed that paragraphs 60-61 of Order 1309 should be vacated (see Appellants' Joint Opening Br. at 3 n.6) does not alter SNWA's and MVIC's status as appellants because they are still aggrieved by the district court's vacation of the remainder of Order 1309.

<sup>2</sup> Resp'ts' Joint Answering Br. at 31-40.

<sup>3</sup> See *Personhood Nevada v. Bristol*, 126 Nev. 599, 601, 245 P.3d 572, 574 (2010) ("This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.").

impacting the Muddy River, the State Engineer issued Order 1309 without including policy-driven management provisions.<sup>4</sup> Order 1309 rescinded the moratorium on the submission of subdivision maps, and lifted the stay on the processing of change applications for existing water rights, that was in Interim Order 1303.<sup>5</sup> Importantly, Order 1309 does not direct any enforcement action based on the factual findings and does not limit, curtail, or any other way “manage” any water rights.

**A. Respondents erroneously claim that Order 1309 reprioritized water rights.**

Throughout their Answering Brief, Respondents repeatedly make the false claim that Order 1309 reprioritized LWRFS water rights in violation of the prior appropriation doctrine.<sup>6</sup> Order 1309 did no such thing. Respondents led the district court to vacate Order 1309, in significant part, based on this inaccurate claim.<sup>7</sup>

Respondents cannot point to any language in Order 1309 regarding the priority dates of water rights in the LWRFS. While the State Engineer suggested in Interim Order 1303 that priorities could be administered based on their position in the totality of the LWRFS, *this finding was rescinded, and Order 1309 makes absolutely no findings with regard to priority dates.*<sup>8</sup> In fact, after circulating a *draft*

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<sup>4</sup> J.A. Vol. 2 at JA\_390-91.

<sup>5</sup> J.A. Vol. 2 at JA\_390-91.

<sup>6</sup> Resp’ts’ Joint Answering Br. at 2, 14, 15, 32, 33, 36, 51, 52, 55.

<sup>7</sup> J.A. Vol. 49 at JA\_23326-27.

<sup>8</sup> J.A. Vol. 2 at JA\_391 (“[a]ll other matters set forth in Interim Order 1303 that not specifically addressed herein are hereby rescinded.”).

of Interim Order 1303 for comment, at the insistence of Coyote Springs Investment (“CSI”), the State Engineer removed the priority table of water rights. Interim Order 1303 did not include a priority table.<sup>9</sup> This is why Respondents’ reference to *Happy Creek* is unavailing: in that case, priority dates were formally changed.<sup>10</sup>

Respondents argue that the State Engineer admitted he reprioritized LWRFS water rights in his answering brief before the district court.<sup>11</sup> This is patently false. In his answering brief, the State Engineer correctly argued that nothing in Order 1309 jeopardizes the priority of LWRFS water rights. He stated Respondents’ water rights “were always subject to older (more senior) existing rights, including those protected by the Muddy River Decree.”<sup>12</sup> This statement is not an admission. The State Engineer made a simple and accurate statement of fact: since the LWRFS groundwater rights were issued after the priority dates of all Muddy River decreed rights, the groundwater rights are junior to the decreed surface water rights. This statement about Muddy River decreed rights does not provide a basis to infer at this stage, as Respondents do, that all groundwater rights in the LWRFS will be managed on a single priority table. Respondents are simply speculating about future management variables.

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<sup>9</sup> J.A. Vol. 3 at JA\_1678-80; J.A. Vol. 2 at JA\_394-412.

<sup>10</sup> *Wilson v. Happy Creek, Inc.*, 135 Nev. 301, 301-02, 448 P.3d. 1106, 1007 (2019).

<sup>11</sup> Resp’ts’ Joint Answering Br. at 34.

<sup>12</sup> J.A. Vol. 47 at JA\_19766.

Similarly, Respondents argue the State Engineer repeatedly admitted that Order 1309 was intended to be a management tool.<sup>13</sup> Yet, Respondents concede that before Order 1309 was issued, the State Engineer was clear that his decision would only involve factual questions.<sup>14</sup> Now they focus on a statement in the State Engineer’s answering brief below, and refer to it as “a callous and shocking disregard for prior appropriation.”<sup>15</sup> Again, the State Engineer was articulating an obvious concept that is true to the prior appropriation doctrine. Pre-statutory Muddy River water rights have earlier priority dates, and greater legal protections, than permitted groundwater rights in the LWRFS. If that groundwater water is drawn from the same source of supply (the LWRFS aquifer), Muddy River rights are senior. Far from “shocking and callous,”<sup>16</sup> this is a basic and straightforward application of the fundamental tenets of Nevada water law.

Respondents also rely on a faulty argument about *relative priority*.<sup>17</sup> Their position on priority is that as long as a holder has the senior right in a LWRFS sub-basin, that right is protected even when its use may harm a *more* senior right in a neighboring LWRFS sub-basin simply because of boundaries on a basin-map that is based on topographic features (like mountains), and not groundwater hydrology.

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<sup>13</sup> Resp’ts’ Joint Answering Br. at 34.

<sup>14</sup> Resp’ts’ Joint Answering Br. at 10-12.

<sup>15</sup> Resp’ts’ Joint Answering Br. at 34.

<sup>16</sup> Resp’ts’ Joint Answering Br. at 34.

<sup>17</sup> Resp’ts’ Joint Answering Br. at 32.

Respondents cite to NRS 533.090(1)-(2) to support their relative priority claim.<sup>18</sup> First, NRS 533.090 pertains to the determination of *pre-statutory vested (common law) water right claims*. *Relative rights* in NRS 533.090(1)-(2) refers to how the priority dates for those *vested water rights* relate to each other.<sup>19</sup> The water rights held by Respondents are not pre-statutory or common law claims of vested rights described in NRS 533.090(1)-(2). The statutes pertaining to the adjudication of pre-statutory vested rights are irrelevant to this matter except as they relate to the Muddy River adjudication and the protected status of the pre-statutory Muddy River rights. Since Respondents' reliance on NRS 533.087 through 533.320 is without merit, the Respondents and the district court's concept of relative priority is not supported by Nevada law and should be rejected by this Court.

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<sup>18</sup> Resp'ts' Joint Answering Br. at 32. Respondents also cite *Lobdell v. Simpson*, 2 Nev. 274, 277-78 (1866), and *Rand Properties, LLC v. Filippini*, Docket No. 78319 WL 1619306 (Order Affirming in Part and Reversing in Part, April 9, 2021) (Unpublished Disposition), yet these cases only discuss priority of vested rights. However, both cases indicate that priority relates back to the first act of appropriation, and not location. Indeed, *Lobdell* distinguished that prior appropriation is based on priority of use and not relative location. *Lobdell*, 2 Nev. at 278, *Rand Properties* 132 Nev. 1021 at 2\*(unpublished disposition).

<sup>19</sup> Jason King, State Engineer, *Summary Of Statutory Procedures For Filing Claims Of Vested Rights, Making Application For A Water Right And A Summary Of Fees Of The State Engineer* (April 2018), at 8-9 available at [http://water.nv.gov/Documents/SE\\_Procedures\\_Fees\\_Brochure.pdf](http://water.nv.gov/Documents/SE_Procedures_Fees_Brochure.pdf) (last visited February 8, 2023) (the priority of vested rights is based on factual determination of the initiation and good faith efforts to construct works of diversion, while the priority of statutory water rights is the date an application to appropriate is filed).

Respondents' water rights have the same priority date today as the rights had prior to the issuance of Order 1309. Any question regarding priorities within the LWRFS is not ripe. No basis exists for the district court's conclusions, or the Respondents' argument, that Order 1309 reprioritized LWRFS water rights.

As the author of Order 1309, the State Engineer's view that he did not change priority dates, or make any judgment regarding curtailment based on priority, should be given significant weight. Also, the Court can assuage Respondents' concerns by agreeing that Order 1309 did not alter any priorities. The manner in which the State Engineer ultimately addresses the use of their rights will be decided at a point in the future and will be subject to continued input and comment by Respondents and all stakeholders within the LWRFS.

**B. Water availability and the sustainable pumping level are factual findings.**

Respondents argue the State Engineer engaged in *further management* by finding that 8,000 acre-feet annually ("afa"), or less, is the sustainable pumping level for the LWRFS.<sup>20</sup> This argument is without merit. In Interim Order 1303, the State Engineer noted that stakeholder input was necessary to determine "the long-term annual quantity of groundwater that may be pumped from the [LWRFS]."<sup>21</sup> Obviously, the determination of water availability from a water resource is a critical

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<sup>20</sup> Resp'ts' Joint Answering Br. at 35.

<sup>21</sup> J.A. Vol. 2 at JA\_406.

step in water resource management.<sup>22</sup> In Order 1309, the State Engineer relied on empirical data from groundwater pumping, spring discharge at the Muddy River Springs, and Muddy River flows to identify water availability through a sustainable pumping level for the LWRFS. This highly scientific and technical determination is clearly factual in nature and is mandated by the Legislature.<sup>23</sup>

Respondents cannot identify any enforcement mechanism relating to the sustainable pumping level. The State Engineer's intent was, and is, to leave such management decisions (*i.e.*, enforcement) to a later phase of the administrative process.<sup>24</sup> Identifying a sustainable level of pumping, alone, was not a management decision.

Importantly, Respondents are not as powerless as they claim. Each Respondent had the opportunity to challenge the finding that their groundwater rights are hydrologically connected to the LWRFS.<sup>25</sup> Likewise, Respondents, through expert reports, rebuttal reports, testimony, cross examination, and post-hearing briefing, had the opportunity to press their specious claim that *no clear*

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<sup>22</sup> See NRS 532.167, NRS 534.090(3)(h), NRS 534.090(4)(a), 534.110(7).

<sup>23</sup> See NRS 532.167 and NRS 534.110(6).

<sup>24</sup> J.A. Vol. 2 at JA\_706 at 10:11-15 (Fairbank) (As the hearing officer made clear in the pre-hearing conference, threshold factual determinations were needed before the State Engineer and the stakeholders could “determine what an appropriate management strategy is” in the LWRFS).

<sup>25</sup> Order 1309 further invites additional hydrological study to determine to what degree water use within Kane Springs Valley and the Black Mountain Area would impact the LWRFS water resources. J.A. Vol. 2 at JA\_379.

*analysis* supports the pumping level for the LWRFS.<sup>26</sup> After reviewing that information, the State Engineer provided clear analysis for his findings based on current trends in spring flows in the Muddy River Springs area.<sup>27</sup>

**C. The State Engineer did not concede that management decisions were made in Order 1309.**

Respondents mischaracterize the following quote from the State Engineer's counsel as an admission that Order 1309 was intended as a management tool: "Priority curtailment is what we're dealing with here where if there's not enough water in the system for all the water rights, then you start to cut people off who are the most junior."<sup>28</sup> The State Engineer's counsel was explaining how curtailment could potentially be applied within the LWRFS in the extraordinary event the State Engineer is forced to exercise that authority. His counsel was not claiming that Order 1309 operates as a curtailment order or includes any management tool to effectuate curtailment as Respondents misleadingly suggest.

The full context of the arguments made below demonstrates the State Engineer was clearly arguing, as he does here, that his office has the legal authority to jointly administer the sub-basins in the LWRFS, not that Order 1309 includes the management tools or conclusions of law to do so. These statements are also

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<sup>26</sup> Resp'ts' Joint Answering Br. at 13.

<sup>27</sup> J.A. Vol. 2 at JA\_387-88.

<sup>28</sup> Resp'ts' Joint Answering Br. at 34.

consistent with the two-phase administrative process that the State Engineer has clearly expressed he intends to follow.<sup>29</sup>

**D. Ultimate issue for consideration in this appeal**

Respondents claim that Appellants are insisting that Order 1309 only made factual findings to get a better standard of review.<sup>30</sup> This is not true. Appellants insist that Order 1309 decided only threshold factual issues because that is precisely what the order did. More importantly, Respondents' conflation of Order 1309 into an abrogation of prior appropriation will lead this Court, as it did the district court, to decide an issue that is not properly before it.<sup>31</sup>

Respondents also claim Appellants are attempting to avoid one of the questions this Court directed the parties to address – whether the State Engineer has authority to jointly administer separate groundwater basins.<sup>32</sup> This too is untrue. Appellants are addressing the precise case and controversy at issue in this appeal. Specifically, the ultimate issue for this Court to decide is *whether, for the purpose of having subsequent proceedings to manage groundwater and protect senior surface water rights, the State Engineer can make findings of fact, based on the best*

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<sup>29</sup> J.A. Vol. 2 at JA\_706 at 10:16-22 (Fairbank) (“This larger substantive policy determinations is not part of this particular proceeding. That’s part of later proceedings, but this has to occur in order to inform those future policy determinations and decisions.”).

<sup>30</sup> Resp’ts’ Joint Answering Br. at 2, 31.

<sup>31</sup> The process envisioned is grounded in the prior appropriation doctrine rather than seeking to modify, much less abrogate it.

<sup>32</sup> Resp’ts’ Joint Answering Br. at 31.

*available science, that multiple groundwater basins share the same source of water supply.*

The judicial review of management powers should wait until those decisions are made, if and when they are, because Order 1309 is not “the only step” the State Engineer intends to take in LWRFS administration.<sup>33</sup> Much like a district court may bifurcate a proceeding into multiple phases, and how this Court managed this appeal, the State Engineer properly bifurcated the LWRFS proceeding.<sup>34</sup> Only the first step in that bifurcated process is ripe for judicial review, and the State Engineer was clearly authorized to take that first step.

**II. The Authority Exists To Make Factual Findings Regarding The Need To Jointly Administer Basins With A Shared Supply To Protect Senior Water Rights And The Public Interest.**

**A. Order 1309 is not the “first time in history” that the State Engineer has jointly administered multiple groundwater basins.**

Respondents are wrong when they repeatedly claim that Order 1309 represents the first time in Nevada history that the State Engineer jointly administered multiple groundwater basins.<sup>35</sup> The State Engineer has consistently

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<sup>33</sup> Resp’ts’ Joint Answering Br. at 12.

<sup>34</sup> *See Awada v. Shuffle Master, Inc.*, 125 Nev. 613, 621, 173 P.3d 707, 713 (2007) (Court recognized that district court’s decision to bifurcate trial into equitable claim and contract claim phases was within the court’s discretion), *Angelo v. Armstrong*, 11 F.3d 957, 964 (10th Cir. 1993) (“The trial court has considerable discretion in determining how a trial is to be conducted . . . [w]e therefore will not disturb the trial court’s bifurcation order absent an abuse of discretion.”).

<sup>35</sup> Resp’ts’ Joint Answering Br. at 1, *see also* Resp’ts’ Joint Answering Br. at 4, 5, 13, 15, 17, 18, 19, 41, 55.

exercised the office's statutory authorities to solve unique problems to preserve Nevada's water. The State Engineer has consistently engaged in the administration of water across basin boundaries throughout Nevada, and in the LWRFS. Accordingly, any decision by this Court about the authority to jointly administer groundwater basins may have statewide implications.<sup>36</sup> By reversing the district court, this Court will confirm the State Engineer's authority to jointly administer groundwater basins, which is a necessity to protect Nevada's water resources.

### **1. Joint administration of groundwater basins in Nevada**

The State Engineer regularly issues orders that transcend basin boundary lines and apply to multiple administrative areas.<sup>37</sup> In some cases, the State Engineer established a joint perennial yield for multiple groundwater basins, similar to what he did for the LWRFS in Order 1309. Since 1977, the State Engineer has managed the Susie Creek (Basin 50) and Maggie Creek Areas (Basin 51) under a joint perennial yield.<sup>38</sup> Since at least 1982, the State Engineer has jointly managed the Meadow Valley Area, a series of eight hydrologically connected sub-basins (Basins

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<sup>36</sup> Even if the State Engineer held to a basin-by-basin approach in the past, he is not bound by stare decisis, and can depart from past practice when warranted by factual conditions. *Desert Irr., Ltd. v. State*, 113 Nev. 1049, 1058, 944 P.2d 835, 841 (1997) ("no binding effect is given to prior administrative determinations") and *Motor Cargo v. Public Service Comm'n*, 108 Nev. 335, 337, 830 P.2d 1328, 1330 (1992) ("In Nevada, administrative agencies are not bound by stare decisis").

<sup>37</sup> See e.g., Rule 28(f) Pamphlet (February 8, 2023) at tabs 1-13.

<sup>38</sup> Rule 28(f) Pamphlet at 1-7.

198-205), under a unified perennial yield.<sup>39</sup> Several other interconnected basins are similarly managed under a joint perennial yield.<sup>40</sup>

The State Engineer's power of joint administration is not limited to administering hydrologically connected basins under a joint perennial yield; the State Engineer regularly implements different statutes across multiple basins in a single administrative action.<sup>41</sup> For example, in Order 708, the State Engineer designated two basins as a single area under NRS 534.030.<sup>42</sup> In Order 715, the State Engineer designated Dixie-Fairview Valley Area, a region consisting of seven sub-basins, under NRS 534.030.<sup>43</sup> In Order 1308, the State Engineer complied with the same statute, NRS 533.0241, in eighty basins simultaneously.<sup>44</sup> In Orders 839 and 872, the State Engineer jointly set preferred uses across multiple basins under NRS 534.120 to protect the combined water supply to rural cities in Nevada.<sup>45</sup> In Order 1162, the State Engineer created special rules and exceptions under NAC Chapter

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<sup>39</sup> Rule 28(f) Pamphlet at 14-45, 72-78. The Meadow Valley Area is a collection of basins that is to the immediate northeast of the LWRFS. J.A. Vol. 5 at JA\_2302.

<sup>40</sup> See Rule 28(f) Pamphlet at 59-71, 79-92; *see also* Rule 28(f) Pamphlet at 128-130 (listing basins 42-45 with a joint perennial yield, basins 64-66 with a joint perennial yield, and basins 124-127 with a joint perennial yield).

<sup>41</sup> See *e.g.*, Rule 28(f) Pamphlet at tabs 14-24.

<sup>42</sup> Rule 28(f) Pamphlet at 93-96.

<sup>43</sup> Rule 28(f) Pamphlet at 97-103 (Dixie-Fairview Valley Area includes Pleasant Valley [130], Jersey Valley [132], Dixie Valley [128], Fairview Valley [124], Eastgate Valley [127], Cowkick Valley [126] and Stingaree Valley [125]).

<sup>44</sup> Rule 28(f) Pamphlet at 124-130.

<sup>45</sup> Rule 28(f) Pamphlet at 107-111.

534 to mines that span Basins 59 and 131.<sup>46</sup> In Orders 1235 and 1237, the State Engineer jointly initiated an adjudication to determine relative rights based on NRS 533.090 of all sources of water across two basins.<sup>47</sup> And in Orders 1251 and 1318 the State Engineer jointly implemented NRS 534.110(2)(a) across multiple basins.<sup>48</sup>

## **2. Joint administration of the LWRFS**

Respondents cannot be genuinely surprised that the LWRFS' sub-basins must be jointly administered. The original hydrologic studies for the area in the 1960s recognized the interconnected nature of the LWRFS basins and the singular source of water.<sup>49</sup> In 1964, the State Engineer and the United States Geologic Survey ("USGS") concluded that Coyote Spring Valley, Kane Springs Valley, and the Muddy River Springs Area were a singular unit with a shared perennial yield.<sup>50</sup> In the 1980s those sub-basins were considered to have a combined perennial yield of 2,600 afa.<sup>51</sup> Further, throughout the application process to appropriate new groundwater rights in the LWRFS, applicants sought more water from the common

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<sup>46</sup> Rule 28(f) Pamphlet at 112-115.

<sup>47</sup> Rule 28(f) Pamphlet at 116-119.

<sup>48</sup> Rule 28(f) Pamphlet at 120-123, 131-134.

<sup>49</sup> J.A. Vol. 5 at JA\_2907.

<sup>50</sup> J.A. Vol. 5 at JA\_2303, 2305, 2310, 2337-38.

<sup>51</sup> Rule 28(f) Pamphlet at 8-13, 46-58 (Rulings 2254, 2947 and 2955).

source of supply in the area that included the “regional interbasin groundwater flow system.”<sup>52</sup>

Order 1169, issued in 2002, was a joint administration order. Order 1169 required an aquifer test using existing permitted rights throughout the LWRFS to better understand the area’s interconnected nature.<sup>53</sup> The State Engineer identified multiple designated groundwater basins and required water right holders in those basins to comply with the joint requirements of Order 1169. Kane Springs Valley was not included but the State Engineer later determined that impacts of the Order 1169 aquifer test spread into Kane Springs Valley.<sup>54</sup> The State Engineer relied on the results of the aquifer test to deny *hundreds* of water right applications in multiple basins for the same reason: that the LWRFS sub-basins share “virtually the same supply of water.”<sup>55</sup> The State Engineer further noted that it was unknown how much water was available to serve existing rights.<sup>56</sup> The purpose of Order 1309 was to further assess what was learned during and after the Order 1169 aquifer test and

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<sup>52</sup> See, e.g., J.A. Vol. 32 at JA\_14832, 14905 (when CSI’s water right was sought, the application stated “[t]he Point of diversion under Application 46777 is within Coyote Spring Valley Groundwater Basin and just up gradient of the Muddy River Springs Area Groundwater Basin. However, Application 46777 does not seek water from the alluvial aquifer, but rather seeks to appropriate water from deep regional groundwater flow system referred to as the carbonate aquifer. The carbonate aquifer is part of a regional interbasin groundwater flow system identified as the White River System.”).

<sup>53</sup> J.A. Vol. 3 at JA\_824–34.

<sup>54</sup> J.A. Vol. 44 at JA\_18070 at 1660:12-14 (Ricci).

<sup>55</sup> See, e.g., J.A. Vol. 3 at JA\_945.

<sup>56</sup> See, e.g., J.A. Vol. 3 at JA\_945.

answer the important question of how much groundwater could be sustainably pumped.<sup>57</sup>

**B. The administrative actions in Order 1309 are authorized by NRS 534.110(6).**

Respondents cannot refute that the State Engineer is bound by NRS 534.110(6) to investigate any basin where “it appears the average replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants.” Nor can Respondents dispute that the State Engineer was authorized by NRS 532.120(1) and NRS 534.110(1) to issue an order based on his investigation. Respondents object to Order 1309 but cannot explain how the State Engineer could fulfill his investigatory mandate without investigating each basin in the LWRFS to refine the *boundaries of the ground water source of supply* and quantify the *average annual replenishment* of that supply.

Authority obviously exists, and must exist, for delineating water sources and sustainable yields that can be used to ensure existing rights are protected. Common sense dictates that the State Engineer cannot fulfill public trust obligations and function under the statutory authority in NRS Chapters 532, 533 and 534 without the power to first identify sources of water – whether or not a source follows along above-ground topographical features that historically characterized basins – and the

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<sup>57</sup> J.A. Vol. 2 at JA\_327-335.

amount of water available therein. Indeed, numerous statutes predicate the State Engineer's water allocation decisions on these determinations.<sup>58</sup>

1. **The plain meaning of NRS 534.110(6) authorizes Order 1309.**

Respondents' plain meaning argument is without merit. NRS 534.110(6) directs an investigation into *any basin* where annual replenishment may be inadequate for all water right holders (over-appropriation). By stating *any* basin, the Legislature did not authorize the State Engineer to exclude a basin if it appeared to be over-appropriated. When the State Engineer issued Interim Order 1303, he knew that multiple basins needed to be investigated under NRS 534.110(6). He properly included the initiation of each basin investigation in one order because nothing in the plain language of NRS 534.110(6) precludes a joint investigation.

The plain language of NRS 534.110(6) also authorizes the factual findings in Order 1309. The statute requires an identification of the groundwater supply. The State Engineer did that after determining that each basin he investigated (*i.e.*, six basins and a portion of a seventh) shared one supply of water. The statute also requires a determination of the annual replenishment of that groundwater supply. The State Engineer determined that if more than 8,000 afa (or something less) was pumped from the LWRFS, the annual replenishment would not be adequate for all

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<sup>58</sup> See *e.g.*, NRS 533.0241, NRS 533.030(1), NRS 533.085, NRS 533.370(2), NRS 533.3705(1), NRS 533.371(4), NRS 533.027(1)(b), NRS 533.364(1)(b), NRS 534.110(6).

vested-right claimants. And since the sub-basins are not isolated, he could not set individual pumping levels for each basin. Accordingly, both factual findings that the State Engineer made about the LWRFS were authorized – indeed required – by the plain language of NRS 534.110(6).

Respondents make a series of technical arguments regarding NRS 534.110(6) that are unavailing. First, the State Engineer did not use NRS 534.110(6) to erase basin boundaries, as Order 1309 explicitly preserved existing basin boundaries as sub-basins.<sup>59</sup> Second, Respondents point to the State Engineer’s failure to mention NRS 534.110 in Interim Order 1303.<sup>60</sup> Their argument fails because Order 1309 replaced the entirety of Interim Order 1303 and the State Engineer identified NRS 534.110(6) as a source of authority in Order 1309. Moreover, even if Order 1309 did not replace the entirety of Interim Order 1303, the State Engineer clearly indicated he was considering whether the groundwater supply in the LWRFS was sufficient to meet the needs of all water rights holders.<sup>61</sup> Since 2014, numerous parties knew the Order 1169 aquifer test provided important new information on the “hydrology and water resources of the Lower White River Flow System in Coyote Spring Valley, the Muddy River Springs Area and the surrounding basins.”<sup>62</sup> Nevertheless, Interim Order 1303 is not under review here.

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<sup>59</sup> J.A. Vol. 2 at JA\_390, 393.

<sup>60</sup> Resp’ts’ Joint Answering Br. at 20.

<sup>61</sup> J.A. Vol. 2 at JA\_368, 405.

<sup>62</sup> J.A. Vol. 3 at JA\_914.

Third, Respondents mischaracterize statements made by the State Engineer's counsel during oral arguments to claim that the State Engineer admitted he lacks explicit authority for Order 1309.<sup>63</sup> His counsel was responding to the district court's question regarding statutory authority to jointly manage groundwater basins.<sup>64</sup> His counsel cited the general rule-making authority under NRS 532.120 (“[t]he State Engineer may make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.”).<sup>65</sup>

When the district court asked for explicit authority to join together basins, counsel clarified that the State Engineer made a “factual scientific finding that is within the State Engineer's specialized area of expertise, and the finding that the LWRFS is a single basin is supported by evidence in the record.”<sup>66</sup> This is the same argument that is made here. Later during oral argument, the district court asked a compound question, with the first part being about the State Engineer's explicit statutory authority, and the second part about the hypothetical curtailment of reprioritized water rights.<sup>67</sup> The answer was not a concession, and each answer of

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<sup>63</sup> Resp'ts' Joint Answering Br. at 18.

<sup>64</sup> J.A. Vol. 49 at JA\_22587 (“if he's already made that decision based on a scientific finding that it's a singular basin, how does he then change it to seven basins as one?”).

<sup>65</sup> J.A. Vol. 49 at JA\_22587-89.

<sup>66</sup> J.A. Vol. 49 at JA\_22589-90.

<sup>67</sup> J.A. Vol. 49 at JA\_22605 (“So there's nothing in the statute that explicitly gives authority for joint management. So there's nothing explicitly in the law that gives direction as to how to reprioritize those rights; correct?”).

counsel was consistent with the State Engineer’s argument here about his investigatory function under NRS 534.110(6).<sup>68</sup>

**a. Wilson v. Pahrump Fair Water**

Respondents urge this Court to adopt the plain meaning approach used in *Pahrump Fair Water*.<sup>69</sup> Appellants agree but for a different reason. *Pahrump Fair Water* supports this Court’s adoption of a more general and broad interpretation of the word “basin” rather than Respondents’ overly limiting definition.<sup>70</sup> In *Pahrump Fair Water* this Court held that the term “well” should be interpreted broadly because “general words” should be read generally to be accorded their full and fair scope, and the Legislature intended for the State Engineer to have adequate authority to identify and address water shortages.<sup>71</sup> Similarly here, the Court should not employ an unnecessarily narrow or technical interpretation of “basin” that would limit the State Engineer’s ability to make basic factual findings regarding over-appropriated water resources.

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<sup>68</sup> J.A. Vol. 49 at JA\_22605 (“Correct. Other than I do think if the parties – say we reached 534.030 designation, things get worse out there, something like that, I do think the State Engineer would have authority to do the worst – the worst result which would be curtailment by priority.”).

<sup>69</sup> Resp’ts’ Joint Answering Brief at 19. Similarly, Respondents cite *Doolin v. Dep’t of Corr.*, 134 Nev. 809, 811, 440 P.3d 53, 55 (Nev. App. 2018). *Doolin* read the plain meaning of the words “punished” under NRS 207.010(1)(a) and “convicted” under NRS 209.4465(8)(d), harmoniously and found the two terms to be a distinction without a difference.

<sup>70</sup> Appellants’ Joint Opening Br. at 35-41.

<sup>71</sup> *Wilson v. Pahrump Fair Water, LLC*, 137 Nev. 10, 15, 481 P.3d 853, 857 (2021).

**b. United States v. United States Board of Water Commissioners**

Consistent with Appellants’ view, the Ninth Circuit recently interpreted the term “basin” when addressing a case about water availability in Nevada.<sup>72</sup> In *United States Board of Water Commissioners*, the Ninth Circuit looked to the plain meaning of the word “basin” in the Walker River Decree and concluded its meaning is general and relates to a geographic area where water flows “according to the law of nature.”<sup>73</sup> Likewise, as “basin” is undefined in statute, the Court should adopt the general definition of basin in the context of its place in the overall statutory scheme.<sup>74</sup>

The State Engineer understood “basin” to have a similar definition based on a shared source of groundwater (*i.e.*, an aquifer). Unlike the Respondents’ claim that “basin” should be an immutable administrative unit on a 1968 map based on surface topography rather than hydrologic reality, the State Engineer’s reading is consistent

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<sup>72</sup> *United States v. United States Bd. of Water Comm’rs*, 893 F.3d 578, 605-06 (9th Cir. 2018).

<sup>73</sup> *See United States v. United States Bd. of Water Comm’rs*, 893 F.3d 578, 605-06 (9th Cir. 2018).

<sup>74</sup> *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989) (“It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”); *Gold Ridge Partners v. Sierra Pac. Power Co.*, 128 Nev. 495, 500-01 285 P.3d 1059, 1062-63 (2012). (Plain meaning interpretation is proper to determine legislative intent and the plain may be ascertained by examining the context and language of the statute as a whole.); *McGrath v. State Dep’t of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007) (concluding “the Legislature intended to use words in their usual and natural meaning”).

with *Pahrump Fair Water* and *United States Board of Water Commissioners*.<sup>75</sup>

Importantly, Respondents’ interpretation would prevent the State Engineer from fulfilling his duties under NRS 534.110(6) which relate directly to legislative mandates to protect existing rights and the public interest.

**c. Respondents’ magic words are not required.**

Respondents claim that magic words like *jointly* or *combine* must exist to authorize Order 1309, and that “basin” must be plural for the State Engineer to have authority for Order 1309. Both arguments miss the point and should be disregarded.<sup>76</sup> This Court in *Diamond Valley Ranch* rejected such an approach. The Court reasoned that specific language was not required to find that the State Engineer had broad authority.<sup>77</sup> Likewise, here the State Engineer’s general

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<sup>75</sup> Resp’ts’ Joint Answering Br. at 17-29.

<sup>76</sup> Resp’ts’ Joint Answering Br. at 17, 19, 30.

<sup>77</sup> *Diamond Nat. Res. Prot. & Conservation Ass’n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003, 1009 (2022) (“NRS 534.037 and NRS 534.110(7) would be meaningless because the State Engineer would have no power—beyond what is already conferred by NRS Chapters 533 and 534—to regulate over-appropriated basins.”). Respondents claim that the inclusion of one remedy in water law implies the exclusion of other remedies. Resp’ts’ Joint Answering Br. at 47 (citing *Slade v. Caesars Entm’t Corp.*, 132 Nev. 374, 380-81, 373 P.3d 74, 78 (2016)). However, *Slade* does not support this claim as it was discussing common law rules only, and the intent of the legislature to adopt or reject those rules. *Slade v. Caesars Entm’t Corp.*, 373 P.3d 74, 78 (Nev. 2016). Here, the relevant statutes provide general authority (NRS 533.030 and NRS 534.110(6)) and special authority (NRS 534.120 and NRS 534.037), which are both specific grants and incorporation of authority by the Legislature.

authority over “all water,”<sup>78</sup> coupled with his specific investigative authority from NRS 534.110(6), certainly provide the authority to make joint factual findings about multiple groundwater basins when he concludes they are, in fact, a single basin where several sub-basins share the same groundwater.

d. **Basin boundaries are not restricted to a 1968 map, and cannot be insulated from the best available science.**

Respondents’ claim that the word “basin” can only refer to one thing – the 232 sub-basins as shown on a 1968 map – should be rejected.<sup>79</sup> The term “basin” has never been used that restrictively in the groundwater context. The 232 sub-basins in the map referenced by Respondents are specifically shown as sub-basins to the larger, and original, 14 regional basins,<sup>80</sup> which are what the Legislature historically knew as “basins.”<sup>81</sup> In the early 1900s, the term “basin” was regularly used by the State Engineer in legislative reports to define the much larger regional basins associated with the 14 primary drainage systems in Nevada, including the

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<sup>78</sup> NRS 533.025 (“The water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public”) and NRS 533.030 (“Subject to existing rights, and except as otherwise provided in this section and NRS 533.0241, 533.027 and 533.028, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.”).

<sup>79</sup> Resp’ts’ Joint Answering Br. at 25-26.

<sup>80</sup> J.A. Vol. 5 at JA\_2302.

<sup>81</sup> See *Gold Ridge Partners v. Sierra Pac. Power Co.*, 128 Nev. 495, 285 P.3d 1059 (2012) (Court held that the plain meaning of a statute may be ascertained by examining the context of the statute. Here, the meaning of basin should be ascertained by examining the historical use of the term).

full watershed of the large perennial rivers.<sup>82</sup> The 14 basins are referenced and preserved in later maps and reports, and all the 232 sub-basins are described in relation to the larger, and historic, regional basins.<sup>83</sup> As both the larger regional basins, and all sub-basins, are generally and interchangeably referred to as “basins,” this Court should adopt the plain and general meaning of the word “basin” rather than Respondents’ overly limiting and specific definition, which was not understood or intended by the Legislature.

For the same reasons, Respondents’ argument that basin boundary lines are immutable should also be rejected.<sup>84</sup> This argument is what led the district court to rule that the State Engineer should ignore the “best available science” because it is a slippery slope.<sup>85</sup> The history of the creation of the 232 sub-basins clearly indicates that those delineations were and continue to be subject to future study and revision. The first studies of basin boundaries made clear that the basin boundaries were

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<sup>82</sup> See e.g., A.E. Chandler, State Engineer, *First Biennial Report of the State Engineer 1903-1904* (1905) at 11 (discussing the Walker River Basin and Humboldt River Basin); Seymour Case, State Engineer, *Biennial Report of the State Engineer 1917-1918* (1919) at 14 (noting the Humboldt River basin was divided into smaller valleys and sub-basins, but that the relation of each to the whole must still be determined); Alfred Merritt Smith, State Engineer, *Biennial Report of the State Engineer for the Period July 1, 1936, to June 30, 1938* (1938) at 107 (noting that smaller stream system and basins are part of the fourteen larger “primary drainage basins”). Available for review and download at <http://water.nv.gov/Biennial.aspx> (last visited January 24, 2023).

<sup>83</sup> J.A. Vol. 5 at JA\_2223-24, 2254-2263, 2302.

<sup>84</sup> Resp’ts’ Joint Answering Br. at 17-18.

<sup>85</sup> J.A. Vol. 49 at JA\_23322-23.

never intended to be unchangeable, and the State Engineer recognized that the boundaries would be amended when more studies were completed.<sup>86</sup>

The statutes that authorize these studies have no limitation to prevent later amendment or revision based on new science or information.<sup>87</sup> Notably, the 1968 hydrographic map was the result of administrative action. Common sense and general principles of administrative law dictate that if the State Engineer can issue a hydrographic basin map, the State Engineer must have the authority to revise the map – particularly when (1) there is no statutory prohibition, and (2) real-life observations and scientific advancements demonstrate a need for refinement. Order 1309 merely follows this approach.

Thus, the Legislature always understood that basin boundaries would be refined based on updated science and data like the USGS studies, Order 1169 aquifer test, and Order 1309 findings about the LWRFS.<sup>88</sup> The district court’s

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<sup>86</sup> NRS 532.170; J.A. Vol. 5 at JA\_2305, 2357. (“As development takes place in any area, demands for more detailed information will arise and studies to supply such information will be undertaken.”).

<sup>87</sup> NRS 532.165, NRS 532.167, NRS 532.170, NRS 534.110(6).

<sup>88</sup> Hugh A. Shamberger, State Engineer, *Biennial Report of the State Engineer for the Period July 1, 1954, to June 30, 1956*, (1956) at 26, 44 (e.g., “During the past biennium a number of maps covering ground-water basins have been brought up to date. It is hoped that little by little, the maps of all ground-water basins within the State will be available. These in turn will be revised from time to time to keep them as current as possible[.]” and “[t]he lack of basic geologic and hydrologic data in most areas precludes anything more than an appraisal of the ground-water resources in general terms. As more data becomes available, more precise determinations of the water resources of many of these areas can be made.”).

conclusion that the State Engineer's hands were tied, and he could not consider this “best available science,” was clearly reversible error.<sup>89</sup>

**e. Dezzani v. Kern & Associates, Ltd. is not relevant.**

Respondents’ reliance on *Dezzani* is misplaced.<sup>90</sup> *Dezzani* was a very specific case questioning whether an attorney providing legal services to a common-interest community homeowners association (“HOA”) was liable as an “agent” of the HOA as defined by statute.<sup>91</sup> Unlike what Respondents represent, “agent” was not defined by statute.<sup>92</sup> Instead, *Dezzani* held that when the Legislature listed “agent” and “attorney” separately in the same sentence (*i.e.*, “its agent or attorney”) the distinction shows that the Legislature meant each term to be separate and independent from the other.<sup>93</sup>

Unlike *Dezzani*, the words “basin” or “aquifer” are never used in the same sentence and manner that demonstrates the Legislature believed they are mutually exclusive. Thus, *Dezzani* is a case based on a specific and limited situation and

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<sup>89</sup> J.A. Vol. 49 at JA\_23321-23325.

<sup>90</sup> Resp’ts’ Joint Answering Br. at 27.

<sup>91</sup> *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 62, 412 P.3d 56, 57 (2018).

<sup>92</sup> Resp’ts’ Joint Answering Br. at 27 (claiming *Dezzani* held that one term “cannot be implied withing the meaning of a defined term”). *But cf. Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 64, 412 P.3d 56, 59 (2018) (“The word “agent” is not defined in NRS 116.31183 or otherwise in NRS Chapter 116”).

<sup>93</sup> *Dezzani v. Kern & Associates, Ltd.*, 134 Nev. 61, 65, 412 P.3d 56, 59 (2018) (the distinction “agent or attorney” in statute “demonstrates that the Legislature used the term ‘attorney’ when it intended to address situations applying to attorneys and the term ‘agent’ when it intended to generically address the duties owed by agents”).

does not support the Respondents' argument that the terms "basin" and "aquifer" are mutually exclusive.

f. **Appellants' argument regarding the definition of basin was raised below.**

Respondents incorrectly claim that Appellants waived their arguments on page 35 of the Opening Brief. SNWA argued in its answering brief in district court that the term "basin" should not be narrowly defined.<sup>94</sup> SNWA also argued that basin and aquifer can be synonymous and used the two terms interchangeably in its brief below.<sup>95</sup> No waiver occurred.<sup>96</sup>

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<sup>94</sup> J.A. Vol 47 at 20160:13-20162:2.

<sup>95</sup> See, e.g., J.A. Vol. 47 at JA\_20144:11-16 ("The *basins* that make up the LWRFS were formally considered separate *basins* largely on the assumption that the groundwater aquifers reflected the topographic boundaries."); JA\_20159:12-20160:12 ("The State Engineer found, based on extensive empirical evidence of hydrologic connection, that the LWRFS is a single aquifer with homogenous characteristics that stores and transmits groundwater. The State Engineer concluded the LWRFS is not five or seven separate aquifers, regardless of historic administrative boundary lines generally based on topography and not hydrological considerations.").

<sup>96</sup> *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52-53, 623 P.2d 981, 984 (1981). Respondents cite to *Old Aztec* to support their argument that Appellants waived their argument that 'basin' should not be narrowly defined but *Old Aztec* is easily distinguishable. In *Old Aztec*, the appellant argued that that district court erred when it did not rule on its forcible detainer claim but the Supreme Court ruled that the appellant waived his forcible detainer claim by failing to file a motion for an amended judgment pursuant to NRCP 52(b). Furthermore, Appellants raised the argument below that "basin" should not be narrowly defined so there is no plausible claim of waiver in this case.

2. **NRS 534.110(6) should be read harmoniously with other express and implied powers that grant the State Engineer broad flexibility for investigating water resources.**

Respondents' restrictive interpretation of the State Engineer's authority should be rejected because it cannot be harmonized with the other obligations of the State Engineer in the water statutes. Any reading of a statute in NRS chapters 532 through 534 must be read harmoniously. Where multiple statutes are at issue, the Court will "construe [them] as a whole, so that all the provisions are considered together and, to the extent practicable, reconciled and harmonized."<sup>97</sup> Here the Court must reconcile and harmonize the interpretation of NRS 534.110(6) with (1) the State Engineer's authority over all water in Nevada, (2) his duty to not impair vested rights (Muddy River rights) or violate decrees, (3) his duty to protect existing rights (senior groundwater rights), and (4) his role in protecting the public interest (the endangered Moapa dace).<sup>98</sup> Interpreting NRS 534.110(6) to authorize the findings in Order 1309 is in harmony with these critical obligations because defining the sustainable level of LWRFS pumping is necessary for protecting senior water rights and the endangered Moapa dace.

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<sup>97</sup> *Diamond Nat. Res. Prot. & Conservation Ass'n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003 (2022) (citing *Cromer v. Wilson*, 126 Nev. 106, 110, 225 P.3d 788, 790 (2010)).

<sup>98</sup> NRS 533.025, NRS 533.030(1); NRS 533.085; NRS 533.370(2); *Diamond Nat. Res. Prot. & Conservation Ass'n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003, 1008 (2022).

The State Engineer also has implicit authority to justify Order 1309. Respondents essentially ignore the State Engineer’s implicit powers, and the reference to those powers in Appellants’ Opening Brief, by arguing that the State Engineer’s implicit powers must be explicit.<sup>99</sup> But this Court already rejected Respondents’ argument when it determined “certain powers may be implied even though they were not expressly granted by statute.”<sup>100</sup> Put simply, “for implied authority to exist, the implicitly authorized act must be essential to carrying out an express duty.”<sup>101</sup>

Express authorities include NRS 533.0245, which prohibits the State Engineer from carrying out his duties in a manner that conflicts with decrees issued by state or federal courts. Also, because all groundwater belongs to the public and is issued subject to existing water rights, the State Engineer has a separate duty to

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<sup>99</sup> Resp’ts’ Answering Br. at 1. *But cf.*, Appellants’ Joint Opening Br. at 4 (NRS 534.110(6)), 24 (NRS 532.120), 26-28 (NRS 532.120, NRS 534.030, NRS 534.080, NRS 534.100, NRS 534.110 and NRS 534.120), 28-29 (NRS 534.110(6)), 29-32 (NRS 532.024(1)(c), NRS 533.030, NRS 533.364, NRS 533.3705, NRS 533.370, NRS 534.110), 47-50 (NRS 532.165, NRS 533.025, NRS 533.030, NRS 534.080, NRS 533.085, NRS 533.370, NRS 533.430, NRS 534.100, NRS 534.110), 59-61 (NRS 533.085(1), NRS 534.020(1)).

<sup>100</sup> *City of Henderson v. Kilgore*, 122 Nev. 331, 334, 131 P.3d 11, 13 (2006).

<sup>101</sup> *Wilson v. Pahump Fair Water, LLC*, 137 Nev. 10, 14, 481 P.3d 853, 857 (2021) (statute that expressly permitted State Engineer to restrict the drilling of “additional wells” *implicitly* included domestic wells); *Stockmeier v. State, Bd. of Parole Com’rs*, 127 Nev. 243, 248, 255 P.3d 209, 212 (2011) (Division of Parole did not have implied duty to amend prisoner’s Presentencing Report because it has no express duties related to the report).

prevent groundwater use from conflicting with senior water rights.<sup>102</sup> That duty includes instances where groundwater pumping impacts surface water rights.

Here, Order 1309 was “essential to carrying out an express duty” to protect senior surface water rights and the Muddy River Decree from groundwater pumping.<sup>103</sup> In *Mineral County*, the Court specifically cited NRS 533.0245, noting that the State Engineer must discharge “his or her duty” so as to not conflict with vested water rights issued through a court decree.<sup>104</sup> Again, LWRFS groundwater is a source of supply for the Muddy River. Pumping certain amounts of groundwater depletes the Muddy River’s flows, and thus impacts those vested rights. The only way to administer water rights in a manner that does not violate the 1920 Muddy River Decree and protects existing rights is to determine the boundaries of the groundwater supply in the LWRFS, and a sustainable pumping level that does not conflict with senior water rights. Therefore, the State Engineer’s authority to issue Order 1309 is implicit within his duty to comply with court decrees (NRS 533.0245) and protect senior rights (NRS 534.020(1)).<sup>105</sup>

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<sup>102</sup> NRS 534.020(1).

<sup>103</sup> J.A. Vol. 2 at JA\_390-91.

<sup>104</sup> *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 517, 473 P.3d 418, 429 (2020).

<sup>105</sup> J.A. Vol. 13 at JA\_6634-80, J.A. Vol. 3 at JA\_388.

**C. The State Engineer cannot ignore the public interest, public trust, or the Endangered Species Act (“ESA”).**

Respondents argue that no statute authorizes the State Engineer to rely on concerns for the public welfare, public trust, or the ESA, as a basis for Order 1309.<sup>106</sup> Respondents again misstate Appellants’ argument. The Appellants argue that the district court’s restrictive interpretation of the State Engineer’s authority is *inconsistent* with the State Engineer’s duty to protect the public interest, public trust, and comply with federal law.

If the State Engineer cannot consider the impacts of groundwater pumping on surface water, his office cannot comply with these other independent statutory mandates, and he could violate federal law.<sup>107</sup> Without being able to consider the impacts of groundwater pumping on surface water (and the surface water springs that provide habitat for the endangered Moapa dace) there is no way the State Engineer can protect the public interest or public trust, or comply with the ESA. The district court’s interpretation of the State Engineer’s authority conflicts with these obligations, is unreasonable, and should be rejected.

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<sup>106</sup> Resp’ts’ Joint Answering Br. at 29.

<sup>107</sup> *Strahan v. Coxe*, 127 F.3d 155, 164 (1st Cir. 1997) (State agency can be liable under the ESA when licensed or permitted activity, authorized by agency, causes take of an endangered species).

This Court recognized in *Mineral County* that Nevada water statutes must be construed consistently with public trust obligations.<sup>108</sup> Beyond express and implicit authority, the public trust doctrine is an independent source of authority “derived not only from common law, but from Nevada’s Constitution[.]”<sup>109</sup> Now, Respondents incorrectly argue that the State Engineer is prohibited from fulfilling his public trust duties if it requires the management of more than one basin at a time.<sup>110</sup> If this were true, the *Mineral County* decision would be a dead letter because the Walker River Basin includes surface and groundwater rights that transcend the boundaries of seven sub-basins, just like the LWRFS.<sup>111</sup>

Contrary to the Respondents’ assertions, this Court specifically determined that the statutory scheme for water resources sufficiently places an affirmative duty on the State Engineer to maintain public trust resources.<sup>112</sup> The only limitations on

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<sup>108</sup> See *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 513-17, 473 P.3d 418, 426-29 (2020).

<sup>109</sup> *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 510, 473 P.3d 418, 424 (2020).

<sup>110</sup> Resp’ts’ Joint Answering Br. at 30, 44.

<sup>111</sup> J.A. Vol. 5 at JA\_2302.

<sup>112</sup> *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 515, 473 P.3d 418, 427 (2020) (quoting *Lawrence v. Clark Cnty.*, 127 Nev. 390, 400, 254 P.3d 606, 613 (2011)). (“because the state holds such property in trust for the public’s use, the state is simply without power to dispose of public trust property when it is not in the public’s interest.”).

that fiduciary duty are *express legislative limitations of that power*, such as limiting the reallocation of decreed water rights.<sup>113</sup>

Respondents do not fit into that limitation, despite their claims.<sup>114</sup> They do not hold pre-statutory vested water rights, and their rights have not been reallocated. Therefore, as the *Mineral County* Court states, their “water rights are subject to regulation for the public welfare[.]”<sup>115</sup> The State Engineer’s regulatory power over *statutorily appropriated* water rights continues after issuance to comply with his public trust obligations.<sup>116</sup> Those obligations, like curtailment of groundwater water rights,<sup>117</sup> enforcement of express conditions in permit terms to limit groundwater development,<sup>118</sup> and the cancellation of water rights<sup>119</sup> are all powers the State Engineer maintains after a water permit is issued. The existence of such powers necessarily presupposes authority for the actions taken in Order 1309 – specifically,

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<sup>113</sup> NRS 533.0245; *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 518, 473 P.3d 418, 429 (2020) (“Nevada therefore expressly prohibits reallocating adjudicated water rights”).

<sup>114</sup> Resp’ts’ Joint Answering Br. at 30, 44-45. *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 529, 473 P.3d 418, 437 (2020) (C.J. Pickering and J. Silver concurring).

<sup>115</sup> *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 518, 473 P.3d 418, 430 (2020).

<sup>116</sup> *Mineral Cnty. v. Lyon Cnty.*, 136 Nev. 503, 514, 473 P.3d 418, 427 (2020).

<sup>117</sup> NRS 534.110(6) (“the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights.”).

<sup>118</sup> NRS 534.110(5).

<sup>119</sup> NRS 533.395(1) (“If, at any time in the judgment of the State Engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall require the submission of such proof and evidence *as may be necessary to show a compliance with the law.*”) (emphasis added).

determining the physical characteristics of a common water resource and the amount of water that can be pumped from that resource without harming the public trust. The Court should reject Respondents' argument that the public trust duty ends the moment a permit is issued.

**D. Alternatively, NRS 534.120(1) authorizes the findings and conclusions in Order 1309.**

In the Opening Brief, Appellants made the alternative argument that if the State Engineer was not authorized to delineate the LWRFS under NRS 534.110(6), he had authority to issue Order 1309 under NRS 534.120(1).<sup>120</sup> Respondents argue this statute did not authorize the State Engineer to issue Order 1309 because the designated basins were designated at different times and not in relation to the other basins.<sup>121</sup> Respondents fail to explain how NRS 534.120(1) requires that basins be designated at the same time to allow subsequent orders to be issued across multiple basins. Again, the Respondents artificially narrow the applications of NRS 534.120(1) with no legal justification.

Respondents also argue that it is illogical that NRS 534.120(1) should provide the authority for Order 1309 for some basins and not others.<sup>122</sup> The Respondents ignore that the Appellants rely on NRS 534.120(1) as an *alternative* argument if the

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<sup>120</sup> Appellants' Joint Opening Br. at 33; see NRS 534.120(1) (authorizing rules in designated basins that are essential for the welfare of the *area*).

<sup>121</sup> Resp'ts' Joint Answering Br. at 21.

<sup>122</sup> Resp'ts' Joint Answering Br. at 21.

Court does not find that the State Engineer had authority to delineate the LWRFS under NRS 534.110(6).<sup>123</sup> The purpose of the argument was to preserve the validity of Order 1309 in the six designated basins in the event the Court disagrees with the Appellants' primary argument. This is not illogical. If the Court adopts this approach, Order 1309 could be upheld in the previously designated basins based on NRS 534.120(1) because that is "essential for the welfare of the area involved."

**E. Respondents' judicial notice documents support Appellants' position or are irrelevant.**

The Respondents cite irrelevant legislative documents to argue the State Engineer conceded a lack of authority to manage all water, jointly or conjunctively.<sup>124</sup> Although the use of such documents is considered dangerous,<sup>125</sup> the exhibits at issue actually demonstrate that the Legislature authorized the State Engineer to conjunctively manage *all water*, and they "really mean[t] it."<sup>126</sup>

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<sup>123</sup> Appellants' Joint Opening Br. at 33.

<sup>124</sup> Resp'ts' Joint Answering Br. at 22-24, 29; Resp'ts' Req. for Jud. Notice, Doc. 2023-00703 (January 9, 2023).

<sup>125</sup> *Diamond Nat. Res. Prot. & Conservation Ass'n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003, 1010 (2022) (citing *Pension Benefit Guar. Corp. v. The LTV Corp.*, 496 U.S. 633, 650, (1990) (explaining that unpassed legislation is "a particularly dangerous ground on which to rest an interpretation of a prior statute"); and *Grupe Dev. Co. v. Superior Court*, 4 Cal.4th 911, 16 Cal.Rptr.2d 226, 844 P.2d 545, 552 (1993) (holding the same)) (Unpassed legislation, "has little value when interpreting a statute" and "leads to conflicting inferences.").

<sup>126</sup> Resp'ts' Req. for Jud. Notice, Ex. 1 at 27.

1. **Legislative discussion of the district court’s vacation of Order 1309**

Respondents refer to minutes of the State Engineer and Legislature discussing the impact of *this case* and the *uncertainty this case causes* on the authority of the State Engineer.<sup>127</sup> The State Engineer’s statements are consistent with his position in this case: he has authority, and the district court order is incorrect.<sup>128</sup> The importance of this document is in the legislators’ interpretation of the State Engineer’s authority. The legislative committee was confused by the district court’s opinion, and refrained from any statement that could be construed as limiting the authority the State Engineer utilized in issuing Order 1309. Chair Carlton stated:

[W]e wrote it down, we passed it, we voted on it, the Governor signed it, and it is in the NRS, so it is the law. Sometimes, even when we do that, we must go back and say, “By the way, we really mean it.” If we must go back and do a “we really mean it” bill, that is what we will have to do to make sure we are perfectly clear.

Thus, the Legislature intends for the State Engineer to have adequate authority to study, administer, and protect public water resources, whether below or above

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<sup>127</sup> Resp’ts’ Req. for Jud. Notice, Ex. 1 at 20-23 (qualifiers to statements include “[W]e have disparate legal interpretations that leave uncertainty,” “the court went on to say,” “one court made a finding that,” “yet another court makes a finding,” and “we are left with that level of uncertainty regarding our role, because we do get differing viewpoints from different courts.”).

<sup>128</sup> Resp’ts’ Req. for Jud. Notice, Ex. 1 at 27 (“We still feel that these policy directives guide our decisions and operations, *but this judicial district* and these particular facts, they constrain our ability to conjunctively manage water resources for protection of senior decreed surface water rights.”) (emphasis added).

ground. Any additional legislation would not be adding new powers. Any bill would be a “we really mean it” bill, confirming that the State Engineer is authorized to conjunctively manage surface and groundwater.

Judicial Notice Exhibits 5 and 6 relate to the bill drafts that were being discussed by the legislative committee, and they demonstrate that the Legislature believed that it needed to *clarify* that the State Engineer’s existing authority includes what he did in Order 1309, not grant new authority.<sup>129</sup>

## **2. Failed legislation from 2019 legislative session**

Respondents reference failed legislation from 2019 as support for their arguments.<sup>130</sup> This Court has consistently held that failed legislation is unreliable and a dangerous source of legislative history.<sup>131</sup> Assembly bills (“AB”) 30 and 51 are failed legislation that related to mitigation of conflicts caused by groundwater

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<sup>129</sup> Resp’ts’ Req. for Jud. Notice, Ex. 5 at 11, Ex. 6 at 1. See Resp’ts’ Joint Answering Br. at 23-24 (the quote cited by the Respondents includes the word “clarify”).

<sup>130</sup> Resp’ts’ Joint Answering Br. at 23 n.6.

<sup>131</sup> *Diamond Nat. Res. Prot. & Conservation Ass’n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003, 1010 (2022) (citing *Pension Benefit Guar. Corp. v. The LTV Corp.*, 496 U.S. 633, 650, (1990) (explaining that unpassed legislation is “a particularly dangerous ground on which to rest an interpretation of a prior statute”); and *Grupe Dev. Co. v. Superior Court*, 4 Cal.4th 911, 16 Cal.Rptr.2d 226, 844 P.2d 545, 552 (1993) (holding the same)) (Unpassed legislation, “has little value when interpreting a statute” and “leads to conflicting inferences.”).

development to surface water rights.<sup>132</sup> Whether a conflict can be mitigated is a question this Court has yet to answer,<sup>133</sup> and is not before the Court here. Accordingly, any statement made during the deliberation over these failed bills is irrelevant.

Respondents also mischaracterize the State Engineer's reference to these failed bills in Order 1329.<sup>134</sup> Order 1329 is an unrelated joint administration order that manages groundwater applications across multiple sub-basins in the Humboldt River Basin.<sup>135</sup> The referenced quote is from a paragraph where the State Engineer provided context to the above AB 51 and how "conjunctive management" was used there.<sup>136</sup> But the State Engineer clarified that the proposed "conjunctive management" in AB 51 was really a "combination of mitigation plan and financial compensation."<sup>137</sup> This discussion is completely irrelevant here because the issue of

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<sup>132</sup> See text of AB 51 (*e.g.*, "the creation of a program for the conjunctive management of groundwater and surface water in a hydrographic basin in the State in order to mitigate conflicts between groundwater and surface water users"). Available at <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/5951/Text> (last visited January 26, 2023).

<sup>133</sup> See *Eureka Cnty. v. State Eng'r*, 131 Nev. 846, 850, 359 P.3d 1114, 117 (2015) ("This court has never addressed whether the statute may be read [to allow mitigation to prevent a conflict], and we need not do so at this time.").

<sup>134</sup> Note, Order 1329 is currently under appeal, and is not ripe for consideration of the Nevada Supreme Court at this time. Nothing in this brief is intended to be an admission by any party, a waiver of claim by any party, or an attempt to influence a future decision of this Court in that case.

<sup>135</sup> The Humboldt River Basin is one of the 14 original basins identified in Nevada, which encompasses 33 of the 232 plus sub-basins. J.A. Vol. 5 at JA\_2302.

<sup>136</sup> See Resp'ts' Req. for Jud. Notice, Ex. 4 at 7-8.

<sup>137</sup> *Id.*

mitigation for conflicts is entirely absent from Order 1309 and is not before the Court.

3. **Memorandum Concerning Proposed Legislative Language and Order Granting Judicial Notice in Case No. 72317**

At the last hour, Respondents seek to admit two additional, irrelevant documents which post-date the district court's decision. The new documents are attached to Respondents' reply to the opposition to its request for judicial notice. The Court should not condone Respondents' highly improper attempt to introduce new evidence on appeal through a reply, but in any event, the proffered documents do not support Respondents' position.

First, Respondents cite an unpublished order from this Court granting a request for judicial notice in an unrelated case. As Appellants have previously explained, this Court "will not take judicial notice of records in another and different case, even though the cases are connected."<sup>138</sup> Further, an unpublished disposition does not establish precedent and may be cited only for its "persuasive value."<sup>139</sup> Here, the Court's unpublished order contains no analysis that would lend it persuasive value. It simply summarizes the parties' positions and states "[h]aving considered the parties' arguments as well as the documents before this court, we

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<sup>138</sup> *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (citing *Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981)).

<sup>139</sup> NRAP 36(c).

grant the motion.”<sup>140</sup> As such, it says nothing about the State Engineer’s authority to identify and describe common water resources. Nor does it contain anything that would inform this Court’s decision whether to grant judicial notice in this case.

Second, Respondents refer to a memorandum on proposed legislation authored by Appellant Center for Biological Diversity (“CBD”).<sup>141</sup> Like the State Engineer’s statements to legislative committees discussed above, the memorandum responds, in part, to the impact of this case and the uncertainty that the district court’s decision creates with respect to the State Engineer’s authority. The proposal also addresses a broader set of concerns than Order 1309 and would expressly grant management authority, which Order 1309 did not require. Specifically, the proposal is designed to “acknowledge the unique challenges associated with each groundwater system in the State and seek to ensure equitable outcomes through robust public and stakeholder participation” in ways current statutes do not provide.<sup>142</sup>

This proposal for *additional* State Engineer authority does not, as Respondents insist, demonstrate that the *current* statutes strictly require basin-by-basin administration. And to the extent that the proposal would clarify the State Engineer’s authority to administer water resources across existing basin boundaries,

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<sup>140</sup> Resp’ts’ Reply in Support of Mot. for Jud. Notice, Ex. A.

<sup>141</sup> See *id.*, Ex. B.

<sup>142</sup> *Id.*

those aspects of the proposal were intended, like the bill drafts discussed above, as a “we really mean it” clarification to avoid confusion in the wake of the district court’s order. Accordingly, the legislative memorandum is not inconsistent with Appellants’ position on appeal.

**III. Respondents Concede That The State Engineer Is Authorized To Conjunctively Manage Ground And Surface Water, But Then Place Baseless Limits On That Authority.**

This Court does not need to review or confirm the basic premise that the State Engineer must recognize the connection, where it exists, between groundwater and surface water when he administers water resources. To the extent that is *conjunctive management*, Respondents concede the point.<sup>143</sup> Also, case law from this Court, Nevada’s federal district court, and the United States Supreme Court already make that principle clear.<sup>144</sup>

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<sup>143</sup> Resp’ts’ Answering Br. at 40 (“Respondents were not concerned with the State Engineer’s authority to conjunctively manage groundwater and surface water in a basin, and made this distinction clear throughout the District Court proceedings.”), 42-43 (Instead of arguing that the cases cited to by Appellants in support of the State Engineer’s authority of conjunctive management do not stand for that proposition, the Respondents argue “none of the decisions cited by the State Engineer concerned the re-prioritization of existing (permitted and certificated) water rights or involved multiple hydrographic basins such as in Order 1309.”), and 47 n.15 (“consolidating basins is not necessary for ‘conjunctive management.’”).

<sup>144</sup> See *United States v. Orr Water Ditch Co.*, 600 F.3d 1152, 1159 (9th Cir. 2010) (Court recognized “[t]he reciprocal hydraulic connection between groundwater and surface water” that has been known to the legal and professional communities for many years, which is why the court found it necessary to protect existing surface water rights from new groundwater rights); *Cappaert v. U.S.*, 426 U.S. 128, 142, (1976) (United States Supreme Court recognized that “Nevada itself may recognize

Respondents also claim they did not argue to the district court that the State Engineer lacks authority for this form of conjunctive management.<sup>145</sup> Yet, whatever Respondents argued below led the district court to conclude “there is *no authority* or guidance whatsoever in the statutes as to how to go about conjunctively managing water and water rights.”<sup>146</sup> The Court should correct this error.

While Respondents argue that the State Engineer improperly relied on the legislative declaration in NRS 533.024(1)(e), they concede that a legislative declaration “offers interpretive guidance.”<sup>147</sup> Since the State Engineer did not rely on this statute as independent authority, Respondents’ argument lacks merit. But the

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the potential interrelationship between surface and groundwater since Nevada applies the law of prior appropriation to both.”); *Eureka County v. State Engineer*, 131 Nev. 846, 852-853, 359 P.3d 1118 (2015) (Court recognized groundwater pumping could not occur if it caused existing surface sources to cease to flow because it constituted a conflict); *Griffin v. Westergard*, 96 Nev. 627, 630, 615 P.2d 235, 237 (1980); *see generally*, *Pyramid Lake Paiute Tribe of Indians v. Ricci*, 126 Nev. 521, 245 P.3d 1145 (2010) (Court considered impact of groundwater appropriations on surface water rights, and the fish habitat sustained by those waters).

<sup>145</sup> Resp’ts’ Joint Answering Br. at 40.

<sup>146</sup> J.A. Vol. 49 at JA\_23326.

<sup>147</sup> Resp’ts’ Joint Answering Br. at 24. Respondents then claim that if NRS 533.024 is read as authority, that its application to Order 1309 would be an unconstitutional delegation of power. Resp’ts’ Joint Answering Br. at 24 citing *Sheriff, Clark County v. Luqman*, 101 Nev. 149, 153, 697 P.2d 107, 110 (1985); *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552-53 (2010). While the State Engineer did not use NRS 533.024 as authority, even if he had, Respondents do not articulate what part of NRS 533.024 they claim to be unconstitutional. Further, the cases they cite do not support their position as they relate to vagueness of criminal statutes or improper delegation of power related to criminal statutes, but no criminal statutes are at issue in this case.

interpretive guidance from the legislative declaration is “to manage conjunctively the appropriation, use and administration of all waters of this State, regardless of the source of the water.”<sup>148</sup> The State Engineer correctly used this declaration as a *lens* through which he interpreted his statutory directives.

The Legislature would only make this declaration if it understood the State Engineer was already authorized to carry out that policy, otherwise it would be nugatory.<sup>149</sup> The Legislature’s placement of the policy to conjunctively manage “all waters of this State” in NRS Chapter 533 is also notable as the Court must harmonize Nevada’s water law statutes. Respondents and the district court, however, place more value in failed legislation and other piecemeal statements than plain language in NRS Chapter 533, enacted by the Legislature. Accepting Respondents’ arguments and the district court’s ruling in this instance would require absurd contortions to fundamental canons of statutory interpretation and reliance on legislative (or failed-legislative) interpretation. Accordingly, this Court should

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<sup>148</sup> NRS 533.024(1)(e).

<sup>149</sup> *S. Nevada Homebuilders Ass’n v. Clark Cnty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (When interpreting a statute, this court must give its terms their plain meaning, considering its provisions as a whole so as to read them in a way that would not render words or phrases superfluous or make a provision nugatory.); *see also Paramount Ins., Inc. v. Rayson & Smitley*, 86 Nev. 644, 649, 472 P.2d 530, 533 (1970); *Diamond Nat. Res. Prot. & Conservation Ass’n v. Diamond Valley Ranch, LLC*, 138 Nev. Adv. Op. 43, 511 P.3d 1003, 1009 (2022).

consider the legislative declaration a “ratification and confirmation” of that existing power to conjunctively manage all water, regardless of the source.<sup>150</sup>

Respondents even appear to concede the State Engineer may conjunctively manage groundwater and surface water, but claim he can only do that when granting new applications (not when managing existing water rights), and when the surface water and groundwater are in the same basin.<sup>151</sup> Both of these limitations are baseless because nothing in NRS 533.024 supports these contentions and the statutes concerning the granting of new applications provide no support.

The State Engineer will violate the non-impairment doctrine if he is precluded from conjunctively managing groundwater rights he has issued that are impacting senior surface water rights.<sup>152</sup> This is particularly true here, where he issued groundwater permits *subject to existing rights*,<sup>153</sup> and with express conditions and permit terms that precluded impacts to the Muddy River.<sup>154</sup> As for conjunctive management across multiple groundwater basins, no logical explanation exists for limiting the State Engineer’s obligation to protect senior surface water rights and the public interest from groundwater pumping, wherever it is occurring, be it one basin or more.

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<sup>150</sup> Appellants’ Joint Opening Br. at 59-60.

<sup>151</sup> Resp’ts’ Joint Answering Br. at 42-46.

<sup>152</sup> NRS 533.085.

<sup>153</sup> NRS 534.020(1).

<sup>154</sup> J.A. Vol. 32 at JA\_14917-18; *see* NRS 533.0245 (protecting court decrees).

Accordingly, this Court should rule that the State Engineer is authorized to conjunctively manage groundwater permits that were issued by his office if pumping those rights impacts vested surface water rights, senior ground water rights or the public interest, regardless of whether the pumping is in one or more hydrographic basin, or whether those impacts are felt inside or outside the same hydrographic basin.

**IV. Respondents Suggest Other Solutions That Are Irrelevant Because They Do Not Negate The Need For Order 1309's Findings.**

**A. 2006 Amended Stipulation for Withdrawal of Protests**

Respondents contend that since 2006, Lincoln County Water District and Vidler Water Company (“Lincoln-Vidler”) and the United States Fish and Wildlife Service (“USFWS”) have performed under the terms of an amended stipulation.<sup>155</sup> The stipulation can in no way correct the over-appropriation problem or speak to the State Engineer’s authority. Also, neither the State Engineer nor SNWA, MVIC or CBD are parties to that stipulation.

**B. 2006 Memorandum of Agreement (“MOA”)**

This MOA between CSI, Moapa Valley Water District, USFWS, and SNWA adopted mitigation policies to protect the Moapa dace.<sup>156</sup> MVIC, CBD and the State Engineer are not parties to this agreement. Simply put, the MOA has nothing to do

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<sup>155</sup> Resp’ts’ Joint Answering Br. at 49.

<sup>156</sup> Resp’ts’ Joint Answering Br. at 49.

with the State Engineer's express or implied authority to engage in joint or conjunctive management.

**C. Muddy River Decree action**

Respondents also suggest that “[n]o Muddy River decree right holder has initiated any action in the Decree court contending its rights have been diminished by any specific groundwater pumping in any of the subject seven groundwater basins.”<sup>157</sup> Respondents are putting the cart before the horse. SNWA and MVIC expect the State Engineer to take steps to correct the impact to the Muddy River from groundwater pumping, and as described herein, he is obligated to do so. The State Engineer began that process by making the factual determinations in Order 1309.

Management decisions by the State Engineer have yet to occur. When those decisions are made, if holders of decreed rights such as MVIC are still aggrieved after trying to work with the State Engineer, those aggrieved parties could properly file a lawsuit in the decree court. At this point, however, the State Engineer is committed to addressing the over-appropriation problem in the LWRFS. No reason or requirement exists for SNWA or MVIC or any other holder of rights under the Muddy River Decree to be forced to engage in more litigation.

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<sup>157</sup> Resp'ts' Joint Answering Br. at 48; J.A. Vol. 49 at JA\_21670 n.10, 22934.

**D. Designate LWRFS as a Critical Management Area (“CMA”)**

Respondents claim that the State Engineer has other statutory tools, including designating a CMA under NRS 534.110(7) to administer groundwater and surface water.<sup>158</sup> This argument fails for two important reasons. First, the State Engineer can only designate a CMA when withdrawals of groundwater consistently exceed the annual supply.<sup>159</sup> Hopefully, the State Engineer’s subsequent management efforts that follow the factual determinations in Order 1309 can avoid that situation. However, in order to *ever* designate a CMA in this area or elsewhere, the State Engineer must have the authority to make factual findings regarding supply like those in Order 1309.

Regardless, Appellants should not have to wait for another Diamond Valley-level problem to exist before the over-appropriation problem is even acknowledged. This is illogical and would result in the State Engineer violating his duty to protect senior water rights. Second, if the State Engineer wanted to designate the LWRFS as a CMA, he would first need to make the threshold factual determinations regarding the boundary of the aquifer and the sustainable pumping level that were made in Order 1309 to effectively determine if groundwater withdrawals are exceeding supply as required by NRS 534.110(7).

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<sup>158</sup> Resp’ts’ Joint Answering Br. at 46-47.

**E. Regulate specific pumping**

Finally, Respondents argue that the State Engineer should address specific impacts to existing rights separately based on location.<sup>160</sup> This argument again shows Respondents' mischaracterization of Order 1309's content and purpose. Nothing in Order 1309 prevents this action and this is the type of management strategy that is ripe for consideration in later phases of administration. But this suggestion does not change the fact Order 1309's initial factual findings were a necessary first step before managing the over-appropriation in the LWRFS.

**V. The State Engineer Provided Constitutionally Adequate Process Before Issuing Order 1309.**<sup>161</sup>

Appellants explicitly challenged the district court's characterization of Order 1309 as a management decision, noting that "the district court's order cites no provision of Order 1309 that effectuates a management decision regarding the LWRFS."<sup>162</sup> Yet all of Respondents' briefs – the Joint Answering Brief and the separate briefs filed by CSI, Lincoln-Vidler, and Nevada Cogeneration Associates Numbers 1 and 2 ("Nevada Cogen") – are devoid of any direct answer to Appellants' argument on that point.

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<sup>160</sup> Resp'ts' Joint Answering Br. at 48.

<sup>161</sup> Because Order 1309 does nothing more than make factual determinations and does not address Respondents' rights, due process may not even apply. See Appellants' Joint Opening Br. at 77-82. But the State Engineer satisfied due process for the reasons explained below.

<sup>162</sup> Appellants' Joint Opening Br. at 64.

In all the briefing Respondents provided, which repeatedly characterizes Order 1309 as a sweeping management decision, Respondents failed to provide even a single citation to any page of Order 1309 to support the conclusion that the State Engineer is managing the LWRFS through Order 1309. This omission from their brief is easily explained and fatal to their position on appeal. The State Engineer made no management decisions in Order 1309.

The record also belies Respondents' representations on what Order 1309 does. Respondents repeatedly say that Order 1309 erases boundaries.<sup>163</sup> But they cite nothing in Order 1309 that erases the existing basin boundaries. Instead, Order 1309 leaves each of the preexisting basins intact as sub-basins of the geographic area the State Engineer delineated as the LWRFS.<sup>164</sup>

Respondents say that Order 1309 reordered the priority of their rights.<sup>165</sup> But they cite no specific statement or content within Order 1309 that addresses priority dates of any rights within the LWRFS. Instead, Order 1309 rescinds a provision of Interim Order 1303 that did address the issue of priority across the LWRFS.<sup>166</sup>

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<sup>163</sup> Resp'ts' Joint Answering Br. at 4; CSI's Answering Br. at 10; Lincoln-Vidler's Answering Br. at 19.

<sup>164</sup> J.A. Vol. 2 at JA\_326, 390.

<sup>165</sup> Resp'ts' Joint Answering Br. at 2, 4, 14-15, 52; Lincoln-Vidler's Answering Br. at 14.

<sup>166</sup> J.A. Vol. 2 JA\_390-391, 406.

Respondents also claim that Order 1309 applies a pumping cap that curtails existing rights.<sup>167</sup> But again, they omit any citation to any statement or finding in Order 1309 that curtails any rights. Instead, Order 1309 merely identifies a level of sustainable groundwater pumping within the LWRFS that will not decrease the current flow of the Muddy River Springs based upon the State Engineer's understanding of the data produced before and after the Order 1169 aquifer test.<sup>168</sup>

Respondents' due process arguments, which are almost entirely based on Respondents' erroneous conclusion that Order 1309 is a management decision, are fictional. Order 1309 includes no enforcement mechanism that would achieve anything that Respondents say that Order 1309 does. Order 1309 makes factual determinations about the characteristics of the LWRFS, but the Order does nothing to manage the LWRFS as a water resource – the order, by intention, does not reach those challenging issues.

For that reason, the vast majority of Respondents' due process arguments fail. Even so, Appellants address all of Respondents' specific arguments in turn below.

**A. The State Engineer provided constitutionally adequate notice and an opportunity to be heard.**

Respondents' general arguments on the State Engineer's notice and hearing procedure fail because they are based upon Respondents' misconception that Order

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<sup>167</sup> Resp'ts' Joint Answering Br. at 35, 46; CSI's Answering Br. at 1-2, 4.

<sup>168</sup> J.A. Vol. 2 at JA\_382-388, 390.

1309 is a “management” decision. Even so, on a theoretical level, Respondents arguments would still fail if Order 1309 did include decisions that manage the LWRFS.

**1. The State Engineer provided adequate notice prior to the Interim Order 1303 Hearing.**

Respondents’ challenge to the notice the State Engineer provided is based on their misconception of Interim Order 1309. Although they claim they were not put on notice that the State Engineer “would make management decisions for the seven basins at the conclusion of the 2019 hearing,”<sup>169</sup> Respondents provide no citation to any part of Order 1309 to support the conclusion that the State Engineer made any management decision within the order. Similarly, Respondents argue that they were not put on notice that “the State Engineer would consider changing the boundaries of seven separate hydrographic basins (six previously designated), delineate them as a single hydrographic basin with one maximum quantity of groundwater that could be pumped from the single basin, or reprioritize the priority of rights in the basins.”<sup>170</sup> But again, Respondents’ assertion lacks a record cite for support. Order 1309 makes only factual determinations on the characteristics of the LWRFS and does not include an enforcement mechanism for management of the LWRFS as a water resource. Thus, Respondents’ notice argument fails on that basis.

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<sup>169</sup> Resp’ts’ Joint Answering Br. at 51.

<sup>170</sup> Resp’ts’ Joint Answering Br. at 51.

But even if Respondents' characterization of what Order 1309 does was accurate – that the State Engineer made management decisions by merely delineating the boundaries of an aquifer and identifying a sustainable pumping level that would protect existing springs that flow from the delineated aquifer – their argument still fails.

First, before Order 1169, many Respondents received water rights subject to protests and challenges regarding regional water supply. Then, some Respondents participated in the Order 1169 aquifer test. As Respondents acknowledge, the State Engineer initiated the test to obtain data that would aid him in understanding (1) the interconnectivity of the carbonate aquifer that is now known as the LWRFS, and (2) the relationship between groundwater pumping from the carbonate aquifer and the flow of the springs at the headwaters of the Muddy River.<sup>171</sup> And although Respondents represent that the State Engineer initiated the Order 1169 aquifer test to address availability of water for new appropriations, that point does not create a basis for Respondents to claim they had no notice of what would later transpire through the Interim Order 1303 hearing process.<sup>172</sup>

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<sup>171</sup> Resp'ts' Joint Answering Br. at 7-9; *see also* J.A. Vol. 2 at JA\_396 (“WHEREAS, prior to the Order 1169 aquifer test beginning, there were significant concerns that pumping 8,050 afa from the Coyote Spring Valley as part of the aquifer test would adversely impact the water resources at the Muddy River Springs, and consequently the Muddy River.”).

<sup>172</sup> Resp'ts' Joint Answering Br. at 7-8.

Respondents acknowledge that the State Engineer denied all pending applications in Rulings 6254-6261 before the State Engineer began holding workshops that led to Interim Order 1303.<sup>173</sup> As a result, Respondents had notice that the Interim Order 1303 hearing would address availability of water across the LWRFS generally, not just for new appropriations, because the State Engineer already denied all applications for new appropriations before initiating the Interim Order 1303 process.

Additionally, Respondents acknowledge that Interim Order 1303 expressly directed production of reports that would include information on (1) “[t]he geographic boundary of the hydrologically connected groundwater and surface water systems comprising the [LWRFS]”; (2) “[t]he information obtained from the Order 1169 aquifer test and subsequent to the aquifer test and Muddy River headwater spring flow as it relates to aquifer recovery since the completion of the aquifer test”; and (3) “[t]he long-term annual quantity of groundwater that may be pumped from the [LWRFS], including the relationships between the location of the pumping on discharge to the Muddy River Springs, and the capture of Muddy River flow[.]”<sup>174</sup> Those three points relate directly to establishing the boundaries of the LWRFS and determining how much groundwater can be sustainably pumped from the LWRFS without decreasing the flow of the springs at the headwaters of the

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<sup>173</sup> Resp’ts’ Joint Answering Br. at 9.

<sup>174</sup> Resp’ts’ Joint Answering Br. at 10.

Muddy River. And if that were not enough, as Lincoln-Vidler points out in their individual brief, quoting Interim Order 1303, “[t]he reports were intended to help the State Engineer subsequently ‘make a determination as to the appropriate long-term management of groundwater pumping that may occur in the LWRFS by existing holders of water rights without conflicting with existing senior decreed rights or adversely affecting the endangered Moapa Dace.’”<sup>175</sup>

Finally, as Respondents acknowledge, through the issuance of prehearing notices and statements of the hearing officer, Respondents received notice that the State Engineer would be conducting a preliminary factual inquiry to address the physical characteristics of the LWRFS.<sup>176</sup> Those characteristics include the boundaries of the LWRFS and the availability of water within the LWRFS for groundwater pumping. The prehearing notice also provided a list of all the documents the State Engineer would be relying on at the hearing and in subsequent decision-making to address those issues, which also included a significant amount of data and reports produced by participants in the hearing.<sup>177</sup>

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<sup>175</sup> Lincoln-Vidler’s Answering Br. at 4-5 (quoting J.A. Vol. 2 at JA\_405). *See also* J.A. Vol. 2 at JA\_404 (referencing the “need for further analysis of the historic and ongoing groundwater pumping data, the relationship of groundwater pumping within the LWRFS to paring discharge and flow of the fully decreed Muddy River, the extent of impact of climate conditions on groundwater levels and spring discharge, and the ultimate determination of the sustainable yield of the LWRFS”).

<sup>176</sup> Resp’ts’ Joint Answering Br. at 11.

<sup>177</sup> J.A. Vol. 2 at JA\_328-335, 470-481.

The extensive history of the carbonate aquifer—including the Order 1169 aquifer test and Interim Order 1303—alone gave Respondents notice of the exact things they say they did not receive notice of. The State Engineer was obviously assessing the LWRFS as a whole when Interim Order 1303 was seeking reports on “management of groundwater pumping that may occur in the LWRFS by existing holders of water rights without conflicting with existing senior decreed rights or adversely affecting the endangered Moapa Dace.”<sup>178</sup> The State Engineer made repeated references to the need to study the impact of groundwater pumping across the entire LWRFS on spring flow at the headwaters of the Muddy River. And to the extent any further notice was needed, the prehearing notice (including reference to the State Engineer’s exhibits) provided adequate notice of what would transpire at the Interim Order 1303 hearing.<sup>179</sup>

The hearing itself tracked with everything the State Engineer said would happen during the hearing: the State Engineer delineated the carbonate aquifer and determined how much water is available for pumping from the aquifer without decreasing the current flow of the springs at the headwaters of the Muddy River.

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<sup>178</sup> J.A. Vol. 2 at JA\_400, 404-405.

<sup>179</sup> Respondents do not contest Appellants’ position that many of the exhibits the State Engineer identified in prehearing notices contained data and reports stakeholders produced regarding the Order 1169 aquifer test. *See* Appellants’ Joint Opening Br. at 62.

Order 1309 does nothing more than that. The State Engineer provided adequate notice.

2. **The State Engineer provided an adequate opportunity to be heard.**

Respondents' challenge to the hearing process is also flawed because it is based upon the fallacy that Order 1309 changed the "relative priority" of all water rights throughout the LWRFS. But Order 1309 ordered no such change in priority. It delineated the aquifer and identified a sustainable pumping level that will protect existing spring flows at the headwaters of the Muddy River based on the State Engineer's understanding of the best available science.<sup>180</sup> And it explicitly rescinds a provision of Interim Order 1303 that did address priority in the LWRFS.<sup>181</sup>

But even on a theoretical level, Respondents' claim that the State Engineer's decision inherently reprioritizes rights within the LWRFS and is, therefore, a management decision, fails to establish a violation of due process. Under the flexible standards of due process based on the standard set forth in *Mathews v. Eldridge*,<sup>182</sup> the State Engineer provided an adequate opportunity to be heard on those issues.

Respondents received full notice about the purpose of the Interim Order 1303 hearing: (1) delineating the geographic boundaries of the LWRFS, and (2) identifying a sustainable pumping level for groundwater pumping in the LWRFS

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<sup>180</sup> J.A. Vol. 2 at JA\_390-391.

<sup>181</sup> J.A. Vol. 2 at JA\_391, 406.

<sup>182</sup> 424 U.S. 319 (1976).

that will not decrease the existing flow of the springs at the headwaters of the Muddy River.<sup>183</sup> And the process the State Engineer provided, beginning with the workshops that led to Interim Order 1303 all the way through the submission of Respondents’ written closing statements after the hearing, provided a full and fair opportunity to address those topics. Respondents were given an opportunity to provide their own evidence — documentary evidence, expert reports, and expert testimony — and to cross-examine the experts presented by other stakeholders during a hearing that lasted two full weeks.

More precisely, when considering the *Mathews* standard, Respondents fail to rebut Appellants’ argument that the State Engineer provided an adequate process. Respondents do not identify a high risk of an *erroneous* deprivation of any property rights that would require additional procedural safeguards, let alone assess the probable value of any proposed additional procedural safeguards.<sup>184</sup> Instead, their argument on the second factor is a statement that the lack of adequate notice rendered “the procedures in place . . . wholly inadequate.”<sup>185</sup> But Respondents’ notice argument fails for the reasons explained above.<sup>186</sup> And Respondents otherwise failed to address the second prong of the *Mathews* analysis.

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<sup>183</sup> See *supra* Part VII(A)(1).

<sup>184</sup> Resp’ts’ Joint Answering Br. at 54-56.

<sup>185</sup> Resp’ts’ Joint Answering Br. at 55.

<sup>186</sup> See *supra* Part VII(A)(1).

Then, in a single paragraph, Respondents baldly state “[t]he government’s interest in this particular procedure does not outweigh Respondents’ loss of their property interest.”<sup>187</sup> But the *Mathews* test does not weigh the value of the property interest against the government’s interest. *Mathews* implements a test to ensure the government provides an adequate process when depriving a person of a protected interest to avoid an *erroneous* deprivation of that interest.

Thus, even though Appellants obviously emphatically dispute that Order 1309 deprived Respondents of any property interest at all, Respondents misunderstand the third prong of the *Mathews* standard. Even if this Court were to assume that Order 1309 deprives Respondents of a property right, Respondents do not contest Appellants’ arguments about the weight of the government’s interest in protection of water.<sup>188</sup> Respondents’ conclusory statements, which completely lack any analysis actually balancing the need for additional process to avoid an *erroneous deprivation* of a protected interest against the government’s interests, do not make a showing of a violation of due process under *Mathews*.

Consequently, Respondents have left un rebutted Appellants’ arguments that (1) there was no likelihood of an erroneous deprivation of a protected interest that required additional procedural safeguards, and (2) that the government had significant interests in completing the Interim Order 1303 hearing: protecting

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<sup>187</sup> Resp’ts’ Joint Answering Br. at 56.

<sup>188</sup> Appellants’ Joint Opening Br. at 68.

Nevada’s water resources — including protection of senior right holders and protecting the public interest — which are amongst Nevada’s highest priorities.

The district court erred when it determined that Respondents established a violation of their right to due process.

**B. The State Engineer provided constitutionally adequate due process regarding the decision to subject the LWRFS to joint administration and conjunctive management.**

This Court invited Respondents to file individual briefs addressing whether “the hearing provided by the State Engineer satisfied due process and afforded respondents a full and complete opportunity to address the implications of the State Engineer’s decision to subject the LWRFS to conjunctive management and joint administration.”<sup>189</sup> Three of the Respondents filed individual briefs, and all three fail to identify a viable theory for a violation of due process that supports affirming the district court’s order.

**1. CSI fails to establish a violation of due process.**

CSI begins with an argument about “geographic” vs. “administrative management” boundaries.<sup>190</sup> This argument is misplaced within the due process analysis because it is merely a reiteration of Respondents’ arguments on the State Engineer’s authority, as opposed to a question of whether the State Engineer provided adequate process. But even considering CSI’s argument, it misses the

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<sup>189</sup> Order Modifying Caption and Setting Briefing Schedule (October 14, 2022) at 4.

<sup>190</sup> CSI’s Answering Br. at 10-12.

mark because it is dependent upon Respondents’ repeated mischaracterization of Order 1309 as a management decision. Additionally, it is grounded in an assumption that the State Engineer lacked authority to delineate the boundaries of the LWRFS. And that assumption is incorrect when considering all of Appellants’ arguments showing that the State Engineer possesses the authority — express and implied — to identify the LWRFS.

Next, CSI argues that the State Engineer deprived it of an opportunity to meaningfully address management decisions regarding its rights in the Coyote Spring Valley and that it had no reason to believe that the State Engineer would “extinguish” or “do away with” the Coyote Spring Valley Hydrographic Basin and Kane Springs Valley Hydrographic Basin.<sup>191</sup> But Order 1309 makes no such decisions. CSI cites no provision of Order 1309 that manages the LWRFS, nor does it cite any provision of Order 1309 that erases the boundaries of any existing basin. And even if it did, CSI’s individual brief adds nothing that would overcome Appellants’ arguments that due process was otherwise satisfied.<sup>192</sup> Thus, CSI has failed to establish a violation of due process.

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<sup>191</sup> CSI’s Answering Br. at 12-14.

<sup>192</sup> See *supra* Part VII(A).

**2. Lincoln-Vidler fails to establish a violation of due process.**<sup>193</sup>

Lincoln-Vidler presents numerous due process arguments, but each fail. First, Lincoln-Vidler’s brief starts by reiterating arguments, without specific citations or reference, that Order 1309 changes “relative” priority of rights by “erasing” basin boundaries.<sup>194</sup> But as Appellants thoroughly address above, Order 1309 makes no changes to priority and erases no basin boundaries.<sup>195</sup> Indeed, Order 1309 rescinded a provision from Interim Order 1303 that would have had that effect.<sup>196</sup>

Second, Lincoln-Vidler incorrectly argues that the State Engineer violated due process by “reweighing” evidence because the State Engineer initially excluded Kane Springs Valley in Interim Order 1303 but changed course after considering the evidence presented during the Interim Order 1303 hearing.<sup>197</sup> The only authority Lincoln-Vidler cites to support their argument has no application here. In *State Engineer v. Eureka County*, this Court rejected an argument on appeal that the district court erred by not remanding to the State Engineer for further fact-finding because the mandate rule and the doctrine of law of the case supported the district

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<sup>193</sup> To the extent Lincoln-Vidler’s individual brief incorporates arguments on the criteria State Engineer identified in Order 1309, which is central to the addition of Kane Springs to the LWRFS, Appellants address those arguments separately below. *See infra* Part VII(C).

<sup>194</sup> Lincoln-Vidler’s Answering Br. at 17-22, 27-29.

<sup>195</sup> *See supra* Part VII (introductory arguments).

<sup>196</sup> J.A. Vol. 2 at JA\_391, 406.

<sup>197</sup> Lincoln-Vidler’s Answering Br. at 22-24.

court's decision to vacate permits that this Court previously held were not supported by substantial evidence.<sup>198</sup>

*Eureka County* does not stand for the proposition that this Court was without authority to allow such a remand, as Lincoln-Vidler seems to suggest. And even if *Eureka County* did say that such a rule would not establish that the State Engineer's reconsideration of his initial decision on the boundaries of the LWRFS in Interim Order 1303 would preclude him from considering evidence presented at the Interim Order 1303 hearing.

The sole question on that issue is whether Lincoln-Vidler obtained notice that the State Engineer was considering inclusion of Kane Springs Valley in the LWRFS. And there is no dispute that they did. Lincoln-Vidler admits that it believed SNWA sought inclusion of Kane Springs Valley within the LWRFS in "late 2018," which triggered their entry into the matter nearly a year before the State Engineer's administrative hearing.<sup>199</sup> Lincoln-Vidler had a full and fair opportunity to address that issue during the Interim Order 1303 hearing.

Third, Lincoln-Vidler also incorrectly argues that the State Engineer overturned Ruling 5712.<sup>200</sup> First, once again, Order 1309 says nothing about reordering priority of any rights, including Lincoln-Vidler's rights under Ruling

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<sup>198</sup> 133 Nev. 557, 559-60, 402 P.3d 1249, 1251 (2017).

<sup>199</sup> Lincoln-Vidler's Answering Br. at 5.

<sup>200</sup> Lincoln-Vidler's Answering Br. at 24-26.

5712. Thus, Lincoln-Vidler’s specious arguments about priority, including their citation to *Mineral County v. Lyon County*,<sup>201</sup> , are misplaced. Additionally, there is no conflict between Ruling 5712 and Order 1309’s inclusion of Kane Springs Valley in the LWRFS. Ruling 5712 predates the beginning of the 1169 aquifer test by three years, so the information from that aquifer test could materially change the State Engineer’s view about that hydrologic connection.<sup>202</sup> This is certainly true given the fact that even before the test, the State Engineer identified a “strong hydrologic connection” between Kane Springs Valley and Coyote Spring Valley.<sup>203</sup> And the State Engineer limited the grant of water to Lincoln-Vidler to only 1,000 afa, when Lincoln-Vidler originally sought 5,000 afa, because additional pumping in Kane Springs Valley would adversely impact downgradient resources of the LWRFS.<sup>204</sup>

Finally, Lincoln-Vidler asserts that the State Engineer violated due process by (1) allowing experts to change their opinions during the hearing, (2) allowing parties to present new opinions and evidence in their closing statements, and (3) by providing limited time for presentation of evidence and cross-examination.<sup>205</sup> But Lincoln-Vidler’s arguments are entirely conclusory. They provide no discussion of

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<sup>201</sup> 136 Nev. 503, 473 P.3d 418 (2020).

<sup>202</sup> J.A. Vol. 3 at JA\_824-834, 864-886.

<sup>203</sup> J.A. Vol. 3 at JA\_877-878.

<sup>204</sup> J.A. Vol. 3 at JA\_878, 885.

<sup>205</sup> Lincoln-Vidler’s Answering Br. at 29-30.

what they were prevented from presenting or asking about on cross-examination.<sup>206</sup> Were this Court to dig into the record in search of the “new” expert opinions about which Lincoln-Vidler complains, it will only find that some of the stakeholders’ experts changed their views on the addition of Kane Springs Valley to the LWRFS after hearing the testimony from other stakeholders’ experts on that issue. Also, former State Engineer Hugh Ricci, who signed Order 1169, testified that if he had the knowledge that he has now about the LWRFS when issuing Order 1169, Kane Springs would have been included in the area of analysis.<sup>207</sup> Lincoln-Vidler had a full and fair opportunity to challenge the experts that originally opined on including Kane Springs in the LWRFS, and those who came to that conclusion after listening to all the testimony admitted in the hearing. Thus, Lincoln-Vidler fails to establish a violation of due process.

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<sup>206</sup> J.A. Vol. 44 at JA\_17632-33 at 690:17-692:7 (Fairbank), J.A. Vol. 44 at JA\_17679 at 811:17-20 (“Seeing no questions, and I have been informed that Nevada Energy does not have any questions. So let’s go ahead and open it up to the Division of Water Resources and State Engineer for questions.”) (Fairbank), J.A. Vol. 44 at JA\_17683 at 827:1-829:5, J.A. Vol. 44 at JA\_17716 at 852:6-9 (“Are there any other parties, participants, that wanted to ask questions? Seeing none, then I’m going to go ahead and open it up to State Engineer staff for any questions.”). (Fairbank), J.A. Vol. 44 at JA\_17803 at 1071:17-19 (“Seeing no additional questions, I’ll open up to Division of Water Resources staff and Staff Engineer.”) (Fairbank), J.A. Vol. 44 at JA\_17956 at 1393:14-16 (“Seeing no further questions, we’ll go ahead and open it up to the State Engineer and Division of Water Resources staff.”) (Fairbank).

<sup>207</sup> J.A. Vol. 44 at JA\_18070 at 1660:12-14 (Ricci).

### 3. **Nevada Cogen arguments must be rejected.**

Nevada Cogen unconvincingly argues that the State Engineer improperly shifted the burden of proof regarding the delineation of the boundary for the LWRFS in the Black Mountains Area. In particular, Nevada Cogen argues that the sixth criterion the State Engineer relied upon shifted the burden of proof to Nevada Cogen.<sup>208</sup> But no such burden shifting occurred.

The sixth criterion states:

When hydrogeologic information indicate a close hydrologic connection (based on criteria 1-5), but limited, poor quality, or low resolution water level data obfuscate a determination of the extent of that connection, a boundary should be established such that it extends out to the nearest mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock, or in the absence of that, to the basin boundary.<sup>209</sup>

Thus, by its own terms, for the criterion to apply, the State Engineer must first identify information that indicates a close hydrologic connection by applying the other five criteria. If the data does not support a close hydrologic connection, that is the end of the analysis. But if the data does support such a connection, then, assuming the existence of the “limited, poor quality, or low resolution water level data,” the State Engineer must determine whether a boundary other than the basin

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<sup>208</sup> Nevada Cogen’s Answering Br. at 6-12.

<sup>209</sup> J.A. Vol. 2 at JA\_373.

boundary should be established due to the existence of “a mapped feature that juxtaposes the carbonate-rock aquifer with low-permeability bedrock.”<sup>210</sup>

The plain language of that criterion places the burden on the State Engineer to identify the area that should be included in the LWRFS. It does not shift the burden to Nevada Cogen to prove that its wells are in an area that should be excluded.

Nevada Cogen cites *King v. St. Clair*,<sup>211</sup> *Gallegos v. Colorado Ground Water Com’n*,<sup>212</sup> and *Antelope Valley Ground Water Cases*,<sup>213</sup> to support the unremarkable proposition that it is the State Engineer’s burden to identify substantial evidence supporting his conclusions.<sup>214</sup> But none of those cases support Nevada Cogen’s theory that the sixth criterion from Order 1309 results in impermissible burden shifting because, read in its entirety, criterion six places no burden on Nevada Cogen to disprove anything. Nevada Cogen fails to establish a due process violation.

**C. The State Engineer’s inclusion of six criteria to support the delineation of the LWRFS in Order 1309 is not a violation of due process.**

Once again, Respondents intertwine their challenge to Appellants’ due process arguments with an argument that Order 1309 is a management decision.<sup>215</sup> Yet Respondents fail to explain how, by using the criteria the State Engineer

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<sup>210</sup> J.A. Vol. 2 at JA\_373.

<sup>211</sup> 134 Nev. 137, 414 P.3d 314 (2018).

<sup>212</sup> 147 P.3d 20 (Colo. 2006).

<sup>213</sup> 59 Cal. App. 5<sup>th</sup> 241, 272 Cal Rptr. 3d 517 (2020).

<sup>214</sup> Nevada Cogen’s Answering Br. at 9-12.

<sup>215</sup> Resp’ts’ Joint Answering Br. at 59-60.

identified when delineating the boundaries of the LWRFS, the State Engineer engaged in a management decision. But their argument fails, even when accepted at face value.

First, Respondents' position is contradictory. Interim Order 1303 sought information about the geographic boundary of the LWRFS, which Respondents readily admit is "related to factual inquiries."<sup>216</sup> Then, they characterize the State Engineer's reliance on the criteria in Order 1309 for purposes of delineating the geographic boundaries of the LWRFS as a management decision.<sup>217</sup> But Respondents provide no analysis to explain how the State Engineer's reliance on the criteria somehow transformed the delineation of the aquifer's boundaries into a management decision. Establishing the boundaries of an aquifer is a factual inquiry, and it is the sort of scientific factual inquiry upon which the State Engineer is entitled to great deference.<sup>218</sup>

Even accepting Respondents' arguments that Order 1309 is a management decision and that "the State Engineer precluded the participants from providing input that would have allowed for full consideration of the issue," Respondents provide no

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<sup>216</sup> Resp'ts' Joint Answering Br. at 59-60.

<sup>217</sup> Resp'ts' Joint Answering Br. at 59-60.

<sup>218</sup> *Diamond Nat. Res. Prot. & Conservation Ass'n*, 138 Nev. Adv. Op. 43, 511 P.3d at 1011 (citing *Pahrump Fair Water, LLC*, 137 Nev. at 16, 481 P.3d at 858 (explaining that the Court's deference to the State Engineer's judgment "is especially warranted" when "technical and scientifically complex" issues are involved)); J.A. Vol. 2 at JA\_406-07.

argument that supports this contention.<sup>219</sup> Respondents brief is devoid of any explanation of how prior disclosure of the criteria would have changed their evidentiary presentations relating to the boundaries of the LWRFS. Instead, Respondents leave entirely unrebutted Appellants' argument that Respondents' "evidentiary submissions [relating to the criteria] demonstrate that the State Engineer's criteria were not a mystery to the stakeholders."<sup>220</sup>

Additionally, Appellants specifically emphasized the State Engineer's statement that including Kane Springs Valley and part of the Black Mountain Area "in the LWRFS provides the opportunity for conducting additional hydrologic studies in sub-basins such as these, to determine the degree to which water use would impact water resources in the LWRFS."<sup>221</sup> Appellants also cited the State Engineer's indication that such studies may allow for more effective and fair management of the water within the LWRFS, to argue that Order 1309 provides for specific treatment of Kane Springs Valley, that would also apply to the Black Mountains area, allowing for further study on the connectivity of those areas to the rest of the LWRFS.<sup>222</sup> But Respondents, again, left that point unaddressed.<sup>223</sup>

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<sup>219</sup> Resp'ts' Joint Answering Br. at 60-61.

<sup>220</sup> *Compare* Appellants' Joint Opening Br. at 72, *with* Resp'ts' Joint Answering Br. at 56-61.

<sup>221</sup> Appellants' Joint Opening Br. at 75-76.

<sup>222</sup> Appellants' Joint Opening Br. at 75-76.

<sup>223</sup> Lincoln-Vidler appears to have made a passing reference to this argument in their individual brief, but their responsive argument about what an expert testified to at

The State Engineer used the criteria in Order 1309 to explain his review of the evidence from the hearing and the conclusions he reached based on that evidence. And when he used those criteria to explain changes to the boundaries of the LWRFS that differed from the area that he previously listed as encompassing the LWRFS, he recognized that further study is needed to understand the connectivity of those areas to the LWRFS as a whole so that he may more effectively and fairly manage the water in those sub-basins and the LWRFS as a whole. For those reasons, the district court erred in identifying the State Engineer's consideration of the criteria listed in Order 1309 as a basis to find a violation of due process.

### **CONCLUSION**

For the reasons stated above, Appellants respectfully request that this Court reverse the district court and affirm Order 1309 by upholding the State Engineer's authority for the joint administrative actions in Order 1309.

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the hearing is irrelevant. *See* Lincoln-Vidler's Answering Br. at 28. The contents of Order 1309 are the subject of this appeal. And the State Engineer, in Order 1309, made no management decision and noted that additional study of the Kane Springs Valley would be needed.

**AFFIRMATION:** The undersigned does hereby affirm that the preceding document and attachments do not contain the social security number of any person.

Dated this 8<sup>th</sup> day of February 2023.

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## **ATTORNEY CERTIFICATE OF COMPLIANCE**

Pursuant to NRAP 28.2, undersigned counsel certifies that:

1. I have read this entire Joint Reply Brief.
2. To the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.
3. This Joint Reply Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.
4. This Joint Reply Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced font using Microsoft Word in 14-point Times New Roman font.
5. The page-volume limitations of NRAP 32(a)(7) have been waived in this matter. This Joint Reply Brief complies with the Order Modifying Caption and Setting Briefing Schedule filed October 14, 2022, as it contains less than 21,000 words. The word-processing system (Microsoft Word) reports that the brief, excluding the disclosure statement, table of contents, table of authorities, and required certificates, consists of 17,551 words.

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I understand that I may be subject to sanctions in the event that the accompanying Joint Reply Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8<sup>th</sup> day of February 2023.

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Pursuant to NRAP 25(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of this document by electronic service to the participants in this case as follows:

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DATED this 8th day of February 2023.

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Case No. 84739

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADAM SULLIVAN, P.E., NEVADA  
STATE ENGINEER, et al.

Appellants,

vs.

LINCOLN COUNTY WATER  
DISTRICT, et al.

Respondents.

Consolidated with  
Case Nos. 84741, 84742, and 84809

Appeal from the Eighth Judicial District Court, Clark County  
District Court Case No. A-20-816761- C  
(Consolidated with Case Nos. A-20-817765-P, A-20-818015-P, A-20-817977-P,  
A-20-818069-P, A-20-817840-P, A-20-817876-P, A-21-833572-J)

**Rule 28 (f) Pamphlet**

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**PAMPHLET OF STATE ENGINEER DECISIONS**  
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|---------------------------------------------------------------------------|-------------|--------------|---------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>Joint Administration to Regulate Hydrologic Connection<sup>1</sup></b> |             |              |                     |                                                                                                                               |
| 1<br>(1-7)                                                                | 12/1/77     | Ruling 2286  | 50, 51              | Administers two basins under a joint perennial yield. <sup>1</sup>                                                            |
| 2<br>(8-13)                                                               | 3/18/80     | Ruling 2524  | 206,<br>210,<br>219 | Administers Coyote Spring Valley, Kane Spring Valley, and Muddy River Spring Area under a joint perennial yield. <sup>2</sup> |
| 3<br>(14-31)                                                              | 11/29/82    | Ruling 2792  | 198-205             | Administers the eight-basin Meadow Valley Area under a joint perennial yield. <sup>3</sup>                                    |
| 4<br>(32-39)                                                              | 2/27/84     | Ruling 2865  | 198-205             | Administers the eight-basin Meadow Valley Area under a joint perennial yield. <sup>4</sup>                                    |
| 5<br>(40-45)                                                              | 4/2/84      | Ruling 2922  | 198-205             | Administers the eight-basin Meadow Valley Area under a joint perennial yield. <sup>5</sup>                                    |
| 6<br>(46-54)                                                              | 4/19/84     | Ruling 2947  | 206,<br>210,<br>219 | Administers Coyote Spring Valley, Kane Spring Valley, and Muddy River Spring Area under a joint perennial yield. <sup>6</sup> |
| 7<br>(55-58)                                                              | 5/8/84      | Ruling 2955  | 206,<br>210,<br>219 | Administers Coyote Spring Valley, Kane Spring Valley, and Muddy River Spring Area under a joint perennial yield. <sup>7</sup> |
| 8<br>(59-65)                                                              | 12/17/96    | Ruling 4479  | 49, 52              | Administers two basins under a joint perennial yield. <sup>8</sup>                                                            |
| 9<br>(66-71)                                                              | 5/8/09      | Ruling 5988  | 49, 52              | Administers two basins under a joint perennial yield. <sup>9</sup>                                                            |
| 10<br>(72-78)                                                             | 3/17/10     | Ruling 6031  | 198-<br>205         | Administers the eight-basin Meadow Valley Area under a joint perennial yield. <sup>10</sup>                                   |
| 11<br>(79-84)                                                             | 8/10/11     | Ruling 6139  | 62, 63              | Administers two basins under a joint perennial yield. <sup>11</sup>                                                           |
| 12<br>(85-89)                                                             | 11/13/15    | Ruling 6322  | 67-69               | Administers three basins under a joint perennial yield. <sup>12</sup>                                                         |
| 13<br>(90-92)                                                             | 2/16/18     | Order 1295   | 49, 52              | Administers two basins under a joint perennial yield. <sup>13</sup>                                                           |

<sup>1</sup> This table is only an example of Rulings and Orders in the two categories, and does not represent an exhaustive list.

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| <b>Joint Administration for Other Purposes</b> |             |              |                                     |                                                                                                                                                  |
| 14<br>(93-96)                                  | 3/1/78      | Order 708    | 86, 87                              | Designates two basins in one. <sup>14</sup>                                                                                                      |
| 15<br>(97-103)                                 | 6/8/78      | Order 715    | 124-<br>128,<br>130,<br>132         | Designates seven basins as the “Dixie-Fairview Valley Area.” <sup>15</sup>                                                                       |
| 16<br>(104-106)                                | 8/3/78      | Order 718    | 93, 94,<br>99                       | Designates three separate basins in the same administrative order. <sup>16</sup>                                                                 |
| 17<br>(107-108)                                | 3/20/84     | Order 839    | 59, 61,<br>64                       | Sets preferred uses under NRS 534.120 over three basins to protect a combined water supply to the City of Battle Mountain, Nevada. <sup>17</sup> |
| 18<br>(109-111)                                | 7/18/85     | Order 872    | 49, 50,<br>51, 52                   | Sets preferred uses under NRS 534.120 over four basins to protect a combined water supply to Carlin, Nevada. <sup>18</sup>                       |
| 19<br>(112-115)                                | 6/13/00     | Order 1162   | 59, 131                             | Creates special rules and exceptions to NAC chapter 534 in two basins. <sup>19</sup>                                                             |
| 20<br>(116-117)                                | 2/13/14     | Order 1235   | 97, 98                              | Initiates determination of relative rights of all water in two basins. <sup>20</sup>                                                             |
| 21<br>(118-119)                                | 4/3/14      | Order 1237   | 97, 98                              | Initiates determination of relative rights of all water in two basins. <sup>21</sup>                                                             |
| 22<br>(120-123)                                | 2/5/15      | Order 1251   | 42-54,<br>57-61,<br>64-67,<br>69-74 | Administers NRS 534.110(2)(a) in twenty-eight basins. <sup>22</sup>                                                                              |
| 23<br>(124-130)                                | 3/16/20     | Order 1308   | See<br><i>P128-130</i>              | Administers NRS 533.0241 in over eighty basins; Table 1 includes reference to some basin groups with a joint perennial yield. <sup>23</sup>      |
| 24<br>(131-134)                                | 12/8/20     | Order 1318   | 107,<br>108                         | Administers NRS 534.110(2)(a) in two basins. <sup>24</sup>                                                                                       |

## Endnote Citations

<sup>1</sup> Ruling 2286, Page 4: “combined perennial yield of Suzie Creek Area [50] and Maggie Creek Area [51]”

<sup>2</sup> Ruling 2524, Page 3: “The estimated average recharge from precipitation in the immediate area of the springs is negligible and indeed for the whole of Coyote Spring [210] and Kane Spring Valleys [206] and the Muddy River Springs Area [219] is estimated to be only about 2,600 acre feet.”

Ruling 2524, Page 4: “The additional withdrawals and consumption would remove water from the groundwater reservoir which would not be replaced resulting in depletion of the groundwater reservoir, substantial water-level declines and land subsidence. The additional withdrawals and consumption of underground water would, therefore, conflict with existing rights and threaten to prove detrimental to the public welfare.”

<sup>3</sup> Ruling 2792, Page 14: “The Lower Meadow Valley Wash [205] is part of a drainage system which includes seven other valleys. The basins in this drainage system include Patterson [202], Spring [201], Eagle [200], Dry [198], Rose [199], Panaca [203], Clover [204], and Lower Meadow Valley [205]. These basins in downstream order are hydrologically interrelated and therefore development in one valley may intercept the supply of water that would reach the next valley downstream. Therefore consideration is given only to the perennial yield of the entire area. The preliminary perennial yield of the area is considered to be about 25,000 acre-feet.”

Ruling 2792, Page 15: “Existing certificated and permitted ground water rights in the Lower Meadow Valley Wash Ground Water Basin total over 28,000 acre-feet per year. The existing certificated and permitted ground water rights in Patterson, Spring, Eagle, Dry, Rose, Panaca and Clover Valley total over 28,000 acre-feet per year. Thus the total water rights in the drainage system exceeds 50,000 acre feet per year.”

<sup>4</sup> Ruling 2865, Page 1: “Panaca Valley is one of eight valleys in southeastern Nevada which are all a part of the Colorado River drainage system known as the Meadow Valley Area.”

Ruling 2865, Page 4: “The Panaca Valley is part of a drainage system which includes seven other basins.”

<sup>5</sup> Ruling 2922, Page 2: “Dry Valley is part of a drainage system which includes seven other valleys.”

## Endnote Citations

“These basins in downstream order are hydrologically interrelated and therefore development in one valley may intercept the supply of water that would reach the next valley downstream. Therefore consideration is given only to the perennial yield of the entire area.”

“Should additional water be allowed for appropriation under new applications and subsequent development of ground-water pursuant thereto detrimentally affect prior ground-water rights the State Engineer is required by law to order withdrawals be restricted to conform to priority rights.”

Ruling 2922, Page 3: “The approval of Application 46995 would authorize the additional withdrawal of 1002.4 acre-feet of ground-water within the drainage system which would serve to increase the withdrawal of ground-water within this system to more than twice the amount of the perennial yield.”

<sup>6</sup> Ruling 2947, Page 5: “Coyote Spring Valley [210] ground water basin is part of a regional interbasin ground water system in the White River Area of Southeastern Nevada. The terminus of this system is the Muddy River Springs which are the headwaters of the Muddy River.”

“The recharge from precipitation within Coyote Spring Valley contributes to the flow of Muddy River Springs. The contribution of the recharge from Coyote Spring [210] and Kane Spring Valleys [206] to the Muddy River Springs flow is estimated to be 2,000 acre-feet per year.”

Ruling 2947, Page 6: “Natural discharge from the Muddy River Springs area is estimated to be on the order of 36,000 acre-feet a year. The estimated average annual recharge from precipitation in the immediate drainage area of the springs is negligible and indeed for the whole of Coyote Spring [210] and Kane Spring Valleys [206] and Muddy River Springs area [219] is estimated to be only about 2,600 acre feet. The source of most of the discharge of the Muddy River Springs is considered to be from valleys upgradient from the springs and hydrologically connected with them. These include the valleys along the White River channel and adjacent valleys that are ground water tributaries to them. Although not demonstrated as yet, allowance must be made for a possible contribution to the springs from the ground water system in carbonate rocks within the Meadow Valley drainage area.”

“As a substantial part of the natural discharge of the region is concentrated in the Muddy River Springs area, the discharge of the springs closely approximates the long-time perennial yield of the regional ground water system.”

## Endnote Citations

Ruling 2947, Page 6: “Total existing underground rights within Coyote Spring Valley [210], Kane Spring Valley [206] and the Muddy River Springs area [219] presently exceed 2,500 acre-feet per year.”

Ruling 2947, Page 8: Additional permits “would result in the withdrawal of substantial amounts of ground water in excess of the recharge of the ground water basin system and would therefore adversely affect existing rights and be detrimental to the public interest and welfare.”

Applications are “herewith denied on the grounds that the granting thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.”

<sup>7</sup> Ruling 2955, Page 2: “indeed [the estimated average annual recharge] for the whole of Coyote Spring [210] and Kane Spring Valleys [206] and Muddy River Springs area [219] is estimated to be only about 2,600 acre-feet.”

“Total existing underground rights within Coyote Spring Valley, Kane Spring Valley and the Muddy River Springs area presently exceed 2,500 acre-feet per year.”

<sup>8</sup> Ruling 4479, Page 4: “combined perennial yield of the Elko Segment [49] and Mary’s Creek Area [52] Groundwater Basins is 13,000 acre-feet annually.”

<sup>9</sup> Ruling 5988, Page 4: “The United States Geological Survey estimates that the perennial yield of the Elko Segment Hydrographic Basin [49] combined with that of the Mary’s Creek Area Hydrographic Basin [52] is approximately 13,000 acre-feet. The committed ground-water resource in the form of permits and certificates to appropriate underground water from the Elko Segment Hydrographic Basin [49] and the Mary’s Creek Area Hydrographic Basin [52], currently exceed 26,129 afa and 1,939 afa, respectively. The State Engineer finds that existing ground-water rights in those basins exceed the combined perennial yield of those ground-water basins.”

<sup>10</sup> Ruling 6031, Page 4: “The Office of the State Engineer estimates that the perennial yield of the Lower Meadow Valley Wash Hydrographic Basin (205) along with the hydrologically interrelated basins 198 thru 204, inclusive, is 25,000 afa. The committed groundwater resources in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Lower Meadow Valley Wash Hydrographic Basin (205) alone are over 23,600 afa, and the combined committed groundwater resource for basins 198 through 205 totals over 69,000 afa.”

Ruling 6031, Page 5: “The accepted perennial yield, at this time, is a combined yield for hydrographic basins 198 through 205 of 25,000 afa. A review of records on file in the Office of the State Engineer show the committed groundwater resource in the

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form of vested rights, permits and certificates for the Lower Meadow Valley Wash Hydrographic Basin (205) totals over 23,600 afa. The combined committed groundwater resources for hydrographic basins 198 through 205 total over 69,000 afa.”

“The State Engineer finds that the perennial yield in the Lower Meadow Valley Wash Hydrographic Basin (205) is hydrologically interrelated to basins 198 thru 204, inclusive, and that the total perennial yield for all of these basins combined is 25,000 afa. The records of the Office of the State Engineer indicate that the existing groundwater rights in basins 198 through 205 total over 69,000 afa.”

<sup>11</sup> Ruling 6139, Page 3: “The combined perennial yield of Hydrographic Basins 62 (Rock Creek Valley) and 63 (Willow Creek Valley) is 2,800 afa.”

<sup>12</sup> Ruling 6322, Page 2: “The perennial yield of the Little Humboldt Valley Hydrographic Basin [67] is currently estimated as 34,000 acre-feet annually (afa), which is a combined perennial yield with the Hardscrabble Area Hydrographic Basin (068) and the Paradise Valley Hydrographic Basin (069). A review of the records on file in the Office of the State Engineer show total committed underground water resources in Little Humboldt Valley at 10,290.21 afa, in Hardscrabble Area at 0.00 afa, and in Paradise Valley at 115,355.86 afa. The total combined committed underground water resources for Little Humboldt Valley, Hardscrabble Area and Paradise Valley is 125,646.07 afa, which greatly exceeds the total combined perennial yield of the basins.”

<sup>13</sup> Order 1295, Page 1: “the Nevada Division of Water Resources estimates that 13,000 acre-feet of water annually is available as the perennial yield from the Elko Segment [49] combine with Mary’s Creek Area Hydrographic [52] basin.”

“the committed groundwater appropriations of record in the Office of the State Engineer total 21,699.36 acre-feet annually, which exceeds the perennial yield of the basins.”

“the State Engineer finds that conditions warrant the curtailment of new appropriations of groundwater within the Elko segment and Mary’s Creek Area Hydrographic Basins.”

<sup>14</sup> Order 708, Page 1: “The State Engineer finds that conditions warrant the designation of the Truckee Meadows Ground Water Basin [87], including the Sun Valley Ground Water Basin [86], Washoe County, Nevada, and by this Order designates the following described area of land as a ground water basin coming

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under the provisions of Chapter 534 NRS (Conservation and Distribution of Underground Waters).”

<sup>15</sup> Order 715, Page 1: “The State Engineer finds that conditions warrant the designation of the Dixie-Fairview Valley Area, Mineral, Churchill, Pershing and Lander Counties, Nevada. The Dixie-Fairview Valley Area includes Pleasant Valley [130], Jersey Valley [132], Dixie Valley [128], Fairview Valley [124], Eastgate Valley [127], Cowkick Valley [126] and Stingaree Valley [125]. By this order, the following described area of land is described as a ground water basin coming under the provisions of Chapter 534, NRS (Conservation and Distribution of Underground Waters.)”

Legal subdivision described “within the natural drainage basin of the Dixie-Fairview Valley Area.”

<sup>16</sup> Order 718, Page 1: “The State Engineer finds that conditions warrant the Designation of the Antelope Valley [93], Bedell Flat [94] and Red Rock Valley [99] Groundwater Basins, Basins, Washoe County, Nevada and by this Order designates the following described area of land as groundwater basins coming under the provisions of Chapter 534 NRS.”

<sup>17</sup> Order 839, Page 1: “the State Engineer will consider municipal, quasi-municipal and domestic use as preferred uses within the following described area of the Lower Reese River Valley [59], Boulder Flat [61] and Clovers Area [64] Designated Ground Water Basins.”

“the available ground water of suitable quality for municipal, quasi-municipal and domestic purposes occurs in the above described area and ground water pumped from said area is used by the City of Battle Mountain and residents within the described boundary for municipal, quasi-municipal and domestic supply. The safeguarding of the aforementioned limited water supply necessitates and demands that municipal, quasi-municipal and domestic use be declared a preferred use of the ground water resource pursuant to NRS 534.120.”

<sup>18</sup> Order 872, Page 1: “Effective this date the State Engineer will consider Municipal, Quasi-municipal and Domestic use as preferred uses within the following described area of the Marys Creek [52], Maggie Creek [51], Susie Creek [50] and the Elko Segment [49] Ground Water Basins:”

Order 872, Page 2: “Most of the available ground water of suitable quality for Municipal, Quasi-municipal and Domestic purposes occurs in the above described

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areas and ground water pumped from said areas is used by the City of Carlin and residents of the Carlin area for a Municipal, Quasi-municipal and Domestic supply.”

“The safeguarding of the aforementioned limited water supply necessitates and demands that Municipal, Quasi-municipal and Domestic use be declared a preferred use of the ground water resource pursuant to NRS 534.120.”

<sup>19</sup> Order 1162, Page 1: “Adopting Rules for Well Spacing and Modification of Regulations for Water Well and Related Drilling Nevada Administrative Code Chapter 534 (January 1998) in a Portion of the Buffalo Valley Groundwater Basin (10-131) and in a Portion of the Lower Reese River Valley Groundwater Basin (4-059) Lander County, Nevada”

<sup>20</sup> Order 1235, Page 1: “Determination of the Relative Rights in and to all Waters of Honey Lake Valley (Hydrographic Basin No. 07-097) and Skedaddle Creek Valley (Hydrographic Basin No. 07-098).”

<sup>21</sup> Order 1237, Page 1: “Notice is hereby given that the State Engineer will commence taking Proofs of Appropriation for the Determination of the Relative Rights in and to All Waters of Honey Lake Valley (Hydrographic Basin No. 07-097) and Skedaddle Creek Valley (Hydrographic Basin No. 07-098)”

<sup>22</sup> Order 1251, Page 2: “WHEREAS, the State Engineer finds that it is in the public interest to ensure that the diversions of underground water in those designated groundwater basins comprising the Humboldt River Basin Hydrographic Region (4) [Basins 42-54, 57-61, 64-67, 69-74] are within the limits set forth in each water right permit, certificate or other authorization to divert groundwater.”

“WHEREAS, NRS § 534.110 provides that the State Engineer may require periodic statements of water elevations, water used, and acreage upon which water was used from all holders of permits and claimants of vested rights.”

<sup>23</sup> Order 1308, Page 1: “Reserving a Portion of Groundwater in Hydrographic Basins With Uncommitted Groundwater as Applied to Multiple Counties Within Nevada”

Order 1308, Page 2: “The State Engineer revises perennial yield values as new data, scientific methods and water budget studies become available.”

*See Table 1 for hydrographic area number per area name, and showing combined perennial yields between some areas with joint calculations of reserve water, i.e., basins 42-45 (83,000 afa), 64-66(72,000 afa), 124-127(6,100 afa).*

<sup>24</sup> Order 1318, Page 1: “Establish Reporting Requirements of Meter Installation and Monthly Meter Readings Within the Smith Valley Hydrographic Basin (09-107),

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Within Lyon and Douglas Counties, Nevada and Mason Valley Hydrographic Basin (09-108), Within Lyon and Mineral Counties, Nevada”

Order 1318, Page 2: “all owners of underground water rights in the Smith Valley and Mason Valley Hydrographic Basins, with the following exceptions, shall submit a report of installation of totalizing meter form by March 1, 2021, to the Division of Water Resources (Division). This form must be submitted within 30 days of installation for any new or replacement totalizing meter installed on any well subject to this order.”

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(b), I hereby certify that I am an employee of TAGGART & TAGGART, LTD., and that on this day, I served, or caused to be served, a true and correct copy of this document by electronic service to the participants in this case as follows:

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X BY EMAIL: By emailing a copy of the foregoing document on this date to the parties at the email addresses as follows:

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*Attorney for Apex Holding Company, LLC and Dry Lake Water, LLC*

DATED this 8th day of February 2023.

/s/ Thomas P. Duensing

TAB 1

TAB 1

IN THE MATTER OF APPLICATION 31940)  
FILED IN FISH LAKE VALLEY FOR )  
WATER FROM AN UNDERGROUND SOURCE )

R U L I N G

GENERAL:

Application 31940 was filed by Arthur O. Johnson on June 6, 1977. A supporting map prepared by J. V. Caselli, State Water Right Surveyor, was received on July 15, 1977. On August 24, 1977, a return for correction notice was sent to the applicant (and Ruth M. Johnson under Application 31941) with a due date of October 23, 1977.

On September 15, 1977, Mr. Arthur O. Johnson (the applicant) telephoned John Lane (Division of Water Resources) and requested (conversation assumed) that since all that either application needed was the bearing and distance tie, would Mr. Lane add this to the application.

Mr. Lane added the bearing and distance tie to Application 31941 only, but not to Application 31940. Application 31940 was cancelled for failure to refile the corrected application within the statutory time on November 2, 1977.

RULING:

The cancellation of Application 31940 is hereby rescinded with the date of filing remaining June 6, 1977. The amended application and supporting map are required within 60 days from the date of this Ruling.

Respectfully submitted,



Roland D. Westergard  
State Engineer

RDW/JLL/dc

Dated this 2nd day  
of December 1977.

IN THE MATTER OF APPLICATION 31273 )  
TO APPROPRIATE WATER FROM AN UNDER- )  
GROUND SOURCE IN THE MAGGIE CREEK )  
AREA, ELKO COUNTY, NEVADA. )

R U L I N G

FINDINGS OF FACT

I

Application 31273 was filed on April 5, 1977 in the name of Orval L. and June Hoffsette to appropriate 1.0 c.f.s. of water from an underground source located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.33N., R.52E., M.D.B. & M. for irrigation and domestic use on 40.51 acres located within the same 40-acre subdivision as the proposed point of diversion.

II

A timely protest to the granting of Application 31273 was filed on June 15, 1977 in the name of the City of Carlin. The protest was filed on the grounds that: "The water sought for appropriation may contribute to the underground water supply of the City of Carlin, Nevada, namely Arthur Spring. The protestant has water rights on said spring (Application 10111, Certificate of Appropriation of Water dated March 1, 1944; and Application 16880, Certificate of Appropriation of Water dated September 27, 1961). The protestant reserves the right to present any additional facts and arguments which become known to her prior to the hearing of this protest". This protest seeks that the application be "denied or issued subject to all prior rights on said Arthur Spring".

III

Application 31273 became ready for action by the State Engineer's office on June 30, 1977.

IV

A field investigation into the matter of protested Application 31273 was conducted on Tuesday, August 30, 1977 at 10:00 a.m. Results of that field investigation are described under Field Investigation No. 638 dated October 27, 1977 and filed under Application 31273 in the State Engineer's office. Field Investigation Report No. 638 is made a part of this Ruling by reference.

V

The point of diversion under Application 31273 is an existing well originally drilled in July, 1961 and later deepened in May, 1972. Application 19763 had been filed on April 24, 1961 to appropriate 1.0 c.f.s. of water at that point of diversion for irrigation and domestic purposes on the same acreage as described under Application 31273. Application 19763 was also timely protested by the Town of Carlin and a field investigation of this protest was conducted on November 4, 1965 by Jack Cardinalli and Bud Danner of the State Engineer's office (see Field Investigation Report 209 filed in the State Engineer's office). The grounds for the filing of a protest under Application 19763 were basically the same as the grounds of the protest filed under Application 31273. The protest under Application 19763 was overruled by State Engineer's Ruling No. 828 and a permit issued on January 24, 1966. Permit 19763 was subsequently cancelled on September 28, 1970 for failure to submit the Proof of Beneficial Use and Cultural Map.

VI

The records of the Division of Water Resources indicate that there are two certified water rights of record on Arthur Spring (aka Carlin Spring) in name of the City of Carlin, those being Certificate 2772 issued under Permit 10111 in the amount of 1.0 c.f.s. and Certificate 5215 issued under Permit 16880, in the amount of 3.0 c.f.s., both for municipal service to the Town of Carlin. There are no other water rights of record on Arthur Spring.

VII

The well under Application 31273 is located approximately four miles north of Arthur Spring, and furthermore is located within a separate hydrologic basin from Arthur Spring. The well is located within the Maggie Creek Area Hydrologic Basin (Basin No. 4-51) while the spring is located within the Mary's Creek Area (Basin No. 4-52). In addition, the springs are separated from the Maggie Creek Area by a hill with approximately 120 feet of topographic relief.

VIII

The proposed point of diversion under Application 31273 is located approximately two miles north of the nearest existing ground water permit, that being Permit 18551 in the amount of 5.0 c.f.s. from a well located within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 16, T.33N., R.52E., M.D.B. & M.

IX

Nevada Resources Planning Report No. 3 indicates the total combined perennial yield for the Suzie Creek Area and Maggie Creek Area to be 6,000 acre-feet per year (page 17). This report further describes the two hydrologic basins as having approximately the same average annual precipitation characteristics and further shows the Maggie Creek Area to comprise 64% of the total combined square mile area of the two basins and to receive 65% of the total combined average annual precipitation in the two basins.

X

There are currently 1,812.79 acre-feet per year of water appropriated within the Maggie Creek Area ground water basin.

XI

There is no recording or measuring device presently installed on the outflow from the Arthur Spring area, and there are no records of past annual flows from Arthur Spring.

XII

The well under Application 31273 is located approximately 1/8 of a mile from the Maggie Creek channel. The drillers logs for this well indicates that the casing was perforated over an interval of from 30 feet to 100 feet. The log further indicates the existance of a clay formation between 20 feet and 32 feet below ground level, which may constitute a confining layer.

CONCLUSIONS

I

The State Engineer has jurisdiction of the parties and the subject matter of this action in accordance with NRS 533.025 and NRS 533.030, Subsection 1.

II

Since ground water flow generally parallels the flow of surface water from topographic divides toward the valley floor, and because of the fact that the well under Application 31273 and Arthur Springs are located within different hydrographic basins, it is the conclusion of the State Engineer that the withdrawal of ground water from the Maggie Creek Area under Application 31273 would not affect the ground water situation within the Mary's Creek Area, and would therefore not adversely affect Arthur Springs.

III

The annual duty of water allowed by permit from ground water sources for irrigation in the Maggie Creek area is 4.0 acre-feet per acre per annum. Therefore, a total annual duty of 162.04 acre-feet would be allowed for the irrigation of the 40.51 acres as applied for under Application 31273.

IV

The 1.0 c.f.s. of water applied for under Application 31273 as a diversion rate is considered by the State Engineer to be adequate for the irrigation of 40.51 acres.

V

Based upon the fact that the Maggie Creek area comprises approximately 2/3 of the total combined acreage included within the Maggie Creek and Suzie Creek hydrographic areas and receives 2/3 of the total combined precipitation of the two areas, it is the opinion of the State Engineer that the perennial yield of the Maggie Creek area is approximately 4,000 acre-feet, which is 2/3 of the total combined perennial yield of the two areas.

VI

Because the current total ground water appropriations from the Maggie Creek area is 1812.79 acre-feet per year, and because the amount of ground water available for appropriation within this area is concluded to be approximately 4,000 acre-feet per year, it is the opinion of the State Engineer that there is water available for appropriation from the ground water system within the Maggie Creek Area.

VII

It is the opinion of the State Engineer that the total ground water withdrawal of 162.04 acre-feet and the total diversion rate of 1.0 c.f.s., considered adequate under Application 31273, would not tend to interfere with other existing rights nor be detrimental to the public interest.

VIII

The strata of clay, described by the driller's log to be located between the depths of 20 feet and 32 feet, is considered adequate to prevent the interference from the well under Application 31273 with the flow of water in Maggie Creek.

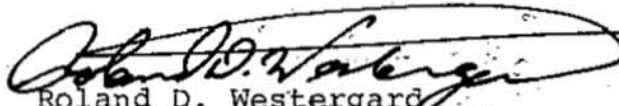
IX

In accordance with NRS 533.370, Subsection 1, the State Engineer shall approve all applications where the proposed use does not tend to impair the value of other existing rights or to be otherwise detrimental to the public welfare.

RULING

The protest to the granting of Application 31273 is herewith overruled on the grounds that there is water available for appropriation within the Maggie Creek Area hydrographic basin and on the grounds that the granting of a permit will not tend to impair the value of other existing rights or be otherwise detrimental to the public welfare. Upon the receipt of the statutory permit fee, a permit will be granted under Application 31273, subject to existing rights, in the amount of 1.0 c.f.s., not to exceed 4.0 acre-feet per acre per annum.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

RDW/BAR/bl

Dated this 2nd day  
of December, 1977.

TAB 2

TAB 2

IN THE MATTER OF APPLICATIONS 33660, 33661, 33780,  
33781, 33782, 33863, 33864, 33889, 33890, 36091,  
and 36092 FILED TO APPROPRIATE THE UNDERGROUND  
WATERS OF THE MUDDY RIVER SPRINGS AREA GROUNDWATER  
BASIN IN CLARK COUNTY, NEVADA

R U L I N G 2524

INTRODUCTION

Application 33660 was filed on September 19, 1977 by G.M. Perkins to appropriate 1.5 c.f.s. of the waters of an underground source to be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 27, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 200 acres within Sections 22 & 27, T.14S., R.65E., M.D.B. & M.

Application 33661 was filed on September 19, 1977 by G.M. Perkins to appropriate 1.5 c.f.s. of the waters of an underground source to be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 27, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 200 acres within Sections 22 & 27, T.14S., R.65E., M.D.B. & M.

Application 33780 was filed on September 23, 1977 by Paul John Galus to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 22, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SE $\frac{1}{4}$ , Section 22, T.14S., R.65E., M.D.B. & M.

Application 33781 was filed on September 23, 1977 by JoAnna Konys to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 14, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the NE $\frac{1}{4}$ , Section 14, T.14S., R.65E., M.D.B. & M.

Application 33782 was filed on September 23, 1977 by Stephen J. Konys to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 10, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SE $\frac{1}{4}$ , Section 10, T.14S., R.65E., M.D.B. & M.

Application 33862 was filed on September 28, 1977 by Joan M. Clements to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 17, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SE $\frac{1}{4}$ , Section 17, T.14S., R.65E., M.D.B. & M.

Application 33863 was filed on September 28, 1977 by Johnny M. Cortez, III to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 11, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SE $\frac{1}{4}$ , Section 11, T.14S., R.65E., M.D.B. & M.

P Application 33864 was filed on September 28, 1977 by Frances C. Galus to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 11, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SW $\frac{1}{4}$ , Section 11, T.14S., R.65E., M.D.B. & M.

Application 33889 was filed on September 30, 1977 by Mel M. Grantham to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 1, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the NW $\frac{1}{4}$ , Section 1, T.14S., R.65E., M.D.B. & M. 205

P Application 33890 was filed on September 30, 1977 by Lyndsey D. Beeler to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 3, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 160 acres within the SE $\frac{1}{4}$ , Section 3, T.14S., R.65E., M.D.B. & M.

Application 36091 was filed on October 24, 1978 by Kathy Anne Kostal to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 4, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 20 acres within the E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 4, T.14S., R.65E., M.D.B. & M.

Application 36092 was filed on October 24, 1978 by Arthur Kostal to appropriate 2.7 c.f.s. of the waters of an underground source to be diverted within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 4, T.14S., R.65E., M.D.B. & M. and to be used for the irrigation of 20 acres within the W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 4, T.14S., R.65E., M.D.B. & M.

Applications 33660, 33661, 33780, 33781, 33782, 33862, 33863, 33864, and 33890 were protested on March 13, 1979, by the Muddy Valley Irrigation Company on the following grounds:

1. The area where the applicant seeks permission to appropriate public water of the State of Nevada for the drilling of a well is a closed basin.
2. The granting of the application would adversely affect the decreed water rights of the Muddy Valley Irrigation Company.
3. The amount of water applied for is excessive.
4. There is no showing that the water applied for can be placed to beneficial use.

In 1964, Ground-Water Resources Reconnaissance Series Report 25, "Ground-Water Appraisal of Coyote Spring and Kane Spring Valleys and Muddy River Springs Area, Lincoln and Clark Counties, Nevada", by Thomas E. Eakin, was prepared cooperatively by the

Nevada Department of Conservation and Natural Resources, Division of Water Resources and the United States Department of the Interior, Geological Survey. This report is available in the State Engineer's Office.

### FINDINGS OF FACT

#### I

The source of water to be used to reclaim land under these applications is water from an underground source within the Muddy River Springs Area. A portion of the Muddy River Springs Area was designated and described by Order of the State Engineer, dated July 14, 1971. 1/

#### II

Groundwater discharging from the springs that supply the Muddy River is derived largely from recharge to the Paleozoic carbonate rocks, and that the area of recharge includes several valleys along and adjacent to the White River channel to the north. 2/

#### III

The estimated average recharge from precipitation in the immediate area of the springs is negligible and indeed for the whole of Coyote Spring and Kane Spring Valleys and the Muddy River Springs Area is estimated to be only about 2,600 acre-feet. 3/

#### IV

Since 1964, the State Engineer has issued permits to appropriate an additional 1,540 acre-feet per year. Total existing groundwater rights in the Muddy River Springs Area amount to 6,500 acre-feet per year. 4/

#### V

Should additional water be allowed for appropriation for the reclamation of lands under these applications and subsequent development of groundwater pursuant thereto detrimentally affect prior groundwater rights, the State Engineer is required by law to order withdrawals be restricted to conform with priority rights. 5/

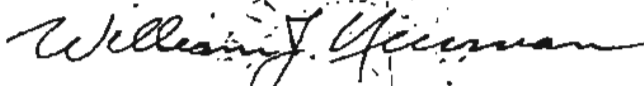
CONCLUSIONS

1. The State Engineer has jurisdiction under NRS 533.370. 6/
2. The State Engineer is prohibited by law from granting a permit where:
  - A. There is no unappropriated water at the source, or
  - B. The proposed use conflicts with existing rights, or
  - C. The proposed use threatens to prove detrimental to the public welfare. 7/
3. If the subject applications were granted, additional lands would be irrigated. This would result in additional consumptive use by farm land irrigation. The additional withdrawals and consumption would remove water from the groundwater reservoir which would not be replaced resulting in depletion of the groundwater reservoir, substantial water-level declines and land subsidence. The additional withdrawals and consumption of underground water would, therefore, conflict with existing rights and threaten to prove detrimental to the public welfare.

RULING

The protests to the granting of Applications 33660, 33661, 33780, 33781, 33782, 33862, 33863, 33864, and 33890 is hereby sustained and these applications along with Applications 33889, 36091, and 36092 are hereby denied on the grounds that their granting would tend to impair the value of existing rights and be otherwise detrimental to the public welfare.

Respectfully submitted,



William J. Newman  
State Engineer

Dated this 18th day  
of March, 1980.

TS:tn

FOOTNOTES

1. NRS 534.
2. Reconnaissance Series Report 25, pg. 1
3. Reconnaissance Series Report 25, pg. 25
4. Public records in the office of the State Engineer.
5. NRS 534.110, Subsection 3 and 6.
6. NRS 533.370.
7. NRS 533.370, Subsection 4.

TAB 3

TAB 3

IN THE MATTER OF APPLICATIONS 30725, 30726,  
 30727, 30728, 30729, 30730, 30731, 30732,  
 30733, 30734, 30735, 30736, 31620, 31621,  
 31622, 31623, 31624, 31625, 31626, 31627,  
 31628, 31629, 32809, 32911, 32912, 33249,  
 33250, 33251, 33252, 33253, 33388, 34611,  
 35655, 36093, 36094, 36095, 36096, 36097,  
 36098, 36099, 36100, 37198, 37203, 37204,  
 37205, 37210, 37212, 37213, 37214, 37254,  
 37256, 37565, 37566, 37652, 37929, 38065,  
 38066, 38067, 38068, 38069, 38070, 38071,  
 38072, 38073, 38333, 38604, 38607, 38608,  
 38609, 38610, 38611, 38612, 38613, 38616,  
 38617, 38664, 38671, 38672, 40262, 40395,  
 40397, 40398, 40399, 40553, 40554, 40555,  
 40791, 40792, 40796, 40798, 40799, 40834,  
 40835, 40836, 40837, 40838, 40839, 40840,  
 40841, 42380, 42381, 42382, 42762 AND  
 44159 FILED TO APPROPRIATE THE WATERS OF  
 AN UNDERGROUND SOURCE IN LOWER MEADOW  
 VALLEY WASH, CLARK COUNTY AND LINCOLN  
 COUNTY, NEVADA

R U L I N G 2792

#### INTRODUCTION

Lower Meadow Valley Wash is one of eight valleys in southeastern Nevada which are all a part of the Colorado River drainage system known as the Meadow Valley Area.

In 1964, Water Resources Reconnaissance Series Report 27, "Ground Water Appraisal of the Meadow Valley Area, Lincoln and Clark Counties, Nevada", was prepared cooperatively by the Nevada Department of Conservation and Natural Resources, Division of Water Resources and the U.S. Department of the Interior, Geological Survey. This report may be viewed at the office of the State Engineer.

#### FINDINGS OF FACT

##### I

Application 30725 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 30726 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 4, NE $\frac{1}{4}$  NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 30727 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 30728 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 10, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  SE $\frac{1}{4}$  Section 9, W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 10, NE $\frac{1}{4}$  of Section 16, T.14S., R.66E., M.D.B.&M.

Application 30729 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  SW $\frac{1}{4}$ , of Section 15, NE $\frac{1}{4}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M.

Application 30730 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  SW $\frac{1}{4}$  Section 15, SE $\frac{1}{4}$  Section 16, E $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 21, T.14S., R.66E., M.D.B.&M.

Application 30731 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 16, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 16, T.14S., R.66E., M.D.B.&M.

Application 30732 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 22, W $\frac{1}{2}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 30733 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M.

Application 30734 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 27, SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35 and NE $\frac{1}{4}$  of Section 34, T.14S., R.66E., M.D.B.&M.

Application 30735 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 240 acres within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, NE $\frac{1}{4}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 35, T.14S., R.66E., M.D.B.&M.

Application 30736 was filed by Meadow Valley Farm Lands Irrigation Company on October 8, 1976 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 25, E $\frac{1}{2}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, W $\frac{1}{2}$  W $\frac{1}{2}$  of Section 36, T.14S., R.66E., M.D.B.&M.

Application 31620 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the S $\frac{1}{2}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 30, SW $\frac{1}{4}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  N $\frac{1}{2}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 31621 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , N $\frac{1}{2}$  N $\frac{1}{2}$  S $\frac{1}{2}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 31622 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, N $\frac{1}{2}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 30, SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, N $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 31623 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the E $\frac{1}{2}$  W $\frac{1}{2}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 31624 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 33, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SW $\frac{1}{4}$  of Section 33, T.13S., R.66E., M.D.B.&M.

Application 31625 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 31626 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 33, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the NW $\frac{1}{4}$  of Section 33, T.13S., R.66E., M.D.B.&M.

Application 31627 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the S $\frac{1}{2}$  N $\frac{1}{2}$  S $\frac{1}{2}$ , S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 31628 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 29, N $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 31629 was filed by A. Allen Stroud, James S. Haworth and Jerry L. Haworth on May 11, 1977 to appropriate 2.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 80 acres within the S $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 32809 was filed by Alfred V. Munoz on July 14, 1977 to appropriate 2.8 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 32911 was filed by Eartha A. Stokke on July 25, 1977 to appropriate 2.8 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 160 acres within the NW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 32912 was filed by Marlene E. Kjersten on July 25, 1977 to appropriate 2.8 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 5, T.14S., R.66E., M.D.B.&M., and the place of use is 160 acres within the NE $\frac{1}{4}$  of Section 5, T.14S., R.66E., M.D.B.&M.

Application 33249 was filed by John F. Gray on August 22, 1977 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 14, T.8S., R.67E., M.D.B.&M., and the place of use is 160 acres within the W $\frac{1}{2}$  W $\frac{1}{2}$  of Section 14, T.8S., R.67E., M.D.B.&M.

Application 33250 was filed by Florene Gray on August 22, 1977 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 23, T.8S., R.67E., M.D.B.&M., and the place of use is 160 acres within the W $\frac{1}{2}$  W $\frac{1}{2}$  of Section 23, T.8S., R.67E., M.D.B.&M.

Application 33251 was filed by Ross A. Gray on August 22, 1977 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.11S., R.65E., M.D.B.&M., and the place of use is 160 acres within the SE $\frac{1}{4}$  SW $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 25, E $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 36, T.11S., R.65E., M.D.B.&M.

Application 33252 was filed by Jean M. Gray on August 22, 1977 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 25, T.11S., R.65E., M.D.B.&M., and the place of use is 160 acres within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 30, T.11S., R.66E., M.D.B.&M., NE $\frac{1}{4}$  SW $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$ , S $\frac{1}{2}$  SE $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 25, T.11S., R.65E., M.D.B.&M.

Application 33253 was filed by Ross Koontz on August 22, 1977 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.9S., R.67E., M.D.B.&M., and the place of use is 160 acres within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, SE $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 15, T.9S., R.67E., M.D.B.&M.

Application 33388 was filed by O. Barry Greene on August 29, 1977 to appropriate 3.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the SE $\frac{1}{4}$  of Section 29, T.13S., R.66E., M.D.B.&M.

Application 34611 was filed by John F. Gray on November 14, 1977 to appropriate 1.7 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 14, T.9S., R.67E., M.D.B.&M., and the place of use is 80 acres within the S $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 14, T.9S., R.67E., M.D.B.&M.

Application 35655 was filed by Jay Dee Walker on July 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.13S., R.66E., M.D.B.&M., and the place of use is 160 acres within the NE $\frac{1}{4}$  of Section 18, T.13S., R.66E., M.D.B.&M.

Application 36093 was filed by Mark Curran Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the W $\frac{1}{2}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M.

Application 36094 was filed by Marcellina Cellini Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the E $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M.

Application 36095 was filed by Laura E. Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the W $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M.

Application 36096 was filed by James Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the W $\frac{1}{2}$  NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M.

Application 36097 was filed by Elizabeth J. Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the E $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, T.14S., R.66E., M.D.B.&M.

Application 36098 was filed by Mary Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the W $\frac{1}{2}$  SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M.

Application 36099 was filed by James C. Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the E $\frac{1}{2}$  NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M.

Application 36100 was filed by Rock C. Ungaro on October 24, 1978 to appropriate 2.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M., and the place of use is 20 acres within the E $\frac{1}{2}$  SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 7, T.14S., R.66E., M.D.B.&M.

Application 37198 was filed by Nick C., Keith L. and Pamela K. Goman on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 28, T.14S., R.66E., M.D.B.&M., and the place of use is 480 acres within the N $\frac{1}{2}$  and SW $\frac{1}{4}$  of Section 28, T.14S., R.66E., M.D.B.&M.

Application 37203 was filed by Doris Earl on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SE $\frac{1}{4}$  of Section 22 and SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 37204 was filed by Lee M. Earl on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  E $\frac{1}{2}$  SE $\frac{1}{4}$ , W $\frac{1}{2}$  W $\frac{1}{2}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M.

Application 37205 was filed by Michael E. Leavitt on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 37210 was filed by Gerald N. Leavitt on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 35, T.14S., R.66E., M.D.B.&M.

Application 37212 was filed by Eleanora E. Leavitt on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 27, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$  of Section 34, S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 27, SW $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M.

Application 37213 was filed by Nettie Wittwer on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M., and SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 37214 was filed by Bernard Joseph on March 26, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 37254 was filed by J. Robert Carlton Leavitt on March 27, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 37256 was filed by Vaughn K. Leavitt on March 27, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 37565 was filed by Jack D. Jensen on April 2, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12, T.12S., R.65E., M.D.B.&M., and the place of use is 214 acres within the S $\frac{1}{2}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SE $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.12S., R.65E., M.D.B.&M.

Application 37566 was filed by Raymond D. Jensen on April 2, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 1, T.12S., R.65E., M.D.B.&M., and the place of use is 258 acres within Lots 3, 4; S $\frac{1}{2}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 1 and NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 12, T.12S., R.65E., M.D.B.&M.

Application 37652 was filed by Kathleen Rosenhan on April 3, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, and NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 37929 was filed by Max Rosenhan on April 16, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 38065 was filed by David E. Driscoll on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$  and NW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38066 was filed by David E. Driscoll on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38067 was filed by David E. Driscoll on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38068 was filed by Dana H. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 22, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 38069 was filed by Dana H. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 22, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 38070 was filed by Dana H. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$ , N $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 22, NW $\frac{1}{4}$  SW $\frac{1}{4}$ , W $\frac{1}{2}$  SW $\frac{1}{4}$  NW $\frac{1}{4}$ , W $\frac{1}{2}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 38071 was filed by Brent D. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38072 was filed by Brent D. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38073 was filed by Brent D. Stewart on April 30, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38333 was filed by Earl N. Gessler on June 15, 1979 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 20, S $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 21, N $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 28, NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, T.14S., R.66E., M.D.B.&M.

Application 38604 was filed by Marilyn Boatman on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 17, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 17, T.14S., R.66E., M.D.B.&M.

Application 38607 was filed by Jeffrey Lynn Sumpter on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 38608 was filed by John W. Batdorf on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 16, T.14S., R.66E., M.D.B.&M.

Application 38609 was filed by David Duggan on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 21, T.14S., R.66E., M.D.B.&M.

Application 38610 was filed by Lisa Hughes on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 38611 was filed by Ann C. Duggan on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 10, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 10, T.14S., R.66E., M.D.B.&M.

Application 38612 was filed by Jonathan Duggan on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 38613 was filed by Matthew Duggan on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 38616 was filed by Eric Duggan on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 38617 was filed by Jori Espinoza on July 20, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$  of Section 22, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 23, E $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 38664 was filed by Calvin Q. Morrison on July 25, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 16, T.14S., R.66E., M.D.B.&M.

Application 38671 was filed by Earl B. Kofoed on July 25, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  E $\frac{1}{2}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  of Section 26, T.14S., R.66E., M.D.B.&M.

Application 38672 was filed by Alene K. Dobbs on July 25, 1979 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SE $\frac{1}{4}$  of Section 22, SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 40262 was filed by Joe M. Foley and Barbara Bradshaw on January 8, 1980 to appropriate 4.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 18, T.7S., R.67E., M.D.B.&M., and the place of use is 157 acres within the S $\frac{1}{2}$  SE $\frac{1}{4}$  of Section 7, N $\frac{1}{2}$  N $\frac{1}{2}$ , SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T.7S., R.67E., M.D.B.&M.

Application 40395 was filed by Steve E. Ward on January 23, 1980 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 40397 was filed by James W. Guin on January 23, 1980 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 21, T.14S., R.66E., M.D.B.&M.

Application 40398 was filed by Barbara J. Guin on January 23, 1980 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 21, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 21, T.14S., R.66E., M.D.B.&M.

Application 40399 was filed by Archie D. Guin on January 23, 1980 to appropriate 5.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 22, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 22, T.14S., R.66E., M.D.B.&M.

Application 40553 was filed by Charles G. Sumpter on February 19, 1980 to appropriate 6.2 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 40554 was filed by Helen F. Sumpter on February 19, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 8, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 8, T.14S., R.66E., M.D.B.&M.

Application 40555 was filed by Tracy L. Ambrose on February 19, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 5, T.14S., R.66E., M.D.B.&M.

Application 40791 was filed by Calvin Q. Morrison on March 3, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 16, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 16, T.14S., R.66E., M.D.B.&M.

Application 40792 was filed by Jeffrey Lynn Sumpter on March 3, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 9, T.14S., R.66E., M.D.B.&M.

Application 40796 was filed by Janie L. DiBella on March 3, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 35, T.14S., R.66E., M.D.B.&M.

Application 40798 was filed by Earl B. Kofoed on March 3, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 26, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  E $\frac{1}{2}$ , E $\frac{1}{2}$  W $\frac{1}{2}$  of Section 26, T.14S., R.66E., M.D.B.&M.

Application 40799 was filed by Alene K. Dobbs on March 3, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the SE $\frac{1}{4}$  of Section 22, SW $\frac{1}{4}$  of Section 23, T.14S., R.66E., M.D.B.&M.

Application 40834 was filed by Eric Duggan on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 32, T.13S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 32, T.13S., R.66E., M.D.B.&M.

Application 40835 was filed by Ann C. Duggan on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 10, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 10, T.14S., R.66E., M.D.B.&M.

Application 40836 was filed by Jonathan Duggan on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 40837 was filed by Matthew Duggan on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the W $\frac{1}{2}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 40838 was filed by Jori Espinoza on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the NE $\frac{1}{4}$  of Section 22, W $\frac{1}{2}$  NW $\frac{1}{4}$  of Section 23, E $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 15, T.14S., R.66E., M.D.B.&M.

Application 40839 was filed by Inez Torkelson on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 33, T.13S., R.66E., M.D.B.&M., and the place of use is 320 acres within the S $\frac{1}{2}$  of Section 33, T.13S., R.66E., M.D.B.&M.

Application 40840 was filed by Lisa Hughes on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 4, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the E $\frac{1}{2}$  of Section 4, T.14S., R.66E., M.D.B.&M.

Application 40841 was filed by David Duggan on March 5, 1980 to appropriate 6.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 21, T.14S., R.66E., M.D.B.&M., and the place of use is 320 acres within the N $\frac{1}{2}$  of Section 21, T.14S., R.66E., M.D.B.&M.

Application 42380 was filed by Michael Leslie Wood on September 4, 1980 to appropriate 12.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.9S., R.67E., M.D.B.&M., and the place of use is 3,000 acres within Sections 25, 35 and 36, T.9S., R.68E., Sections 30 and 31, T.9S., R.69E., Sections 1, 2 and 12, T.10S., R.68E., and Section 6, T.10S., R.69E., M.D.B.&M.

Application 42381 was filed by Michael Leslie Wood on September 4, 1980 to appropriate 12.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.9S., R.67E., M.D.B.&M., and the place of use is 3,000 acres within Section 25, 35 and 36, T.9S., R.68E., Section 30 and 31, T.9S., R.69E., Section 1, 2 and 12, T.10S., R.68E., and Section 6, T.10S., R.69E., M.D.B.&M.

Application 42382 was filed by Michael Leslie Wood on September 4, 1980 to appropriate 12.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.9S., R.67E., M.D.B.&M., and the place of use is 3,000 acres within Section 25, 35 and 36, T.9S., R.68E., Section 30 and 31, T.9S., R.69E., Section 1, 2 and 12, T.10S., R.68E., and Section 6, T.10S., R.69E., M.D.B.&M.

Application 42762 was filed by Michael Leslie Wood on November 3, 1980 to appropriate 12.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 15, T.9S., R.67E., M.D.B.&M., and the place of use is 3,000 acres within Section 25, 35 and 36, T.9S., R.68E., Section 30 and 31, T.9S., R.69E., Section 1, 2 and 12, T.10S., R.68E., and Section 6, T.10S., R.69E., M.D.B.&M.

Application 44159 was filed by Joe C. Ballow on July 15, 1981 to appropriate 0.33 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27, T.5S., R.66E., M.D.B.&M., and the place of use is 220 acres within the W $\frac{1}{2}$  SW $\frac{1}{4}$  of Section 26, NW $\frac{1}{4}$  NE $\frac{1}{4}$ , E $\frac{1}{2}$  NE $\frac{1}{4}$  of Section 27, NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T.5S., R.66E., M.D.B.&M. 1/

## II

These applications are on lands associated with the Carey Act or the Desert Land Entry Act and as such fall within the priority as specified in NRS 533.357. 2/

## III

A timely protest to the granting of Application 30735 was filed on February 14, 1977 in the name of Nevada Power Company. Said protest seeks denial of the application on the following grounds:

"Nevada Power Company has previously been granted the right to appropriate 3.5 second feet of water at our No. 4 well in the Meadow Valley Wash. This well is located approximately 200 feet from the location specified in the above application. The water to be withdrawn from the No. 4 well is necessary for use in developing the electrical generation required in our service area".

3/

IV

A timely protest to the granting of Application 40262 was filed on October 9, 1980 in the name of Gene Randono. Said protest seeks denial of the application on the following grounds:

"None of the group resides in the area nor on the Bradshaw Ranch but they have diverted the waters of Meadow Valley Wash and caused the stream to stop flowing in its natural bed for approximately two miles. The wildlife, BLM Range and Range cattle and the Green belt have suffered greatly. The diversion has caused these waters to flow along a barrow pit along the public road and in some areas on the public road. My ranch is down stream approximately 2 1/2 miles from the Bradshaw Ranch. In the spirit of conservation and preservation I protest the approval of application 40262 on the basis that it would further deplete the underground waters." 4/

V

Applications 30725, 30726, 30727, 30728, 30729, 30730, 30731, 30732, 30733, 30734, 30735, 30736, 31620, 31621, 31622, 31623, 31624, 31625, 31626, 31627, 31628, 31629, 32809, 32911, 32912, 33388, 35655, 36093, 36094, 36095, 36096, 36097, 36098, 36099, 36100, 37198, 37203, 37204, 37205, 37210, 37212, 37213, 37214, 37254, 37256, 37652, 37929, 38065, 38066, 38067, 38068, 38069, 38070, 38071, 38072, 38073, 38333, 38604, 38607, 38608, 38609, 38610, 38611, 38612, 38613, 38616, 38617, 38664, 38671, 38672, 40395, 40397, 40398, 40399, 40553, 40554, 40555, 40791, 40792, 40796, 40798, 40799, 40834, 40835, 40836, 40837, 40838, 40839, 40840 and 40841 are located in the area designated under Order No. 803 as a preferred use area in which irrigation is stipulated to be a non-preferred use.

VI

By Order dated November 23, 1982, the State Engineer designated and described the Lower Meadow Valley Ground Water Basin under the provisions of NRS 534. 5/

VII

The Lower Meadow Valley Wash is part of a drainage system which includes seven other valleys. The basins in this drainage system include Patterson, Spring, Eagle, Dry, Rose, Panaca, Clover, and Lower Meadow Valley. These basins in downstream order are hydrologically interrelated and therefore development in one valley may intercept the supply of water that would reach the next valley downstream. Therefore consideration is given only to the perennial yield of the entire area. The preliminary perennial yield of the area is considered to be about 25,000 acre-feet. 6/

### VIII

Existing certified and permitted ground water rights in the Lower Meadow Valley Wash Ground Water Basin, total over 28,000 acre-feet per year. The existing certified and permitted ground water rights in Patterson, Spring, Eagle, Dry, Rose, Panaca and Clover Valley total over 28,000 acre-feet per year. Thus the total water rights in the drainage system exceeds 50,000 acre-feet per year. 7/

### CONCLUSIONS

#### I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 8/

#### II

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public welfare. 9/

#### III

If Applications 30725, 30726, 30727, 30728, 30729, 30730, 30731, 30732, 30733, 30734, 30735, 30736, 31620, 31621, 31622, 31623, 31624, 31625, 31626, 31627, 31628, 31629, 32809, 32911, 32912, 33249, 33250, 33251, 33252, 33253, 33388, 34611, 35655, 36093, 36094, 36095, 36096, 36097, 36098, 36099, 36100, 37198, 37203, 37204, 37205, 37210, 37212, 37213, 37214, 37254, 37256, 37565, 37566, 37652, 37929, 38065, 38066, 38067, 38068, 38069, 38070, 38071, 38072, 38073, 38333, 38604, 38607, 38608, 38609, 38610, 38611, 38612, 38613, 38616, 38617, 38664, 38671, 38672, 40262, 40395, 40397, 40398, 40399, 40553, 40554, 40555, 40791, 40792, 40796, 40798, 40799, 40834, 40835, 40836, 40837, 40838, 40839, 40840, 40841, 42380, 42381, 42382, 42762 and 44159 are granted, additional land would be irrigated. This would result in additional consumptive use by farm land irrigation. The additional withdrawals and consumption would remove water from the ground water reservoir which would not be replaced resulting in depletion of the ground water reservoir, or would be replaced by infiltrating surface water that would otherwise serve existing rights.

The 104 applications to irrigate 23,852 acres would require an appropriation of as much as 119,350 acre-feet of ground water annually.

This additional withdrawal and consumption of underground water for irrigation would, therefore, conflict with existing rights and threaten to prove detrimental to the public welfare.

IV

The applications which are considered in this ruling have the lowest order of priority under NRS 533.357. The State Engineer is required by this statute to observe the following priority in acting upon irrigation water right applications in the same basin:

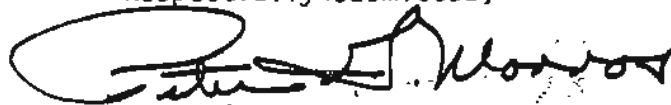
Applications by:

1. An owner of land for use on that land.
2. An owner of land for use on adjacent land for which he intends to file an application under the Carey Act or the Desert Land Entry Act.
3. Any other person whose application is preparatory to proceeding under the Carey Act or the Desert Land Entry Act.

RULING

Applications 30725, 30726, 30727, 30728, 30729, 30730, 30731, 30732, 30733, 30734, 30735, 30736, 31620, 31621, 31622, 31623, 31624, 31625, 31626, 31627, 31628, 31629, 32809, 32911, 32912, 33249, 33250, 33251, 33252, 33253, 33388, 34611, 35655, 36093, 36094, 36095, 36096, 36097, 36098, 36099, 36100, 37198, 37203, 37204, 37205, 37210, 37212, 37213, 37214, 37254, 37256, 37565, 37566, 37652, 37929, 38065, 38066, 38067, 38068, 38069, 38070, 38071, 38072, 38073, 38333, 38604, 38607, 38608, 38609, 38610, 38611, 38612, 38613, 38616, 38617, 38664, 38671, 38672, 40262, 40395, 40397, 40398, 40399, 40553, 40554, 40555, 40791, 40792, 40796, 40798, 40799, 40834, 40835, 40836, 40837, 40838, 40839, 40840, 40841, 42380, 42381, 42382, 42762 and 44159 are denied on the grounds that this appropriation of underground water for irrigation would tend to impair the value of existing rights and would be detrimental to the public interest and welfare within the Lower Meadow Valley Ground Water Basin. Also, the protest filed against Application 40262 is herewith upheld. The protest filed against Application 30735 is herewith overruled due to the fact that protestants' well No. 4 has no existing water rights.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/GB/bc

Dated this 29th day of  
NOVEMBER, 1982.

#### FOOTNOTES

1. Public records in the office of the State Engineer.
2. Public records in the office of the State Engineer.
3. Public records in the office of the State Engineer.
4. Public records in the office of the State Engineer.
5. Public records in the office of the State Engineer.
6. Water Resources-Reconnaissance Series, Report 27, page 26.
7. Public records in the office of the State Engineer.
8. NRS 533.025 and NRS 533.030, subsection 1.
9. NRS 533.370, subsection 3.

TAB 4

TAB 4

IN THE MATTER OF APPLICATIONS 36698, )  
37567, 37568, 38857, 40389, 40456, )  
40846, 40982, 42407, 42534, 43155, )  
45946 AND 46128, FILED TO APPROPRIATE )  
UNDERGROUND WATER IN PANACA VALLEY, )  
LINCOLN COUNTY, NEVADA. )

R U L I N G

INTRODUCTION

Applications 36698, 37567, 37568, 38857, 40389, 40456, 40846, 40982, 42407, 42534, 43155, 45946 and 46128 were filed to appropriate water from an underground source in Panaca Valley, Lincoln County, Nevada.

Water Resources Reconnaissance Series Report 27, "Ground-Water Appraisal of the Meadow Valley Area, Lincoln and Clark Counties, Nevada", by F. Eugene Rush, geologist, was prepared cooperatively by the Nevada Department of Conservation and Natural Resources, Division of Water Resources, and the U. S. Department of the Interior, Geological Survey. This report is available for review in the office of the State Engineer.

Water Resources Bulletin No. 7, "Geology and Ground Water in the Meadow Valley Wash Drainage Area Nevada, Above the Vicinity of Caliente," by David A. Phoenix and others, was prepared cooperatively by the State of Nevada office of the State Engineer and the U.S. Department of the Interior, Geological Survey. This report is available for review in the office of the State Engineer.

Panaca Valley is one of eight valleys in southeastern Nevada which are all a part of the Colorado River drainage system known as the Meadow Valley Area.

FINDINGS OF FACT

I

Application 36698 was filed by Daniel A. Love on February 12, 1979 to appropriate 5.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 24, T. 2 S., R. 67 E., M.D.B.&M., and the place of use is 200 acres within the SE $\frac{1}{4}$  Section 13, NW $\frac{1}{4}$  NE $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 24, T. 2 S., R. 67 E., M.D.B.&M.

Application 37567 was filed by Winnie Dean LaFortune on April 2, 1979 to appropriate 5.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 12, T. 3 S., R. 67 E., M.D.B.&M., and the place of use is 160 acres within the SW $\frac{1}{4}$  of Section 12, T. 3 S., R. 67 E., M.D.B.&M.

Application 37568 was filed by Mark Judson Hines on April 2, 1979 to appropriate 5.7 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, T. 3 S., R. 67 E., M.D.B.&M., and the place of use is 160 acres within the NW $\frac{1}{4}$  of Section 12, T. 3 S., R. 67 E., M.D.B.&M.

Application 38857 was filed by Don Scott and Marcia P. Wadsworth on August 23, 1979 to appropriate 4.2 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 18, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 200 acres within the W $\frac{1}{2}$  SW $\frac{1}{4}$  Section 20, E $\frac{1}{2}$  SE $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 19, T. 2 S., R. 68 E., M.D.B.&M.

Application 40389 was filed by Leo A. Stevens on January 23, 1980 to appropriate 4.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 200 acres within the SE $\frac{1}{4}$ , NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 20, T. 2 S., R. 68 E., M.D.B.&M.

Application 40456 was filed by John M. or Margaret A. Wadsworth on February 4, 1980 to appropriate 4.5 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 17, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 260 acres within the W $\frac{1}{2}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 17, N $\frac{1}{2}$  NW $\frac{1}{4}$  Section 21, N $\frac{1}{2}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and SE $\frac{1}{4}$  NW $\frac{1}{4}$  of said Section 20, T. 2 S., R. 68 E., M.D.B.&M.

Application 40846 was filed by William M. and Eloise J. White on March 7, 1980 to appropriate 1.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 40 acres within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 8, NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 9, SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 5, and the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 4, T. 2 S., R. 68 E., M.D.B.&M.

Application 40982 was filed by Don Scott and Marcia P. Wadsworth on March 31, 1980 to appropriate 3.6 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 19, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 160 acres within the SW $\frac{1}{4}$  of Section 20, T. 2 S., R. 68 E., M.D.B.&M.

Application 42407 was filed by Richard and LaRue Prince on September 10, 1980 to appropriate 1.0 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 20 acres within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 8, NW $\frac{1}{4}$  NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 9, SW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$  Section 4, SE $\frac{1}{4}$  SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 5, T. 2 S., R. 68 E., M.D.B.&M.

Application 42534 was filed by Dean and Merlene Sonnenberg on September 26, 1980 to appropriate 0.25 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 40 acres within the NE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, T. 2 S., R. 68 E., M.D.B.&M.

Application 43155 was filed by Alfred H. and Lorrell G. Louchard on January 28, 1981 to appropriate 0.33 c.f.s. of underground water for irrigation purposes. The point of diversion is within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T. 3 S., R. 67 E., M.D.B.&M., and the place of use is 10 acres within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, T. 3 S., R. 67 E., M.D.B.&M.

Application 45946 was filed by Lavette M. Tennille on July 16, 1982 to appropriate 3.4 c.f.s. of underground water for irrigation and domestic purposes. The point of diversion is within the SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 35, T. 2 S., R. 67 E., M.D.B.&M., and the place of use is 200 acres within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 26, N $\frac{1}{2}$  NW $\frac{1}{4}$ , SE $\frac{1}{4}$  NW $\frac{1}{4}$ , NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 35, T. 2 S., R. 67 E., M.D.B.&M.

Application 46128 was filed by Stan Gaffin on September 8, 1982 to appropriate 1.0 c.f.s. of underground water for irrigation purposes. The point of diversion is within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T. 2 S., R. 68 E., M.D.B.&M., and the place of use is 40 acres within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 9, T. 2 S., R. 68 E., M.D.B.&M. 1/

## II

Applications 36698, 37567, 37568 and 45946 are on lands associated with the Carey Act or the Desert Land Entry Act and as such fall within the priority as specified in NRS 533.357. 2/

## III

By Order dated January 17, 1980, the State Engineer designated and described the Panaca Valley Ground Water Basin as a groundwater basin in need of additional administration under the provisions of NRS 534. 3/

IV.

The Panaca Valley is part of a drainage system which includes seven other basins. The basins in this drainage system include Patterson, Spring, Eagle, Dry, Rose, Panaca, Clover, and Lower Meadow Valley. These basins in downstream order are hydrologically interrelated and therefore development of the groundwater resource in one valley may intercept the supply of water that would reach the next valley down gradient. Therefore, consideration is given to the perennial yield of the entire drainage area. The preliminary perennial yield of the area is considered to be approximately 25,000 acre-feet. 4/

V.

Existing certified and permitted ground water rights in the Panaca Valley Ground Water Basin total over 28,000 acre-feet per year. The existing certified and permitted ground water rights in Patterson, Spring, Eagle, Dry, Rose, Clover Valley, and Lower Meadow Valley Wash total over 28,000 acre-feet per year. Thus the total existing water rights in the drainage system exceed 50,000 acre-feet per year. 5/

VI

The perennial yield of a ground water reservoir may be defined as the maximum amount of water of useable chemical quality that can be withdrawn and consumed economically each year for an indefinite period of time. If the perennial yield is continually exceeded, water levels will decline until the ground water reservoir is depleted of water of usable quality or until the pumping lifts become uneconomical to maintain. 6/

VII

Ground water pumpage within Panaca Valley amounted to an estimated total of 13,552 acre-feet in 1982 determined by pumpage inventories conducted by the office of the State Engineer. 7/

VIII

Ground water levels measured in six monitor wells within the basin have experienced declines during the period 1968 to 1983. 8/

## CONCLUSIONS

### I

The State Engineer has jurisdiction of the parties and the subject matter of this action. 9/

### II

The State Engineer is prohibited by law from granting a permit where:

- A. There is no unappropriated water at the proposed source, or
- B. The proposed use conflicts with existing rights, or
- C. The proposed use threatens to prove detrimental to the public welfare. 10/

### III

If Applications 36698, 37567, 37568, 38857, 40389, 40456, 40846, 40982, 42407, 42534, 43155, 45946 and 46128 are granted, additional land would be irrigated. This would result in additional consumptive use by farm land irrigation. The additional withdrawals and consumption would remove water from the ground water reservoir which would not be replaced, resulting in depletion of the ground water reservoir, or would be replaced by infiltrating surface water that would otherwise serve existing rights.

Additional withdrawal and consumption of the groundwater resource would contribute detrimentally to an existing condition of declining groundwater levels within the basin.

The 13 applications to irrigate 1750 acres would require an appropriation of as much as 8,750 acre-feet of ground water annually.

This additional withdrawal and consumption of underground water for irrigation would, therefore, conflict with existing rights and threaten to prove detrimental to the public welfare.

RULING

Applications 36698, 37567, 37568, 38857, 40389, 40456, 40846, 40982, 42407, 42534, 43155, 45946 and 46128 are herewith denied on the grounds that this appropriation of underground water for the irrigation of additional lands would tend to impair the value of existing rights and would be detrimental to the public interest and welfare within the Panaca Valley Ground Water Basin. The irrigation of additional lands within the Panaca Valley Ground Water under these conditions is not considered to be a preferred use of the limited resource as provided under NRS Chapter 534.

Respectfully submitted,



PETER G. MORROS,  
State Engineer

PGM/G8/br

DATED: This 27th day of  
February, 1984.

#### FOOTNOTES

1. Public records in the office of the State Engineer.
2. Public records in the office of the State Engineer.
3. Public records in the office of the State Engineer.
4. Water Resources-Reconnaissance Series Report 27, page 26.
5. Public records in the office of the State Engineer.
6. Water Supply Paper 1832, Page 39, U.S. Geological Survey, NRS 534.110(4).
7. Public records in the office of the State Engineer.
8. Public records in the office of the State Engineer.
9. NRS 533.025 and NRS 533.030, Subsection 1.
10. NRS 533.370, subsection 3.

TAB 5

TAB 5

IN THE MATTER OF APPLICATION 46955 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE IN )  
DRY VALLEY, LINCOLN COUNTY, NEVADA. )

RULING

GENERAL

I.

Application 46955<sup>1</sup> was filed on May 27, 1983, by Chester H. and Josephine Oxborrox as Trustees to appropriate 1.72 c.f.s. of water from an underground source for irrigation purposes on 200.48 acres of land within Lots 3, 4, 5 and the SE1/4 NW1/4 and 10 acres within the NE1/4 SW1/4 Section 6, T.1S., R.69E., and the SE1/4 SW1/4, SW1/4 SW1/4 Section 36, T.1N., R.68E., M.D.B.&M. The point of diversion is described as being within the SE1/4 NE1/4 Section 6, T.1S., R.69E., M.D.B.&M.

II.

Ground-Water Resources - Reconnaissance Series Report 27 titled "Ground-Water Appraisal of the Lower Meadow Valley Area, Lincoln and Clark Counties, Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of Interior and State of Nevada, Department of Conservation and Natural Resources.

FINDINGS

I.

Dry Valley is one of eight valleys in southeastern Nevada which are all a part of the Colorado River drainage system known as the Meadow Valley Area.<sup>2</sup>

II.

The perennial yield<sup>2</sup> of a ground-water reservoir is the maximum rate at which ground-water of suitable chemical quality is available and can be withdrawn economically for an indefinite period of time. If the perennial yield is exceeded, water will be withdrawn from storage and ground-water levels will decline.

Withdrawals of ground-water in excess of the perennial yield contribute to adverse conditions<sup>3</sup> such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence and possible

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<sup>1</sup> Public records in the office of the State Engineer.

<sup>2</sup> Ground-Water Resources - Reconnaissance Series Report 27.

<sup>3</sup> See attached Appendix of References.

reversal of ground-water gradients which could result in significant changes in the recharge-discharge relationship. These conditions have developed in several other ground-water basins<sup>3</sup> within the State of Nevada where storage depletion and declining water tables have been recorded and documented.

III.

Dry Valley is part of a drainage system which includes seven other valleys. The basins in this drainage system include Patterson, Spring, Eagle, Panaca, Rose, Clover, Lower Meadow Valley Wash and Dry Valley. These basins in downstream order are hydrologically interrelated and therefore development in one valley may intercept the supply of water that would reach the next valley downstream. Therefore consideration is given only to the perennial yield of the entire area. The preliminary perennial yield of the area is considered to be about 25,000 acre-feet.

IV.

Existing certified and permitted ground-water rights in Dry Valley total over 5,000 acre-feet per year. The total existing certified and permitted ground water rights in the 8 valleys comprising the Meadow Valley Area drainage systems exceeds 50,000 acre-feet per year.

V.

Ground-water levels measured in six monitor wells within the Panaca Valley have declined on a gradual basis from 1968 to 1983.<sup>1</sup>

VI.

Should additional water be allowed for appropriation under new applications and subsequent development of ground-water pursuant thereto detrimentally affect prior ground-water rights, the State Engineer is required by law<sup>4</sup> to order withdrawals be restricted to conform to priority rights.

VII.

Information available<sup>1</sup> to the State Engineer indicates that Application 46995 was filed in support of a Desert Land Entry Application. NRS 533.367 establishes the order of priority the State Engineer must consider in acting on applications for irrigation use within the same basin.

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<sup>4</sup> NRS 534.110(6).

VIII.

The approval of Application 46995 would authorize the additional withdrawal of 1002.4 acre-feet of ground-water within the drainage system which would serve to increase the withdrawal of ground-water within this system to more than twice the amount of the perennial yield.

CONCLUSIONS

I.

The State Engineer has jurisdiction under the provisions of NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law<sup>5</sup> from granting a permit where:

- A. there is no unappropriated water at the proposed source,
- B. the proposed use conflicts with existing rights,
- C. the proposed use threatens to prove detrimental to the public welfare.

III.

The granting of a permit under Application 46955 would result in the withdrawal of substantial amounts of ground-water. The amount requested would substantially increase the total water rights in the Meadow Valley drainage system, which presently has certificated and permitted water rights exceeding twice the perennial yield.

RULING

Application 46955 is herewith denied on the grounds that the granting thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/bl

Dated this 2nd day of

April, 1984.

<sup>5</sup> NRS 533.370.

APPENDIX OF REFERENCES

Land Subsidence in Las Vegas Valley, 1935-63, Information Series No. 5 U.S.G.S.

State of Nevada, Department of Highways, Report on Land Subsidence in Las Vegas Valley.

Evaluation of the Water Resources of Lemmon Valley with Emphasis on Effects of Ground-Water Development to 1971, J.R. Harrill, Water Resources Bulletin No. 42, United States Geological Survey and State of Nevada, State Engineer's Office, Division of Water Resources, Department of Conservation and Natural Resources, 1972.

Hydrologic Response to Irrigation Pumping in Diamond Valley, Eureka and Elko Counties, Nevada, 1950-65, J.R. Harrill, Water Resources Bulletin No. 35, United States Geological Survey and State of Nevada, State Engineer's Office, Division of Water Resources, Department of Conservation and Natural Resources, 1968.

Effects of Irrigation Development on the Water Supply Quin River Valley area, Nevada and Oregon, 1950-1964, C.J. Huxel, Jr., Water Resource Bulletin No. 34, United States Geological Survey and State of Nevada, State Engineer's Office, Division of Water Resources, Department of Conservation and Natural Resources, 1966.

Hydrologic Response to Irrigation Pumping in Hualapai Flat, Washoe, Pershing and Humboldt Counties, Nevada, 1960-1967, J.R. Harrill, Water Resource Bulletin No. 37, United States Geological Survey and State of Nevada, State Engineer's Office, Division of Water Resources, Department of Conservation and Natural Resources, 1969.

The Effects of Pumping on the Hydrology of Kings River Valley, Humboldt County, Nevada, 1957-1964, G.T. Malmberg and G.F. Worts, Jr., Water Resource Bulletin No. 31, United States Geological Survey and State of Nevada, State Engineer's Office, Division of Water Resources, Department of Conservation and Natural Resources, 1966.

Effects of Ground-Water Development on the Water Regimen of Paradise Valley, Humboldt County, Nevada, 1948-1968, and Hydrologic Reconnaissance of the Tributary Areas, J.R. Harrill and D.O. Moore, Water Resource Bulletin No. 39, United States Geological Survey, 1970.

Ground-Water Storage Depletion in Pahrump Valley, Nevada-California, 1962-75, J.R. Harrill, Open File Report 81-635, United States Geological Survey, 1982, prepared in cooperation with Nevada Division of Water Resources.

Development of a Relation for Steady State Pumping Rate for Eagle Valley Ground-Water Basin, Nevada, F.E. Arteaga, T.J. Durbin, United States Geological Survey, 1978, prepared in cooperation with Nevada Division of Water Resources.

Basin Ground-Water Hydrology, Ralph C. Heath, U.S. Geological Survey Water Supply Paper 2220, 1983.

Subsidence in Las Vegas Valley, John w. Bell, Nevada Bureau of Mines and Geology Bulletin 95.

Subsidence in United States due to Ground-Water Overdraft - A Review, J.F. Poland, Proceedings of the Irrigation and Drainage Division Specialty Conference, April 1973, American Society of Civil Engineers.

TAB 6

TAB 6

IN THE MATTER OF APPLICATIONS )  
33067, 33068, 33069, 33070, 33071, )  
33072, 34287, 34396, 34397, 34398, )  
34581, 34582, 34583, 34584, 35198, )  
35199, 35200, 35201, 37207, 37208, )  
37215, 37253, 38556, 38557 AND )  
40268 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE IN COYOTE SPRING VALLEY, )  
CLARK AND LINCOLN COUNTIES, NEVADA. )

RULING

GENERAL

I.

Application 33067<sup>1</sup> was filed on August 8, 1977, by Doris Conger to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the W1/2 NE1/4 and N1/2 SE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 33068<sup>1</sup> was filed on August 8, 1977, by Ernest R. Conger to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the W1/2 NW1/4 Section 24, E1/2 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 33069<sup>1</sup> was filed on August 8, 1977, by Malcom Lee Lewis to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the SW1/4 SE1/4 Section 11, N1/2 NE1/4, SE1/4 NE1/4 Section 14, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 11, T.13S., R.63E., M.D.B.&M.

Application 33070<sup>1</sup> was filed on August 8, 1977, by Lois Lewis to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the N1/2 SE1/4, NE1/4 SW1/4 and SE1/4 SE1/4 Section 14, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 14, T.13S., R.63E., M.D.B.&M.

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<sup>1</sup> Public records in the office of the State Engineer.

Application 33071<sup>1</sup> was filed on August 8, 1977, by Clarvid A. Lewis to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the SW1/4 SE1/4, S1/2 SW1/4, NW1/4 SW1/4 Section 14, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SW1/4 Section 14, T.13S., R.63E., M.D.B.&M.

Application 33072<sup>1</sup> was filed on August 8, 1977, by Barbara Lewis to appropriate 2.5 c.f.s. of water from an underground source for irrigation and domestic purposes on 160 acres of land within the S1/2 NW1/4, SW1/4 NE1/4 and NE1/4 NW1/4 Section 14, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 14, T.13S., R.63E., M.D.B.&M.

Application 34287<sup>1</sup> was filed on October 18, 1977, by Herman Britz to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the SW1/4 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 34396<sup>1</sup> was filed on October 25, 1977, by David Paul Fuller to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NE1/4 NE1/4 Section 26, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NE1/4 Section 26, T.13S., R.63E., M.D.B.&M.

Application 34397<sup>1</sup> was filed on October 25, 1977, by Leonie M. Fuller to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NW1/4 SE1/4 Section 26, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 SE1/4 Section 26, T.13S., R.63E., M.D.B.&M.

Application 34398<sup>1</sup> was filed on October 25, 1977, by Vera L. Holton to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the SE1/4 SE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 34581<sup>1</sup> was filed on November 7, 1977, by Rita T. Chabafy to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NE1/4 SW1/4 Section 8, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 8, T.13S., R.63E., M.D.B.&M.

Application 34582<sup>1</sup> was filed on November 7, 1977, by Hubert S. Szanto to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NW1/4 Section 17, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 17, T.13S., R.63E., M.D.B.&M.

Application 34583<sup>1</sup> was filed on November 7, 1977, by Attila M. Chabafy to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the SE1/4 Section 8, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 8, T.13S., R.63E., M.D.B.&M.

Application 34584<sup>1</sup> was filed on November 7, 1977, by Francis K. Parker to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NE1/4 Section 17, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 17, T.13S., R.63E., M.D.B.&M.

Application 35198<sup>1</sup> was filed on March 20, 1978, by Melvin R. Lallement to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NW1/4 NE1/4 Section 8, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 8, T.13S., R.63E., M.D.B.&M.

Application 35199<sup>1</sup> was filed on March 20, 1978, by Margaret B. Hopper to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the SE1/4 SW1/4 Section 5, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 5, T.13S., R.63E., M.D.B.&M.

Application 35200<sup>1</sup> was filed on March 20, 1978, by Grace M. Lallement to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the SW1/4 SE1/4 Section 5, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the SW1/4 SE1/4 Section 5, T.13S., R.63E., M.D.B.&M.

Application 35201<sup>1</sup> was filed on March 20, 1978, by Graciabel H. Lallement to appropriate 2.7 c.f.s. of water from an underground source for irrigation and domestic purposes on 20 acres of land within the NE1/4 NW1/4 Section 8, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 8, T.13S., R.63E., M.D.B.&M.

Application 37207<sup>1</sup> was filed on March 26, 1979, by Daniel Earl to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes on 320 acres of land within the NE1/4 Section 25, SE1/4 Section 24, T.11S., R.62E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 24, T.11S., R.62E., M.D.B.&M.

Application 37208<sup>1</sup> was filed on March 26, 1979, by Lorna Earl to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes on 320 acres of land within the E1/2 SE1/4 Section 13, E1/2 NE1/4 Section 24 and NE1/4 Section 13, T.11S., R.62E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 13, T.11S., R.62E., M.D.B.&M.

Application 37215<sup>1</sup> was filed on March 26, 1979, by Kenneth Joseph to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes on 300 acres of land within the SE1/4 SW1/4, SW1/4 NE1/4 SW1/4, W1/2 SW1/4, SW1/4 NW1/4, SW1/4 NW1/4 NW1/4 Section 24; N1/2 NW1/4 NW1/4 Section 25; E1/2 SE1/4, E1/2 NW1/4 SE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 37253<sup>1</sup> was filed on March 27, 1979, by Maria Leavitt to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes on 320 acres of land within the SE1/4 NW1/4, W1/2 NW1/4 Section 31, T.11S., R.63E.; W1/2 SE1/4 Section 30, E1/2 SE1/4 Section 25, T.11S., R.62E. and NW1/4 NW1/4 Section 30, T.11S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SE1/4 Section 25, T.11S., R.62E., M.D.B.&M.

Application 38556<sup>1</sup> was filed on July 16, 1979, by Kathy S. Leavitt to appropriate 5.4 c.f.s. of water from an underground source for irrigation purposes on 320 acres of land within the W1/2 W1/2 NE1/4, E1/2 NW1/4 Section 11; E1/2 SW1/4, E1/2 W1/2 SW1/4, S1/2 NW1/4 Section 2, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 SW1/4 Section 2, T.13S., R.63E., M.D.B.&M.

Application 38557<sup>1</sup> was filed on July 16, 1979, by Earl Leavitt to appropriate 2.9 c.f.s. of water from an underground source for irrigation purposes on 160 acres of land within the NE1/4 Section 23, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NW1/4 NE1/4 Section 23, T.13S., R.63E., M.D.B.&M.

Application 40268<sup>1</sup> was filed on January 8, 1980, by Earl Leavitt to appropriate 2.9 c.f.s. of water from an underground source for irrigation purposes on 160 acres of land within the E1/2 W1/2 Section 14, T.13S., R.63E., M.D.B.&M. The point of diversion is described as being within the NE1/4 NW1/4 Section 14, T.13S., R.63E., M.D.B.&M.

II.

Ground-Water Resources - Reconnaissance Series Report 25 titled "Ground-Water Appraisal of the Coyote Spring and Kane Spring Valleys, and Muddy River Springs Area, Lincoln and Clark Counties, Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of Interior and State of Nevada, Department of Conservation and Natural Resources.

Water Resources - Bulletin No. 33 titled "A Regional Interbasin Ground Water System in the White River Area, Southeastern Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of Interior, and State of Nevada, Department of Conservation and Natural Resources.

FINDINGS

I.

Coyote Spring Valley ground water basin is part of a regional interbasin ground water system in the White River Area of Southeastern Nevada. The terminus of this system is the Muddy River Springs which are the headwaters of the Muddy River.<sup>2</sup> Irrigation utilizing the Muddy River extends from the vicinity of the springs to within about a mile of Lake Mead. Decreed rights of the Muddy River provide for an irrigation supply of 500 acres of land in upper Moapa Valley plus about 87 acres within the Indian Reservation. For the Lower Moapa Valley, the decree provides for irrigation of 2,670 acres in the summer and 4,541.56 acres in the winter season. Other uses include industrial and public water supply and wildlife management.<sup>3</sup>

II.

The recharge from precipitation within Coyote Spring Valley contributes to the flow of Muddy River Springs. The contribution of the recharge from Coyote Spring and Kane Spring Valleys to the Muddy River Springs flow is estimated to be 2,000 acre-feet per year.<sup>2</sup>

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<sup>2</sup> Water Resources Bulletin No. 33.

<sup>3</sup> Ground Water Resources - Reconnaissance Series Report 25.  
Public records in the office of the State Engineer.

III.

Natural discharge from the Muddy River Springs area is estimated to be on the order of 36,000 acre-feet a year. The estimated average annual recharge from precipitation in the immediate drainage area of the springs is negligible and indeed for the whole of Coyote Spring and Kane Spring Valleys and Muddy River Springs area is estimated to be only about 2,600 acre-feet. The source of most of the discharge of the Muddy River Springs is considered to be from valleys upgradient from the springs and hydrologically connected with them. These include the valleys along the White River channel and adjacent valleys that are ground water tributaries to them. Although not demonstrated as yet, allowance must be made for a possible contribution to the springs from the ground water system in carbonate rocks within the Meadow Valley drainage area.

As a substantial part of the natural discharge of the region is concentrated in the Muddy River Springs area, the discharge of the springs closely approximates the long-time perennial yield of the regional ground water system.<sup>3</sup>

Total existing underground rights within Coyote Spring Valley, Kane Spring Valley and the Muddy River Springs area presently exceed 2,500 acre-feet per year.<sup>3</sup>

IV.

The depth to the main body of ground water in the valley fill within Coyote Spring Valley is probably 300 feet or more, as indicated by an exploratory well and a stock well in the northern and southern parts of the valley.<sup>3</sup>

V.

Information available<sup>1</sup> to the State Engineer indicates that Applications 33067, 33068, 33069, 33070, 33071, 33072, 34287, 34396, 34397, 34398, 34581, 34582, 34583, 34584, 35198, 35199, 35200 and 35201 were filed in support of Carey Act Applications. Applications 37207, 37208, 37215, 37253, 38556, 38557 and 40268 were filed in support of Desert Land Entry Applications. NRS 533.357 establishes the order of priority the State Engineer must consider in acting on applications for irrigation use within the same basin.

VI.

The place of use under Applications 37207 and 37208 cover a portion of lands under private ownership and a portion that are public lands. The place of use under Applications 37215 and 37253 is public land.

VII.

The approval of Applications 33067, 33068, 33069, 33070, 33071, 33072, 34287, 34396, 34397, 34398, 34581, 34582, 34583, 34584, 35198, 35199, 35200, 35201, 37207, 37208, 37215, 37253, 38556, 38557 and 40268 would authorize the additional withdrawal of 15,600 acre-feet of ground water which would substantially exceed the estimated recharge of the ground water basin.

VIII.

The approval of Applications 33067, 33068, 33069, 33070, 33071, 33072, 34287, 34396, 34397, 34398, 34581, 34582, 34583, 34584, 35198, 35199, 35200, 35201, 37207, 37208, 37215, 37253, 38556, 38557 and 40268 would authorize the additional withdrawal of 15,600 acre-feet of ground water upgradient from the Muddy River Spring area.

IX.

The present ground water levels within the basin exceed approximately 300 feet below the ground surface. A pumping lift of 300 feet is not an economical pumping lift for irrigation use.<sup>4</sup>

CONCLUSIONS

I.

The State Engineer has jurisdiction under the provisions of NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law<sup>5</sup> from granting a permit where:

- A. there is no unappropriated water at the proposed source,
- B. the proposed use conflicts with existing rights,
- C. the proposed use threatens to prove detrimental to the public welfare.

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<sup>4</sup> NRS 534.110.

<sup>5</sup> NRS 533.370.

III.

The granting of permits under Applications 33067, 33068, 33069, 33070, 33071, 33072, 34287, 34396, 34397, 34398, 34581, 34582, 34583, 34584, 35198, 35199, 35200, 35201, 37207, 37208, 37215, 37253, 38556, 38557 and 40268 would result in the withdrawal of substantial amounts of ground water in excess of the recharge of the ground water basin system and would therefore adversely affect existing rights and be detrimental to the public interest and welfare. Also the approval of water rights for irrigation where pumping lifts are not economical, would not be in the public interest and welfare.

RULING

Applications 33067, 33068, 33069, 33070, 33071, 33072, 34287, 34396, 34397, 34398, 34581, 34582, 34583, 34584, 35198, 35199, 35200, 35201, 37207, 37208, 37215, 37253, 38556, 38557 and 40268 are herewith denied on the grounds that the granting thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted,

  
Peter G. Morros  
State Engineer

PGM/bl

Dated this 19th day of  
APRIL, 1984.

TAB 7

TAB 7

IN THE MATTER OF APPLICATIONS 37381 )  
AND 37382 FILED TO APPROPRIATE THE )  
PUBLIC WATERS OF AN UNDERGROUND )  
SOURCE IN MUDDY RIVER SPRINGS AREA )  
GROUND WATER BASIN IN CLARK COUNTY, )  
NEVADA. )

RULING

GENERAL

I.

Application 37381<sup>1</sup> was filed on March 30, 1979, by Diane Earl to appropriate 2.5 c.f.s. of water from an underground source for irrigation purposes on 120 acres of land within the W1/2 SE1/4 NW1/4, E1/2 SW1/4 NW1/4, NE1/4 NW1/4 SW1/4, NE1/4 SW1/4, N1/2 SE1/4 SW1/4 and SE1/4 SE1/4 SW1/4 Section 10, T.14S., R.65E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 3, T.14S., R.65E., M.D.B.&M.

Application 37382<sup>1</sup> was filed on March 30, 1979, by Gary Earl to appropriate 5.0 c.f.s. of water from an underground source for irrigation purposes on 250 acres of land within the W1/2 SW1/4, Section 11; E1/2 SE1/4 Section 10; NE1/4 NE1/4 NE1/4 Section 15; NW1/4 NW1/4, N1/2 SW1/4 NW1/4, NW1/4 SE1/4 NW1/4 and SW1/4 NE1/4 NW1/4 Section 14, T.14S., R.65E., M.D.B.&M. The point of diversion is described as being within the SE1/4 SW1/4 Section 3, T.14S., R.65E., M.D.B.&M.

II.

Ground-Water Resources - Reconnaissance Series Report 25 titled "Ground-Water Appraisal of the Coyote Spring and Kane Spring Valleys, and Muddy River Springs Area, Lincoln and Clark Counties, Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of Interior and State of Nevada, Department of Conservation and Natural Resources.

Water Resources - Bulletin No. 33 titled "A Regional Interbasin Ground Water System in the White River Area, Southeastern Nevada", was prepared cooperatively by the Geological Survey, U.S. Department of Interior, and State of Nevada, Department of Conservation and Natural Resources.

FINDINGS

I.

Applications 37381 and 37382 were timely protested on March 27, 1980, by the Muddy Valley Irrigation Company on the following grounds:

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<sup>1</sup> Public record in the office of the State Engineer under Applications 37381 and 37382.

- "1. Drilling a well in the area designated would have an adverse effect on the springs which are the headwaters of the Muddy River.
2. Granting the application would have an adverse effect upon the decreed water rights of Muddy Valley Irrigation Company.
3. The amount of water applied for is excessive.
4. There is no showing that the water applied for can be put to beneficial use."

II.

Natural discharge from the Muddy River Springs area is estimated to be on the order of 36,000 acre-feet a year. The estimated average annual recharge from precipitation in the immediate drainage area of the springs is negligible and indeed for the whole of Coyote Spring and Kane Spring Valleys and Muddy River Springs area is estimated to be only about 2,600 acre-feet. The source of most of the discharge of the Muddy River Springs is considered to be from valleys upgradient from the springs and hydrologically connected with them. These include the valleys along the White River channel and adjacent valleys that are ground water tributaries to them. Although not demonstrated as yet, allowance must be made for a possible contribution to the springs from the ground water system in carbonate rocks within the Meadow Valley drainage area.

As a substantial part of the natural discharge of the region is concentrated in the Muddy River Springs area, the discharge of the springs closely approximates the long-time perennial yield of the regional ground water system.<sup>2</sup>

Total existing underground rights within Coyote Spring Valley, Kane Spring Valley and the Muddy River Springs area presently exceed 2,500 acre-feet per year.<sup>3</sup>

IV.

Information available<sup>1</sup> to the State Engineer indicates that Applications 37381 and 37382 were filed in support of Desert Land Entry applications.

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<sup>2</sup> Ground Water Resources - Reconnaissance Series Report 25. Public records in the office of the State Engineer.

<sup>3</sup> Water Resources Bulletin No. 33

V.

Applications for irrigation purposes, including Desert Land Entries, have been denied in the Muddy River Springs and Coyote Spring Valley Ground Water Basins.

CONCLUSIONS

I.

The State Engineer has jurisdiction under the provisions of NRS Chapters 533 and 534.

II.

The State Engineer is prohibited by law<sup>4</sup> from granting a permit where:

- A. there is no unappropriated water at the proposed source,
- B. the proposed use conflicts with existing rights,
- C. the proposed use threatens to prove detrimental to the public welfare.

III.

The State Engineer has denied applications for irrigation use within the Muddy River Springs Ground Water Basin.<sup>5</sup>

RULING

The protest to the granting of Applications 37381 and 37382 is hereby sustained and Applications 37381 and 37382 are herewith denied on the grounds that the granting thereof would adversely affect existing rights and would be detrimental to the public interest and welfare.

Respectfully submitted,



Peter G. Morros  
State Engineer

PGM/BD/bl

Dated this 8th day of  
MAY, 1984.

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<sup>4</sup> NRS 533.370.

<sup>5</sup> Public record in the office of the State Engineer.

TAB 8

TAB 8

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

IN THE MATTER OF APPLICATIONS 62181,) )  
62182 AND 62183 FILED TO APPROPRIATE) )  
THE UNDERGROUND WATERS IN THE ELKO ) )  
SEGMENT GROUNDWATER BASIN, (049), ) )  
ELKO COUNTY, NEVADA. ) )

RULING

# 4479

GENERAL

I.

Application 62181 was filed on June 3, 1996, by Elko Summit Limited to appropriate 0.35 cubic feet per second (cfs) from an underground source for quasi-municipal purposes within all of Section 25, T.34N., R.55E., M.D.B.&M. The point of diversion is described as being located within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of said Section 25.<sup>1</sup>

II.

Application 62182 was filed on June 3, 1996, by Elko Summit Limited to appropriate 0.35 cfs from an underground source for quasi-municipal purposes within all of Section 25, T.34N., R.55E., M.D.B.&M. The point of diversion is described as being located within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 25.<sup>2</sup>

III.

Application 62183 was filed on June 3, 1996, by Elko Summit Limited to appropriate 0.35 cfs from an underground source for quasi-municipal purposes within all of Section 25, T.34N., R.55E., M.D.B.&M. The point of diversion is described as being located within the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of said Section 25.<sup>3</sup>

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<sup>1</sup>File No. 62181, official records in the Office of the State Engineer.

<sup>2</sup>File No. 62182, official records in the Office of the State Engineer.

<sup>3</sup>File No. 62183, official records in the Office of the State Engineer.

### FINDINGS OF FACT

#### I.

The State Engineer initially designated and described a portion of the Elko Segment Groundwater Basin on December 8, 1981, under the provisions of NRS 534.030 as a basin in need of additional administration.<sup>4</sup> The State Engineer finds that the proposed points of diversion under these applications are within the designated area.

#### II.

Deputy State Engineer, Hugh Ricci, P.E., sent a letter to Elko County Planning on February 16, 1993, regarding Subdivision Review No. 6012T. The last paragraph of the letter strongly recommends that the Elko County Board of Commissioners impose restrictions that no further lots be created via the parcel map process if those lots are to be served by domestic wells. At a minimum, lots to be served by domestic wells should require the withdrawal/relinquishment of groundwater rights in good standing based upon 2.02 acre feet annually per lot created as a condition of final approval.<sup>5</sup>

#### III.

The State Engineer finds that by letter dated November 24, 1996, he was informed that on August 18, 1994, Elko Summit Limited had a map filed with the Elko County Recorder which divided Section 25, T.34N., R.55E., M.D.B.&M. into 16 large parcels as per NRS 278.471--NRS 278.4725.<sup>1</sup> The State Engineer finds that the same letter indicated that the land was further divided by the parcel map procedure under NRS 278.461--NRS 278.469 into a total of 64 lots.<sup>1</sup> The State Engineer further finds that this parceling

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<sup>4</sup>State Engineer's Order No. 778, dated December 8, 1981, official records in the Office of the State Engineer.

<sup>5</sup>Notebook entitled, 1993 Subdivision Review for All Other Counties Other than Washoe, official records in the Office of the State Engineer.

process is the process most commonly used to circumvent the subdivision process over which the State Engineer has approval and denial authority.<sup>6</sup>

Nevada Revised Statute 534.180 allows for drilling of a well for domestic purposes since there is not a purveyor that can furnish water to these sites. NRS 534.013 defines "domestic use" as culinary and household purposes, in a single family dwelling, the watering of a family garden, lawn and the watering of domestic animals. The county by its ordinances will determine whether to allow the building of single family dwellings within the place of use.

#### IV.

The perennial yield of a hydrologic basin is the maximum amount of water of usable chemical quality that can be consumed economically each year for an indefinite period of time. The perennial yield cannot exceed the natural replenishment to an area indefinitely, and ultimately is limited to the maximum amount of natural recharge that can be salvaged for beneficial use. If the perennial yield is continually exceeded, groundwater levels will decline until the groundwater reservoir is depleted. Withdrawals of ground water in excess of the perennial yield contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, land subsidence and possible reversal of groundwater gradients which could result in significant changes in the

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<sup>6</sup>NRS 278.377.

recharge-discharge relationship.<sup>7</sup> The State Engineer finds that the combined perennial yield of the Elko Segment and Marys Creek Area Groundwater Basins is 13,000 acre-feet annually.<sup>8</sup>

V.

The State Engineer finds that existing certificated and permitted groundwater rights in the Elko Segment Groundwater Basin exceed 26,000 acre-feet annually.<sup>9</sup> The State Engineer further finds that the potential exists for groundwater pumpage, and the resulting groundwater level declines, to have an impairment of the flow of the Humboldt River, a decreed and fully appropriated River as well as other groundwater users in this basin.<sup>10</sup>

VI.

The State Engineer finds that the creation of the lots within the place of use of Applications 62181, 62182 and 62183, occurred subsequently to the State Engineer's recommendation of no further parcel division. The creation of these parcels places a greater burden on the groundwater resources of the Elko Segment Groundwater Basin.

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<sup>7</sup>State Engineer's Office, Water for Nevada, State of Nevada Water Planning Report No. 3, p. 13, October 1971.

<sup>8</sup>State Engineer's Office, Hydrologic Reconnaissance of the Humboldt River Basin, Nevada, Nevada Department of Conservation and Natural Resources, Water Resources Bulletin No. 32.

<sup>9</sup>Hydrographic Basin Abstract, Basin 049, official records in the Office of the State Engineer.

<sup>10</sup>In the Matter of the Determination of the Relative Rights of the Waters of the Humboldt River Stream System and Tributaries, Case No. 2804, Sixth Judicial District Court of Nevada, In and for the County of Humboldt, 1923-1938.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and of the subject matter of this action.<sup>11</sup>

II.

The State Engineer is prohibited by law from granting a permit where:<sup>12</sup>

1. there is no unappropriated water at the proposed source, or
2. the proposed use conflicts with existing rights, or
3. the proposed use threatens to prove detrimental to the public interest.

III.

The State Engineer concludes that existing groundwater rights exceed the estimates of perennial yield in the Elko Segment Groundwater Basin and that to approve an additional appropriation under Applications 62181, 62182 and 62183 from the limited groundwater reservoir would adversely affect existing rights and be detrimental to the public interest.

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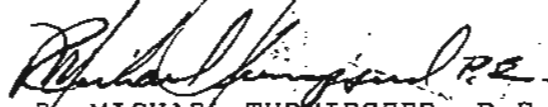
<sup>11</sup>NRS Chapters 533 and 534.

<sup>12</sup>NRS 533.370(3).

RULING

Applications 62181, 62182 and 62183 are hereby denied on the grounds that granting of the applications would conflict with existing rights and threaten to prove detrimental to the public interest.

Respectfully submitted,

  
R. MICHAEL TURNIPSEED, P.E.  
State Engineer

RMT/MJR/ab

Dated this 17th day of  
December, 1996.

TAB 9

TAB 9

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

IN THE MATTER OF APPLICATIONS 73957, 75043 )  
AND 73959 FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND SOURCE )  
WITHIN THE ELKO SEGMENT (49) AND MARYS )  
CREEK AREA (52) HYDROGRAPHIC BASINS, )  
ELKO COUNTY, NEVADA. )

**RULING**

**#5988**

**GENERAL**

**I.**

Application 73957 was filed on March 3, 2006, by Elko County to appropriate 6.0 cubic feet per second (cfs), not to exceed 4,000 acre-feet annually (afa), of ground water from the Elko Segment Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within Sections 1 through 36 in T.33N., R.54E., R.55E., and R.56E., M.D.B.&M., Sections 1 through 36 in T.34N., R.54E., R.55E., and R.56E., M.D.B.&M., Sections 1 through 36 in T.35N., R.54E., R.55E., and R.56E., M.D.B.&M. and Sections 1 through 36 in T.36N., R.54E., R.55E., and R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the NW¼ NE¼ of Section 8, T.33N., R.54E., M.D.B.&M.<sup>1</sup>

**II.**

Application 75043 was filed on November 9, 2006, by Elko County to appropriate 3.0 cfs, not to exceed 2,000 afa, of ground water from the Elko Segment Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within the SE¼ SE¼ of Section 3, and Section 10 lying south of Interstate Highway 80 R/W, the W½ of Section 11 and the NW¼ of Section 15 all in T.35N., R.56E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ NW¼ of Section 10, T.35N., R.56E., M.D.B.&M.<sup>2</sup>

**III.**

Application 73957 was timely protested by Maggie Creek Ranch, LP, on the grounds that the point of diversion and a portion of the place of use are on the Protestant's property and would interfere with the Protestant's water rights. Application 73957 was timely protested by Sandy Davis, Doyle Tow and Coni D. Steward on the grounds that the appropriation would affect the

<sup>1</sup> File No. 73957, official records in the Office of the State Engineer.

<sup>2</sup> File No. 75043, official records in the Office of the State Engineer.

domestic wells in the area surrounding the new well and could also affect the surface waters that are used by livestock and wildlife. Application 73957 was timely protested by Dorsey Land, LLC, on the grounds that a portion of the place of use is on the Protestant's property, that the use of the water could also affect the Protestant's senior water rights, and that granting the application will make it more difficult in the future to appropriate water. Application 73957 was timely protested by Boyd Ranch, LLC, on the grounds that the new appropriation of a large-draft well will diminish surface flows in the streams located in the area surrounding the point of diversion, which would conflict with the Protestant's surface-water rights.<sup>1</sup>

#### IV.

Application 73959 was filed on March 3, 2006, by Elko County to appropriate 3.0 cfs, not to exceed 2,000 afa, of ground water from the Marys Creek Area Hydrographic Basin for municipal and domestic purposes. The proposed place of use is described as being located within all of Sections 1 through 36, T.32N., R.52E., and R.53E. and all of Sections 1 through 36, T.33N., R.52E., and R.53E., M.D.B.&M. The proposed point of diversion is described as being located within the NE¼ SE¼ of Section 29, T.33N., R.52E., M.D.B.&M.<sup>3</sup>

#### V.

Application 73959 was timely protested by Coni D. Steward, Sandy Davis and Doyle Tow on the grounds that the appropriation would affect the domestic wells in the area surrounding the new well and could also affect the surface waters that are used by livestock and wildlife. Application 73959 was timely protested by Maggie Creek Ranch, LP, on the grounds that a portion of the proposed place of use is on land owned by the Protestant and the Applicant has not obtained the Protestant's consent to use the property and the use of the water would interfere with Protestant's senior water rights. Application 73959 was timely protested by Dorsey Land, LLC, on the grounds that a portion of the place of use is on the Protestant's property, that the use of the water could also affect the Protestant's senior water rights, and that granting the application will make it more difficult in the future to appropriate water. Application 73959 was timely protested by Boyd Ranch, LLC, on the grounds that the new appropriation of a large-draft well will diminish surface flows in the streams located in the area surrounding the point of diversion, which would conflict with the Protestant's surface-water rights.<sup>3</sup>

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<sup>3</sup> File No. 73959, official records in the Office of the State Engineer.

## **FINDINGS OF FACT**

### **I.**

The State Engineer issued Order No. 778 on December 8, 1981, designating and describing a portion of the Elko Segment Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534 of the Nevada Revised Statutes. The State Engineer issued Order No. 864 on July 10, 1985, designating and describing the remaining portion of the Elko Segment Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534, Nevada Revised Statutes.<sup>4</sup> The State Engineer issued Order No. 872 on July 18, 1985, stating that municipal, quasi-municipal and domestic uses are considered preferred uses within the described area of the Elko Segment Hydrographic Basin. A portion of the described area is that portion of Sections 26, 33, 34 and 35 of T.33N., R.52E., M.D.B.&M. lying southerly of the Humboldt River.<sup>5</sup> The proposed point of diversion under Applications 73957 and 75043 are within the area designated under State Engineer's Order No. 864, but are not within the preferred use area designated under State Engineer's Order No. 872.

### **II.**

The State Engineer issued Order No. 868 on July 18, 1985, designating and describing the Marys Creek Area Hydrographic Basin as a ground-water basin coming under the provisions of chapter 534 of the Nevada Revised Statutes. The State Engineer issued Order No. 872 on July 18, 1985, designating and describing municipal, quasi-municipal and domestic use as preferred uses of water within certain areas of the Marys Creek Area Hydrographic Basin.<sup>6</sup> The proposed point of diversion under Application 73959 is within the area designated under State Engineer's Order No. 868, but is not within the preferred use area designated under State Engineer's Order No. 872.

### **III.**

The perennial yield of a ground-water reservoir may be defined as the maximum amount of ground water that can be salvaged each year over the long term without depleting the ground-water reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be salvaged for beneficial use. The perennial yield cannot be more than the natural recharge to a ground-water basin and in some cases is less. If the perennial yield is

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<sup>4</sup> State Engineer's Order No. 778, dated December 8, 1981, and State Engineer's Order No. 864, dated July 10, 1985, official records in the Office of the State Engineer.

<sup>5</sup> State Engineer's Order No. 872, dated July 18, 1985, official records in the Office of the State Engineer.

<sup>6</sup> State Engineer's Order No. 868, dated July 18, 1985, and State Engineer's Order No. 872, dated July 18, 1985, official records in the Office of the State Engineer.

exceeded, ground-water levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as ground-water mining. Additionally, withdrawals of ground water in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.<sup>7</sup>

The United States Geological Survey estimates that the perennial yield of the Elko Segment Hydrographic Basin combined with that of the Marys Creek Area Hydrographic Basin is approximately 13,000 acre-feet.<sup>8</sup> The committed ground-water resource in the form of permits and certificates to appropriate underground water from the Elko Segment Hydrographic Basin and the Marys Creek Area Hydrographic Basin, currently exceed 26,129 afa and 1,939 afa, respectively.<sup>9</sup> The State Engineer finds that existing ground-water rights in those basins exceed the combined perennial yield of those ground-water basins.

### CONCLUSIONS

#### I.

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

#### II.

The State Engineer is prohibited by law from granting a permit under an application to appropriate the public waters where:<sup>11</sup>

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

#### III.

The State Engineer concludes current potential withdrawals from the Elko Segment and Marys Creek Area Hydrographic Basins exceed the perennial yield of the ground-water basins

<sup>7</sup> Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

<sup>8</sup> T.E. Eakin, R.D. Lamke, *Hydrologic Reconnaissance of the Humboldt River Basin, Nevada*, Water Resources Bulletin No. 32, Nevada Department of Conservation and Natural Resources, p. 58, 1966.

<sup>9</sup> Special Hydrologic Basin Abstract, Water Rights Database, Basin 49, May 2009, official records in the Office of the State Engineer.

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

<sup>11</sup> NRS § 533.370(5).

and that the potential for ground-water quality degradation and adverse effects upon existing water rights would become greater with any additional ground-water appropriation.

RULING

Applications 73957, 75043 and 73959 are hereby denied on the grounds that the granting thereof would adversely affect existing rights and thereby threaten to prove detrimental to the public interest.

Respectfully submitted,

 P.E.  
TRACY TAYLOR, P.E.  
State Engineer  
10/12

TT/JED/jm

Dated this 8th day of  
May 2009  
\_\_\_\_\_

TAB 10

TAB 10

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

IN THE MATTER OF APPLICATIONS )  
63379, 63380 AND 63381 FILED TO )  
APPROPRIATE THE UNDERGROUND )  
WATERS OF LOWER MEADOW )  
VALLEY WASH HYDROGRAPHIC )  
BASIN (205), CLARK COUNTY, )  
NEVADA. )

**RULING**

**# 6031**

**GENERAL**

**I.**

Application 63379 was filed on August 28, 1997, by the Moapa Valley Water District to appropriate 6.0 cubic feet per second (cfs), not to exceed 4,344 acre-feet annually (afa), of the underground water of the Lower Meadow Valley Wash Hydrographic Basin (205), Clark County, Nevada, for municipal purposes within Sections 5, 6, 8, 9, 13, 14, 15, 16, 23, 24, 25, 26, 35 and 36, T.14S., R.65E., M.D.B.&M., Sections 15, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36, T.14S., R.66E., M.D.B.&M., Sections 1, 2, 3, 4, 5, 6, 9 and 12, T.15S., R.66E., M.D.B.&M., Sections 6, 7, 8, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 34, 35 and 36, T.15S., R.67E., M.D.B.&M., Section 31, T.15S., R.68E., M.D.B.&M., Sections 1, 2, 3, 10, 11, 12, 13, 14, 24 and 25, T.16S., R.67E., M.D.B.&M., and Sections 6, 7, 8, 17, 18, 19, 20, 30 and 31, T.16S., R.68E., M.D.B.&M. The proposed point of diversion is described as being located within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7, T.13S., R.66E., M.D.B.&M.<sup>1</sup>

**II.**

Application 63380 was filed on August 28, 1997, by the Moapa Valley Water District to appropriate 6.0 cfs, not to exceed 4,344 afa, of the underground water of the Lower Meadow Valley Wash Hydrographic Basin (205), Clark County, Nevada for municipal purposes within the same place of use as described under Application 63379. The proposed point of diversion is described as being located within the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 26, T.12S., R.65E., M.D.B.&M.<sup>2</sup>

**III.**

Application 63381 was filed on August 28, 1997, by the Moapa Valley Water District to appropriate 6.0 cfs, not to exceed 4,344 afa, of the underground water of the Lower Meadow Valley

<sup>1</sup> File No. 63379, official records in the Office of the State Engineer.

<sup>2</sup> File No. 63380, official records in the Office of the State Engineer.

Wash Hydrographic Basin (205), Clark County, Nevada for municipal purposes within the same place of use as described under Application 63379. The proposed point of diversion is described as being located within the NE¼ NE¼ of Section 12, T.13S., R.65E., M.D.B.&M.<sup>3</sup>

**IV.**

Applications 63379, 63380 and 63381 were timely protested by the United States Department of Interior, National Park Service on grounds as summarized below:

1. There is no water available for appropriation because the committed water resources exceed groundwater recharge.
2. The approval and development of the appropriation proposed by this application will impair the water rights of the United States.
3. The public interest would not be served by the granting of this application because it would sanction groundwater mining, the applicant does not control the proposed well location or proposed place of use and the water and water-related resources in the Lake Mead National Recreation Area would be diminished or impaired.<sup>1,2,3</sup>

**V.**

Application 63379, 63380 and 63381 were also timely protested by the United States Department of Interior, Fish and Wildlife Service on grounds as summarized below:

1. Granting of this application may cause injury to a pending United States water right for water on the Moapa Valley National Wildlife Refuge and for other senior water right holders in the Muddy River area.
2. Water may not be available to appropriate in the manner described.
3. The public interest would not be served by the granting of this application because it would damage habitat for species that are endangered or threatened under the Endangered Species Act or other species of concern.

**FINDINGS OF FACT**

**I.**

Nevada Revised Statute § 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 63379, 63380 and 63381 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.

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<sup>3</sup> File No. 63381, official records in the Office of the State Engineer.

## II.

By Order No. 803, the State Engineer designated and described the Lower Meadow Valley Wash Hydrographic Basin (205) under the provisions of NRS § 534.030 as a basin in need of additional administration.<sup>4</sup> The State Engineer finds that the proposed points of diversion under Applications 63379, 63380 and 63381 are within the designated groundwater basin.

## III.

Applications 63379, 63380 and 63381 seek to appropriate 4,344 afa each for a total of over 13,000 afa of new permanent appropriations of groundwater for municipal purposes from the Lower Meadow Valley Wash Hydrographic Basin (205). However, it is the understanding of the State Engineer that the Applicant is proposing a total duty of 4,344 afa under the subject application.<sup>5</sup> A review of records on file in the Office of the State Engineer show that there have been 106 applications for groundwater that were denied in the Lower Meadow Valley Wash Hydrographic Basin (205) by State Engineer's ruling.<sup>6</sup> The rulings were based, in part, that there was no significant amount of groundwater available for appropriation from the basin when considering the committed groundwater resource versus the estimated perennial yield and additional appropriations of groundwater would tend to impair the value of existing water rights and would be detrimental to the public interest and welfare. The State Engineer finds that Applications 63379, 63380 and 63381 were filed to appropriate 4,344 afa of groundwater in the same hydrologic basin as prior applications to appropriate groundwater that were denied in the past.

## IV.

The Nevada Revised Statutes (NRS) Chapters 533 and 534 and the policies developed by the Office of the State Engineer control the appropriation of water within the State of Nevada. Under the provisions found under NRS § 533.370(5), before an application that requests a new appropriation of underground water can be considered for approval it must be determined, among other things, that there is unappropriated water available at the targeted source. The answer to the question of what amount of underground water is available for additional appropriation from the Lower Meadow Valley Wash Hydrographic Basin (205) can be found in an analysis of the basin's recharge-discharge relationship.

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<sup>4</sup> State Engineer's Order No. 803, dated November 23, 1982, official records in the Office of the State Engineer.

<sup>5</sup> See, Letter dated May 6, 1999, from the United States Department of Interior, National Park Service to R. Michael Turnipseed, State Engineer, File No. 63379, official Records in the Office of the State Engineer.

<sup>6</sup> State Engineer's Ruling No. 2792, dated November 29, 1982, and State Engineer's Ruling No. 2802, dated March 31, 1983, official records in the Office of the State Engineer.

The Office of the State Engineer estimates that the perennial yield of the Lower Meadow Valley Wash Hydrographic Basin (205) along with the hydrologically interrelated basins 198 thru 204, inclusive, is 25,000 afa.<sup>7</sup> The committed groundwater resources in the form of permits and certificates issued by the State Engineer to appropriate underground water from the Lower Meadow Valley Wash Hydrographic Basin (205) alone are over 23,600 afa, and the combined committed groundwater resource for basins 198 through 205 totals over 69,000 afa.<sup>8</sup> Applications 63379, 63380 and 63381 seek to appropriate 4,344 afa each for a total of over 13,000 afa of new permanent appropriations of groundwater for municipal purposes from the Lower Meadow Valley Wash Hydrographic Basin (205).

The State Engineer finds there is no unappropriated water in the Lower Meadow Valley Wash Hydrographic Basin (205) in a quantity sufficient to support Applications 63379, 63380 and 63381.

#### V.

By letter dated February 23, 2009, the State Engineer requested that the Applicant provide information in support of the applications, which was to include an analysis as to the total groundwater resource available in the hydrographic basin, the existing water rights in the basin, the approximate number of persons to be served, the approximate future requirement, an estimation of time required to construct the works and apply the water to beneficial use, a compilation of the water rights presently held by the Moapa Valley Water District, and a quantification as to how much of that water is presently being placed to beneficial use.

By letter dated September 23, 2009, the Applicant provided the State Engineer with a report in response to the request for information. The Applicant relied on a 2001 report by the Las Vegas Valley Water District that suggests that the recharge to the groundwater basin is at least 23,000 acre-feet per year,<sup>9</sup> which is appreciably higher than the perennial yield historically relied upon by the Office of the State Engineer. The Applicant's report also indicated that the existing water rights in the Lower Meadow Valley Wash Hydrographic Basin (205) are 19,718 afa.

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<sup>7</sup> F. Eugene Rush *Ground-Water Appraisal of the Meadow Valley Area, Lincoln and Clark Counties, Nevada*; Ground-Water Resources – Reconnaissance Series Report 27, (Department of Conservation and Natural Resources in cooperation with the U.S. Geological Survey), p. 26, 1964.

<sup>8</sup> Nevada Division of Water Resources Water Rights Database, Hydrographic Area Summary Basins 198, 199, 200, 201, 202, 203, 204 and 205, January 22, 2010, official records in the Office of the State Engineer.

<sup>9</sup> Office of the State Engineer, Las Vegas Valley Water District, *Water Resources and Ground-Water Modeling in the White River and Meadow Valley Flow Systems, Clark, Lincoln, Nye and White Pine Counties, Nevada*, June 2001.

The Office of the State Engineer has reviewed the report titled *Water Resources and Ground-Water Modeling in the White River and Meadow Valley Flow Systems, Clark, Lincoln, Nye and White Pine Counties, Nevada*, that the Applicant relies upon for its recharge estimate, and based on this review, the State Engineer finds that he cannot accept the recharge values contained therein. The accepted perennial yield, at this time, is a combined yield for hydrographic basins 198 through 205 of 25,000 afa.<sup>10</sup> A review of records on file in the Office of the State Engineer show the committed groundwater resource in the form of vested rights, permits and certificates for the Lower Meadow Valley Wash Hydrographic Basin (205) totals over 23,600 afa.<sup>11</sup> The combined committed groundwater resources for hydrographic basins 198 through 205 total over 69,000 afa.<sup>12</sup>

The State Engineer finds that the perennial yield in the Lower Meadow Valley Wash Hydrographic Basin (205) is hydrologically interrelated to basins 198 thru 204, inclusive, and that the total perennial yield for all of these basins combined is 25,000 afa. The records of the Office of the State Engineer indicate that the existing groundwater rights in basins 198 through 205 total over 69,000 afa.

## CONCLUSIONS

### **I.**

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

### **II.**

The State Engineer is prohibited by law from granting a permit to appropriate the public waters where:<sup>14</sup>

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

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<sup>10</sup> F. Eugene Rush *Ground-Water Appraisal of the Meadow Valley Area, Lincoln and Clark Counties, Nevada*; Ground-Water Resources – Reconnaissance Series Report 27, (Department of Conservation and Natural Resources in cooperation with the U.S. Geological Survey), p. 26, 1964.

<sup>11</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Area Summary, Lower Meadow Valley Wash Hydrographic Basin (205), January 12, 2010, official records in the Office of the State Engineer.

<sup>12</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Area Summary, hydrographic basins 198, 199, 200, 201, 202, 203, 204 and 205, January 12, 2010, official records in the Office of the State Engineer.

<sup>13</sup> NRS Chapters 533 and 534.

<sup>14</sup> NRS § 533.370(5).

D. the proposed use or change threatens to prove detrimental to the public interest.

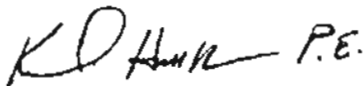
**III.**

Applications 63379, 63380 and 63381 request new appropriations of groundwater in excess of 4,344 afa. A review of this basin's available groundwater supply and existing committed groundwater resources show that there is insufficient water available to satisfy an additional draw of 4,344 afa. The State Engineer concludes that the approval of the subject applications would adversely affect existing rights and would threaten to prove detrimental to the public interest.

**RULING**

The protests are upheld in part and Applications 63379, 63380 and 63381 are hereby denied on the grounds that there is no unappropriated water in sufficient quantity to approve these applications and to grant the applications would conflict with existing rights and thereby threaten to prove detrimental to the public interest. No ruling is made on the merits of other protest grounds.

Respectfully submitted,

 P.E.  
TRACY TAYLOR, P.E.  
 State Engineer

Dated this 17th day of  
March, 2010.

TAB 11

TAB 11

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

IN THE MATTER OF APPLICATION 80714 )  
FILED TO APPROPRIATE THE PUBLIC )  
WATERS OF AN UNDERGROUND )  
SOURCE WITHIN THE WILLOW CREEK )  
VALLEY HYDROGRAPHIC BASIN (63) )  
ELKO COUNTY, NEVADA. )

**RULING**

**#6139**

**GENERAL**

**I.**

Application 80714 was filed on March 30, 2011, by Rodeo Creek Gold Inc., to appropriate 0.668 cubic feet per second, not to exceed 29.95 acre-feet annually (afa) of water from an underground source for mining purposes. The proposed place of use is described as being located within Sections 33, 34, 35 and 36, T.39N., R.46E., Sections 31, 32, 33, 34, 35 and 36, T.39N., R.47E., Sections 2, 3 and 4, T.38N., R.46E., Sections 1, 2, 12 and 13, T.38N., R.47E., Sections 17, 18, 19, 20, 29, 30, 31, 32, 33 and 34, T.38N., R.48E., Sections 3, 4, 5, 8, 9, 10, 16, 17, 20, 21, 28, 29, 32 and 33, T.37N., R.48E., M.D.B.&M. The proposed point of diversion is described as being located within the SW¼ SE¼ of Section 35, T.39N., R.46E., M.D.B.&M.<sup>1</sup>

**II.**

Application 80714 was timely protested by the Pershing County Water Conservation District of Nevada on the following grounds:<sup>1</sup>

That the granting of said application will affect the water table and drainage and adversely affect the decreed waters of the Humboldt River. Also, Basin #063 is over appropriated.

**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 Application 80714

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<sup>1</sup> File No. 80714, official records in the Office of the State Engineer.

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.

The Applicant requests a total duty of water not to exceed 29.95 afa. The water will be pumped from an existing water well drilled by Ruby Pipeline, LLC in support of the Ruby Pipeline Project (Project); the well is located on public land.<sup>2</sup> Water right permits were issued to support the construction phase of the Project within Nevada. The subject well was drilled under water right Permit 78862 and the associated permit terms state:

This permit is issued solely for construction and related purposes for the Ruby Gas Pipeline Project and will expire upon completion of the pipeline project, as provided in NRS 533.045 and NRS 534.120(1). The permittee shall notify the State Engineer within thirty (30) days of project completion that the diversion of water from this location for this segment of pipeline construction is no longer necessary and the State Engineer will cancel the permit and the well shall be plugged and abandoned as provided in Nevada Administrative Code 534.427.

The Applicant proposes to use the well for dust suppression and road maintenance on access roads in and around the Hollister Mine Project as shown on the proposed place of use map. It is estimated that a 4,000 gallon water truck will be filled twice every hour, ten hours per day during the months of June through September.

The State Engineer finds that the manner of use of water proposed under Application 80714 is, by nature of its activity, a temporary use and any application to change the manner of use granted will be subject to additional determination and evaluation with respect to the permanent effects on existing rights and the resource within the groundwater basin.

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<sup>2</sup> Well Driller's Report, Well Log No. 112014, filed September 24, 2010, official records in the Office of the State Engineer.

### III.

The combined perennial yield of Hydrographic Basins 62 (Rock Creek Valley) and 63 (Willow Creek Valley) is 2,800 afa.<sup>3</sup> The raw total for committed groundwater is 2,260 afa and 5,720 afa, respectively. For Rock Creek Valley, 2,237.14 afa of groundwater is for mining and milling purposes and 23.29 afa is for stockwatering purposes.<sup>4</sup> For Willow Creek Valley, 462.50 afa of groundwater is for mining and milling purposes, 77.62 for construction, 181 afa for environmental, 4,929.07 afa for irrigation, 58.01 for quasi-municipal, and 12.18 for stockwater.<sup>5</sup>

Of the 77.62 afa of water issued for construction purposes in Willow Creek Valley, 72 afa are permits issued for the Project and those permits will be cancelled upon completion of the pipeline construction per the terms of the permit. The 181 afa for environmental was issued to Newmont USA, Limited, and the terms of the permit state that, "It is understood that the amount of water herein granted is only a temporary allowance for pollution control as mandated by orders issued by the Nevada Division of Environmental Protection and subsequent correspondence with said agency. The right will cease to exist upon termination of clean up activity as determined by the Nevada Division of Environmental Protection." For the 462.50 afa and the 2,237.14 afa for mining and milling in the two hydrographic basins, the State Engineer considers the groundwater used in mining and milling to be a temporary use of water and as such is not considered in the long-term committed resource analysis for the basin.

For the 4,929.07 afa of irrigation in Willow Creek Valley, the State Engineer considers whether the groundwater is supplemental to a surface water source and the amount of groundwater that is consumptively utilized for irrigation. In this instance, the entire duty of water is contained within two permits; Permits 45107 and 46559. Both permits are comingled and supplemental to decreed and permitted surface waters.<sup>6</sup> In a study of groundwater use for irrigation within the Middle Humboldt River Basin, it is

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<sup>3</sup> Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, Oct. 1971.

<sup>4</sup> Special Hydrographic Basin Abstract, Water Rights Database, Rock Creek Valley Hydrographic Basin (062), July 6, 2011, official records in the Office of the State Engineer.

<sup>5</sup> Special Hydrographic Basin Abstract, Water Rights Database, Willow Creek Valley Hydrographic Basin (063), July 6, 2011, official records in the Office of the State Engineer.

<sup>6</sup> See File No. 28983, official records in the Office of the State Engineer.

noted that no groundwater was pumped for irrigation purposes within the Willow Creek Valley Hydrographic Basin.<sup>7</sup> When groundwater rights are used as supplemental to surface water sources, it is expected that the groundwater permit so issued will not be utilized until the surface water becomes unavailable, and then only to make up for 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, depending on the availability of the overlying surface water. Upon consideration of the temporary uses and the nature and limitation of the water rights issued for irrigation, the State Engineer finds the Applicant's request for the temporary use of 29.95 afa of groundwater can be considered for approval.

#### IV.

The space between the well casing and the wall of the well boring, is the "annular space," and is required to be sealed to prevent it from being a preferential pathway for the movement of poor quality water, pollutants, and contaminants. A secondary purpose of the annular seal is to isolate the well intake section or screen to one water-bearing unit and to minimize interaction with surface water sources and shallow aquifers.

The Well Driller's Report shows that the well was completed with a 110 foot annular seal. The depth of the seal insures that water is pumped from discrete water-bearing structures deep within the groundwater aquifer. Below the annular seal, the lithologic log shows sandy clay from a depth of 100 feet to 160 feet and the log indicates that this is not a water bearing strata. The next interval, which is a water bearing strata, is sand/gravel from 160 feet to 230 feet; however, the well has no perforations at this level and is screened at a much deeper depth with mill-slotted perforations occurring from 320 feet to 440 feet. The only perforated portion of the well where water can enter the well casing is from 320 feet to 440 feet.<sup>8</sup>

The State Engineer finds that the withdrawal of groundwater, as requested under Application 80714, will not impair Humboldt River water users.

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<sup>7</sup> Russell W. Plume, *Ground-Water Use, Locations of Production Wells, and Areas Irrigated Using Ground Water in 1998, Middle Humboldt River Basin, North-Central Nevada*, Water-Resources Investigations Report 03-4227, United States Geological Survey and Nevada Department of Conservation and Natural Resources, p.13, 2003.

<sup>8</sup> Well Driller's Report, Log No. 112014, filed September 24, 2010, official records in the Office of the State Engineer.

## CONCLUSIONS

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>9</sup>

### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>10</sup>

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

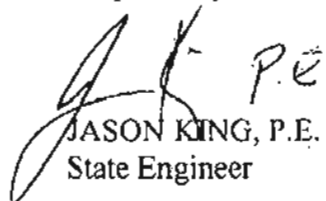
### **III.**

Based on the findings, the State Engineer concludes that there is unappropriated water at the source sufficient to satisfy the requirements of the requested appropriation, the proposed use of water will not conflict with existing water rights within the Willow Creek Valley Hydrographic Basin or the Humboldt River, and the granting of Application 80714 does not threaten to prove detrimental to the public interest.

## RULING

The protest is overruled and Application 80714 is hereby approved subject to existing rights and payment of the statutory permit fees.

Respectfully submitted,

  
JASON KING, P.E.  
State Engineer

Dated this 10th day of  
August, 2011.

<sup>9</sup> NRS Chapters 533 and 534.

<sup>10</sup> NRS § 533.370(5).

TAB 12

TAB 12

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

IN THE MATTER OF APPLICATION )  
84553 FILED TO APPROPRIATE )  
THE PUBLIC WATERS OF AN )  
UNDERGROUND SOURCE WITHIN )  
THE LITTLE HUMBOLDT VALLEY )  
HYDROGRAPHIC BASIN (067), )  
HUMBOLDT COUNTY, NEVADA. )

**RULING**

**#6322**

**GENERAL**

**L**

Application 84553 was filed on November 25, 2014, by Crawford Cattle, LLC, to appropriate 4.456 cubic feet per second of water from an underground source for irrigation purposes. The proposed point of diversion is described as being located within the SW¼ SW¼ of Section 29, T.41N., R.42E., M.D.B.&M. The proposed place of use is described as being 250 acres within portions of the SW¼ and W½ SE¼ of Section 29; portions of the SE¼ of Section 30; portions of the NE¼ NE¼ of Section 31 and portions of the N½ NW¼ and NW¼ NE¼ of Section 32, all within T.41N., R.42E., M.D.B.&M.<sup>1</sup>

**FINDINGS OF FACT**

**L**

Nevada Revised Statute § 533.370(2) provides that the State Engineer must reject an application where there is no unappropriated water in the proposed source of supply. In determining the amount of underground water available for appropriation in a given hydrographic basin (basin), the State Engineer relies on available hydrologic studies to provide relevant data to determine the perennial yield of a basin. The perennial yield of a groundwater basin may be defined as the maximum amount of groundwater that can be withdrawn each year over the long term without depleting the basin. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be utilized for beneficial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less. If the perennial yield is exceeded, groundwater levels will decline and steady-state conditions will not be achieved, a situation commonly referred to as groundwater mining. Additionally,

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<sup>1</sup> File No. 84553, official records in the Office of the State Engineer.

withdrawals of groundwater in excess of the perennial yield may contribute to adverse conditions such as water quality degradation, storage depletion, diminishing yield of wells, increased economic pumping lifts, and land subsidence.<sup>2</sup>

Perennial yield is a guideline that is used in Nevada to manage underground water development. Perennial yield sets an upper limit on the amount of underground water than can be developed in an underground water basin. Since perennial yield is determined by the natural hydrologic conditions, limiting underground water development to a basin's perennial yield ensures sustainable development of the underground water resource.

The perennial yield of the Little Humboldt Valley Hydrographic Basin is currently estimated as 34,000 acre-feet annually (afa), which is a combined perennial yield with the Hardscrabble Area Hydrographic Basin (068) and the Paradise Valley Hydrographic Basin (069).<sup>3</sup> A review of the records on file in the Office of the State Engineer show total committed underground water resources in Little Humboldt Valley at 10,290.21 afa,<sup>4</sup> in Hardscrabble Area at 0.00 afa<sup>5</sup> and in Paradise Valley at 115,355.86 afa.<sup>6</sup> The total combined committed underground water resources for Little Humboldt Valley, Hardscrabble Area and Paradise Valley is 125,646.07 afa, which greatly exceeds the total combined perennial yield of the basins. The State Engineer finds that there is no underground water available for appropriation in the quantity necessary to satisfy Application 84553.

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<sup>2</sup> Office of the State Engineer, *Water for Nevada, State of Nevada Water Planning Report No. 3*, p. 13, Oct. 1971.

<sup>3</sup> J.R. Harrill and D.O. Moore, *Effects of Ground-Water Development on the Water Regimen of Paradise Valley, Humboldt County, Nevada, 1948-68, and Hydrologic Reconnaissance of the Tributary Areas*, Water Resources Bulletin No. 39, (Department of Conservation and Natural Resources, Division of Water Resources and U.S. Department of the Interior, Geological Survey), 1970.

<sup>4</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Little Humboldt Valley Hydrographic Basin (067), June 16, 2015, official records in the Office of the State Engineer.

<sup>5</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Hardscrabble Area Hydrographic Basin (068), June 16, 2015, official records in the Office of the State Engineer.

<sup>6</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Paradise Valley Hydrographic Basin (069), June 16, 2015, official records in the Office of the State Engineer.

## **CONCLUSIONS OF LAW**

### **I.**

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.<sup>7</sup>

### **II.**

The State Engineer is prohibited by law from granting an application to appropriate the public waters where:<sup>8</sup>

- A. there is no unappropriated water at the proposed source;
- B. the proposed use or change conflicts with existing rights;
- C. the proposed use or change conflicts with 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.**

The committed underground water resources of the Little Humboldt Valley Hydrographic Basin combined with the committed underground water resources of the Hardscrabble Area Hydrographic Basin and the Paradise Valley Hydrographic Basin currently exceed the basins' estimated combined perennial yield. The State Engineer concludes that there is no unappropriated water at the source of supply and the approval of the subject application would result in the withdrawal of underground water in excess of the combined perennial yield of the Little Humboldt Valley Hydrographic Basin.

### **IV.**

The State Engineer concludes that Application 84553 requests a new appropriation of underground water and its approval would conflict with existing rights and would threaten to prove detrimental to the public interest.

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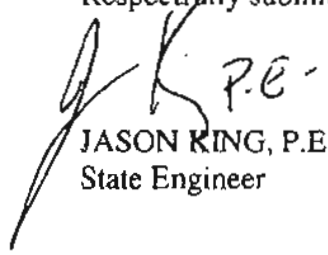
<sup>7</sup> NRS Chapters 533 and 534.

<sup>8</sup> NRS § 533.370(2).

**RULING**

Application 84553 is hereby denied on the grounds that there is no unappropriated water at the source of supply and approval of the application would conflict with existing rights and would threaten to prove detrimental to the public interest.

Respectfully submitted,



JASON KING, P.E.  
State Engineer

Dated this 13th day of  
November, 2015.

TAB 13

TAB 13

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

**ORDER**

**#1295**

**CURTAILING NEW APPROPRIATIONS OF GROUNDWATER  
WITHIN THE ELKO SEGMENT HYDROGRAPHIC BASIN (049) AND MARYS  
CREEK AREA HYDROGRAPHIC BASIN (052)**

**WHEREAS**, Nevada Revised Statute (NRS) § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

**WHEREAS**, the State Engineer designated the Elko Segment Hydrographic Basin, located within Elko and Eureka counties, Nevada, as provided under the provisions of NRS § 534.030, by Order No. 778 dated December 8, 1981, and Order No. 864 dated July 10, 1985.

**WHEREAS**, the State Engineer designated the Marys Creek Area Hydrographic Basin, located within Elko and Eureka counties, Nevada, as provided under the provisions of NRS § 534.030, by Order No. 868 dated July 18, 1985.

**WHEREAS**, the Nevada Division of Water Resources estimates that 13,000 acre-feet of water annually is available as the perennial yield from the Elko Segment combined with Marys Creek Area Hydrographic Basins.<sup>1</sup>

**WHEREAS**, the committed groundwater appropriations of record in the Office of the State Engineer total 21,699.36 acre-feet annually, which exceeds the perennial yield of the basins.<sup>2</sup>

**WHEREAS**, the State Engineer finds that conditions warrant the curtailment of new appropriations of groundwater within the Elko Segment and Marys Creek Area Hydrographic Basins.

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<sup>1</sup> T.E. Eakin, R.D. Lanke, *Hydrologic Reconnaissance of the Humboldt River Basin, Nevada*, Water Resources Bulletin No. 32, (Department of Conservation and Natural Resources), p. 56, 1966.

<sup>2</sup> Nevada Division of Water Resources' Water Rights Database, Hydrographic Basin Summary, Elko Segment Hydrographic Basin (49), combined with Marys Creek Area Basin (052), accessed January 22, 2018, official records in the Office of the State Engineer, available at <http://water.nv.gov/undergroundactive.aspx>.

**NOW THEREFORE, IT IS HEREBY ORDERED** that, with the following exceptions, any application to appropriate groundwater pursuant to NRS Chapters 533 and 534 within the designated Elko Segment Hydrographic Basin and Marys Creek Area Hydrographic Basin will be denied. Applications filed under the exceptions below must also satisfy the criteria found in NRS Chapters 533 and 534.

**EXCEPTIONS:**

1. Those applications filed for environmental permits pursuant to NRS §§ 533.437 to 533.4377, inclusive.
2. Those applications filed for temporary appropriations of groundwater for establishing fire-resistant vegetative cover pursuant to NRS § 533.436.
3. Those applications filed for temporary stockwater use pursuant to NRS § 533.504 that seek appropriations of two or less acre-feet of water annually.
4. Those applications filed for diversion rate only with no corresponding increase in duty of water.
5. Those applications filed for non-consumptive uses.

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

Dated at Carson City, Nevada this

16th day of February, 2018.

TAB 14

TAB 14

## IN THE OFFICE OF THE STATE ENGINEER

## OF THE STATE OF NEVADA

## ORDER

DESIGNATING AND DESCRIBING  
THE TRUCKEE MEADOWS GROUND WATER BASIN  
INCLUDING THE SUN VALLEY GROUND WATER BASIN,  
WASHOE COUNTY, NEVADA

The State Engineer finds that conditions warrant the designation of the Truckee Meadows Ground Water Basin, including the Sun Valley Ground Water Basin, Washoe County, Nevada, and by this Order designates the following described area of land as a ground water basin coming under the provisions of Chapter 534 NRS (Conservation and Distribution of Underground Waters).

T.17N., R.18E., M.D.B. & M.

Section 1 and that portion of Sections 2, 11, 12, 13 and 14 lying within the natural drainage of Truckee Meadows.

T.17N., R.19E., M.D.B. & M.

That portion of Sections 1, 5, 6 and 7 lying within the natural drainage of Truckee Meadows.

T.17N., R.20E., M.D.B. & M.

All of Sections 1, 12, 13, 23 and 24 and that portion of Sections 2, 3, 5, 6, 11, 14, 22, 25, 26 and 27 lying within the natural drainage of Truckee Meadows.

T.17N., R.21E., M.D.B. & M.

That portion of Sections 6, 7, 8, 17, 18, 19 and 30 lying within the natural drainage of Truckee Meadows.

T.18N., R.18E., M.D.B. & M.

All of Sections 1, 2, 11, 12, 13, 14, 24, 25 and 36 and that portion of Sections 3, 10, 15, 22, 23, 26 and 35 lying within the natural drainage of Truckee Meadows.

T.18N., R.19E., M.D.B. & M.

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 and that portion of Sections 32, 33, 34, 35 and 36 lying within the natural drainage of Truckee Meadows.

T.18N., R.20E., M.D.B. & M.

All of Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 35 and that portion of Sections 1, 2, 12, 32, 33, 34 and 36 lying within the natural drainage of Truckee Meadows.

T.18N., R.21E., M.D.B. & M.

That portion of Sections 7, 18, 19, 30 and 31 lying within the natural drainage of Truckee Meadows.

T.19N., R.18E., M.D.B. & M.

All of Sections 24, 25 and 36 and that portion of Sections 1, 12, 13, 14, 23, 26, 34 and 35 lying within the natural drainage of Truckee Meadows.

T.19N., R.19E., M.D.B. & M.

All.

T.19N., R.20E., M.D.B. & M.

All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33 and 34 and that portion of Sections 12, 13, 24, 25, 35 and 36 lying within the natural drainage of Truckee Meadows.

T.19N., R.21E., M.D.B. & M.

All of Section 6 and that portion of Sections 5, 7 and 8 lying within the natural drainage of Truckee Meadows.

T.20N., R.18E., M.D.B. & M.

That portion of Section 25 lying within the natural drainage of Truckee Meadows except the NE1/2 NE1/4, SE1/4 NE1/4, NE1/4 NW1/4; that portion of Section 36 lying within the natural drainage of Truckee Meadows.

T.20N., R.19E., M.D.B. & M.

All of Sections 23, 26, 27, 28, 31, 32, 33, 34, 35, 36; S1/2 SW1/4, SE1/4 Section 14, S1/2 NE1/4, SE1/4 NW1/4, S1/2 Section 21; E1/2, E1/2 W1/2, W1/2 SW1/4, SW1/4 NW1/4 Section 22, E1/2, S1/2 NW1/4, SW1/4 Section 29; SE1/4 NE1/4, S1/2 Section 30; and that portion of Sections 24 and 25 lying within the natural drainage of Truckee Meadows.

All of Section 13, E1/2, E1/2 W1/2, W1/2 SW1/4 Section 12 and that portion of Sections 24 and 25 lying within the natural drainage of Sun Valley.

T.20N., R.20E., M.D.B.& M.

All of Sections 25, 31, 32, 33, 34, 35, 36; E1/2 SE1/4 Section 23, W1/2, W1/2 E1/2, E1/2 SE1/4, SE1/4 NE1/4 Section 24; S1/2, E1/2 NE1/4 Section 26; SE1/4 Section 27; SW1/4 NE1/4, S1/2 NW1/4, SW1/4, NW1/4 SE1/4, S1/2 SE1/4 Section 28 and that portion of Sections 29 and 30 lying within the natural drainage of Truckee Meadows.

All of Sections 7, 17, 18, 19; SW1/4 NE1/4, S1/2 NW1/4, SW1/4, W1/2 SE1/4 Section 8; W1/2, W1/2 E1/2 Section 20 and that portion of Sections 29 and 30 lying within the natural drainage of Sun Valley.

T.20N., R.21E., M.D.B.& M.

All of Section 31; SW1/4 SW1/4 Section 29, W1/2, SW1/4 NE1/4, SE1/4 Section 30; NW1/4 NW1/4 and that remaining portion of Section 32 lying within the natural drainage of Truckee Meadows.

  
Roland D. Westergard  
State Engineer

Dated at Carson City, Nevada,

this 1<sup>st</sup> day of March, 1978.

TAB 15

TAB 15

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

## ORDER

DESIGNATING AND DESCRIBING  
THE DIXIE-FAIRVIEW VALLEY AREA  
MINERAL, CHURCHILL, PERSHING AND LANDER COUNTIES, NEVADA

The State Engineer finds that conditions warrant the designation of the Dixie-Fairview Valley Area, Mineral, Churchill, Pershing and Lander Counties, Nevada. The Dixie-Fairview Valley Area includes Pleasant Valley, Jersey Valley, Dixie Valley, Fairview Valley, Eastgate Valley, Cowkick Valley and Stingaree Valley. By this order, the following described area of land is described as a ground water basin coming under the provisions of Chapter 534, NRS (Conservation and Distribution of Underground Waters.)

T.14N., R.32E.

All of Sections 1, 12, 13, 14, 24 and that portion of Sections 2, 3, 10, 11, 15, 22, 23, 25, 26 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.14N., R.33E.

All of Sections 1 thru 24, 26, 27, 28 and that portion of Sections 25, 29, 30, 31, 32, 33, 34, 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.14N., R.34E.

All of Sections 3, 4, 5, 6, 7, 10 and that portion of Sections 2, 8, 9, 11, 14, 15, 16, 17, 18, 19, 22 and 23 within the natural drainage basin of Dixie-Fairview Valley Area.

T.14N., R.35E.

That portion of Section 6 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.32E.

All of Sections 1, 2, 3, 10 thru 15, 22 thru 26, 35, 36 and that portion of Sections 4, 5, 8, 9, 16, 21, 27, 28 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.33E.

All

T.15N., R.34E.

All of Sections 1 thru 34 and that portion of Sections 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.35E.

All of Sections 1 thru 8 and that portion of Sections 9, 10, 11, 12, 16, 17, 18, 19, 30, and 31 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.36E.

All of Sections 3, 4, 5, 6, and that portion of Sections 1, 2, 7, 8, 9, 10 and 11 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.37E.

All of Sections 2, 3, 4, 5, 8, 9, 10, 15 and that portion of Sections 1, 6, 7, 11, 12, 14, 16, 17, 18, 21, 22 and 23 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.15N., R.38E.

That portion of Section 6 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.16N., R.32E.

All of Sections 13, 24, 25, 26, 35, 36 and that portion of

Sections 1, 2, 3, 11, 12, 14, 23, 27, 33 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.16N., R.33E.  
All

T.16N., R.34E.  
All

T.16N., R.35E.  
All

T.16N., R.36E.  
All

T.16N., R.37E.  
All

T.16N., R.38E.  
All of Sections 7, 18, 19, 30 and that portion of Sections 5, 6, 8, 16, 17, 20, 21, 29, 31, and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.17N., R.32E.  
All of Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36 and that portion of Sections 3, 4, 5, 10, 15, 22, 27 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.17N., R.33E.  
All

T.17N., R.34E.  
All

T.17N., R.35E.  
All

T.17N., R.36E.  
All

T.17N., R.37E.  
All of Sections 2 thru 11, 14 thru 23, 25 thru 36, and that portion of Sections 1, 12, 13 and 24 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.17N., R.38E.  
That portion of Sections 19, 30 and 31 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.18N., R.32E.  
All of Sections 12 thru 15, 22 thru 27, 33 thru 36 and that portion of Sections 1, 2, 9, 10, 11, 16, 21, 28, 29 and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.18N., R.33E.  
All

T.18N., R.34E.  
All

T.18N., R.35E.  
All

T.18N., R.36E.  
All of Sections 3 thru 11, 13 thru 36 and that portion of Sections 1, 2, and 12 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.18N., R.37E.  
All of Sections 31, 32, 33, 34 and 35 and that portion of Sections 7, 18, 19, 25 thru 30 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.18N., R.38E.

That portion of Sections 30 and 31 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.19N., R.32E.

That portion of Sections 25 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.19N., R.33E.

All of Sections 1, 2, 3, 8 thru 17, 20 thru 29, 31 thru 36 and that portion of Sections 4, 5, 6, 7, 18, 19 and 30 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.19N., R.34E.

All

T.19N., R.35E.

All

T.19N., R.36E.

All of Sections 5 thru 9, 16 thru 21, 27 thru 34 and that portion of Sections 3, 4, 10, 15, 22, 23, 25, 26, 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.20N., R.33E.

All of Sections 25, 36 and that portion of Sections 1, 12, 13, 23, 24, 26, 33, 34 and 35 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.20N., R.34E.

All

T.20N., R.35E.

All

T.20N., R.36E.

All of Sections 1 thru 11, 18, 19, 30, 31, 32 and that portion of Sections 12, 13, 14, 15, 16, 17, 20, 22, 23, 28, 29 and 33 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.20N., R.37E.

All of Sections 5, 6 and that portion of Sections 4, 7, 8, 9, 16 and 17 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.21N., R.33E.

All of Sections 1, 12, 13, 24, 25, and 36 and that portion of Sections 2, 11, 14, 23, 26 and 35 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.21N., R.34E.

All

T.21N., R.35E.

All

T.21N., R.36E.

All

T.21N., R.37E.

All of Sections 1 thru 11, 14, 16 thru 21, 28 thru 33 and that portion of Sections 12, 13, 15, 22, 23, 24, 27 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.21N., R.38E.

All of Section 6 and that portion of Sections 4, 5, 7 and 8 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.22N., R.33E.

That portion of Sections 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.22N., R.34E.

All of Sections 1, 2, 3, 10 thru 16, 20 thru 36 and that portion of Sections 4, 5, 8, 9, 17, 18 and 19 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.22N., R.35E.

All

T.22N., R.36E.

All

T.22N., R.37E.

All

T.22N., R.38E.

All of Sections 1 thru 24, 27 thru 33 and that portion of Sections 25, 26, 34 and 35 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.22N., R.39E.

All of Sections 1 thru 10, 16 thru 20 and that portion of Sections 11, 12, 14, 15, 21, 22, 28, 29 and 30 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.22N., R.40E.

All of Sections 5, 6, 8 and that portion of Sections 3, 4, 7, 9, 16, 17, 18, 20 and 29 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.23N., R.34E.

All of Sections 13, 23 thru 27, 34, 35 and 36 and that portion of Sections 11, 12, 14, 15, 21, 22, 28, 32 and 33 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.23N., R.35E.

All of Sections 1, 2, 3, 8 thru 36 and that portion of Sections 4, 5, 6, 7 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.23N., R.36E.

All

T.23N., R.37E.

All

T.23N., R.38E.

All

T.23N., R.39E.

All

T.23N., R.40E.

All of Sections 4 thru 9, 16 thru 21, 29 thru 32 and that portion of Sections 3, 10, 15, 22, 27, 28, 33 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.24N., R.35E.

All of Sections 1, 11 thru 14, 22 thru 27, 34 thru 36 and that portion of Sections 2, 3, 10, 15, 16, 21, 28 and 33 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.24N., R.36E.

All

T.24N., R.37E.

All

T.24N., R.38E.

All

T.24N., R.39E.

All of Sections 2 thru 36 and that portion of Section 1 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.24N., R.40E.

All of Sections 18, 19, 29 thru 33 and that portion of Sections 6, 7, 8, 17, 20, 21, 27, 28 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.25N., R.35E.

That portion of Sections 25, 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.25N., R.36E.

All of Sections 24 thru 29, 31 thru 36 and that portion of Sections 13, 14, 16, 19, 20, 21, 22, 23 and 30 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.25N., R.37E.

All of Sections 1 thru 4, 10 thru 16, 20 thru 36, and that portion of Sections 5, 8, 9, 17, 18 and 19 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.25N., R.38E.

All

T.25N., R.39E.

All of Sections 1 thru 12, 14 thru 23, 26 thru 35 and that portion of Sections 13, 24, 25 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.25N., R.40E.

All of Sections 4, 5, 6 and that portion of Sections 2, 3, 7, 8, 9, 10, 18 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.26N., R.37E.

All of Sections 1, 2, 10 thru 15, 22 thru 27, and 33 thru 36 and that portion of Sections 3, 4, 9, 16, 21, 28, 29 and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.26N., R.38E.

All

T.26N., R.39E.

All

T.26N., R.40E.

All of Sections 1 thru 23, 26 thru 34 and that portion of Sections 24, 25, 35 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.26N., R.41E.

Those portions of Sections 6, 7, 18, 19 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.27N., R.37E.

All of Sections 1, 12, 13, 23 thru 26, 35 and 36 and those portions of Sections 2, 11, 14, 15, 22, 27, 28, 33 and 34 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.27N., R.38E.

All

T.27N., R.39E.

All

T.27N., R.40E.

All

T.27N., R.41E.

All of Sections 6, 7 and those portions of Sections 5, 8, 17, 18, 19, 30 and 31 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.28N., R.37E.

All of Sections 25, 36 and those portions of Sections 1, 12, 13, 23, 24, 26, 35 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.28N., R.38E.

All of Sections 1 thru 5, 8 thru 36 and those portions of Sections 6 and 7 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.28N., R.39E.

All

T.28N., R.40E.

All of Sections 7, 15 thru 22, 26 thru 35 and those portions of Sections 5, 6, 8, 9, 10, 11, 14, 23, 24, 25 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.28N., R.41E.

That portion of Sections 31 and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.29N., R.37E.

All of Sections 1, 12, 13 and that portion of Sections 2, 11, 14, 23, 24, 25 and 36 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.29N., R.38E.

All

T.29N., R.39E.

All

T.29N., R.40E.

All of Section 6 and that portion of Sections 5, 7, 8, 18, 19, 29, 30, 31 and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.30N., R.37E.

All of Sections 24, 25, 36 and that portion of Sections 12, 13, 23, 26 and 35 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.30N., R.38E.

All of Sections 16 thru 36 and that portion of Sections 5, 6, 7, 8, 9, 10, 13, 14 and 15 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.30N., R.39E.

All of Sections 12 thru 16, 19 thru 36 and that portion of Sections 1, 2, 8, 9, 10, 11, 17 and 18 within the natural drainage basin of the Dixie-Fairview Valley Area.

T.30N., R.40E.

All of Sections 7, 18, 19, 30, 31 and that portion of Sections 5, 6, 8, 17, 20, 21, 28, 29 and 32 within the natural drainage basin of the Dixie-Fairview Valley Area.

  
Roland D. Westergard  
State Engineer

RDW:BR/jv

Dated this 8th day

of June, 1978.

TAB 16

TAB 16

## IN THE OFFICE OF THE STATE ENGINEER

## OF THE STATE OF NEVADA

## ORDER

## DESIGNATING AND DESCRIBING

## THE ANTELOPE VALLEY, BEDELL FLAT

## AND REDROCK VALLEY GROUNDWATER BASINS,

## WASHOE COUNTY, NEVADA

The State Engineer finds that conditions warrant the Designation of the Antelope Valley, Bedell Flat and Red Rock Valley Groundwater Basins, Basins, Washoe County, Nevada and by this Order designates the following described area of land as groundwater basins coming under the provisions of Chapter 534 NRS (Conservation and Distribution of Under-ground Waters).

## The Antelope Valley Groundwater Basin

T.22N., R.19E., M.D.B. & M.

All of Sections 11, 12, 14, 15, 22, 23 and 26, and that portion of Sections 1, 2, 3, 9, 10, 13, 16, 21, 24, 25, 27, 34, 35, 36 lying within the natural drainage basin of Antelope Valley.

T.22N., R.20E., M.D.B. & M.

That portion of Sections 6, 7, and 16 lying within the natural drainage basin of Antelope Valley.

## The Bedell Flat Groundwater Basin

T.22N., R.18E., M.D.B. & M.

That portion of Sections 1, 12, and 13 lying within the natural drainage basin of Bedell Flat.

T.22N., R.19E., M.D.B. & M.

All of Sections 4, 5, and 6, and that portion of Sections 2, 3, 7, 8, 9, 10, and 18 lying within the natural drainage basin of Bedell Flat.

T.23N., R.18E., M.D.B. & M.

That portion of Sections 1, 25, and 36 lying within the natural drainage basin of Bedell Flat.

T.23N., R.19E., M.D.B. & M.

All of Sections 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, and 35, and that portion of Sections 1, 6, 7, 18, 19, 25, 30, and 36 lying within the natural drainage basin of Bedell Flat

T.23N., R.20E., M.D.B. & M.

All of unsurveyed Section 7 and that portion of unsurveyed sections 6, 8, 17, 18, and 19 lying within the natural drainage basin of Bedell Flat.

T.24N., R.18E., M.D.B. & M.

That portion of Sections 25, 26, and 36 lying within the natural drainage basin of Bedell Flat.

T.24N., R.19E., M.D.B. & M.

All of unsurveyed Sections 34 and 35. All of Section 31, that portion of unsurveyed Sections 25, 26, 27, 28, 29, 32, 33, and 36 and that portion of Section 30 lying within the natural drainage of Bedell Flat.

The Red Rock Valley Groundwater Basin

T.22N., R.18E., M.D.B. & M.

All of Sections 2, 3, 10, and 11, and that portion of Sections 1, 4, 9, 12, 13, 14, 15, 16, 22, and 23 lying within the natural drainage basin of Red Rock Valley.

T.23N., R.18E., M.D.B. & M.

All of Sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 26, 27, 28, 34, and 35, and that portion of Sections 1, 5, 8, 17, 20, 25, 29, 32, 33, and 36 lying within the natural drainage of Red Rock Valley.

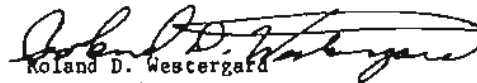
T.23N., R.19E., M.D.B. & M.

That portion of Sections 6, 7, 18, 19, and 30, lying within the natural drainage basin of Red Rock Valley.

T.24N., R.18E., M.D.B. & M.

All of Sections 33, 34, and 35, and that portion of Sections 25, 26, 27, 28, 29, 32, and 36 lying within the natural drainage basin of Red Rock Valley.

Respectfully submitted,

  
Roland D. Westergard  
State Engineer

Dated at Carson City, Nevada

this 3rd day of August, 1978.

RDW/jv

TAB 17

TAB 17

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

839

O R D E R

NOTICE OF DESIGNATION OF PREFERRED  
USE OF A LIMITED GROUND WATER RESOURCE  
LANDER COUNTY, NEVADA

Effective this date, the State Engineer will consider municipal, quasi-municipal and domestic use as preferred uses within the following described area of the Lower Reese River Valley, Boulder Flat and Clovers Area Designated Ground Water Basins:

T.32N., R.45E., M.D.B.&M.

All of Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32 and 33.

T.32N., R.44E., M.D.B.&M.

All of Sections 1, 12, 13, 24, 25 and 36.

Most of the available ground water of suitable quality for municipal, quasi-municipal and domestic purposes occurs in the above described area and ground water pumped from said area is used by the City of Battle Mountain and residents within the described boundary for municipal, quasi-municipal and domestic supply. The safeguarding of the aforementioned limited water supply necessitates and demands that municipal, quasi-municipal and domestic use be declared a preferred use of the ground water resource pursuant to NRS 534.120.

  
Peter G. Morros  
State Engineer

Dated at Carson City, Nevada, this  
20th day of MARCH, 1984.

TAB 18

TAB 18

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

872

O R D E R

NOTICE OF DESIGNATION OF PREFERRED USE  
OF A LIMITED GROUND WATER RESOURCE  
ELKO COUNTY, NEVADA

Effective this date the State Engineer will consider Municipal, Quasi-municipal and Domestic use as preferred uses within the following described area of the Marys Creek, Maggie Creek, Susie Creek and the Elko Segment Ground Water Basins:

MARYS CREEK AREA (BASIN 52)

T.33N., R.52E., M.D.B.&M.

All of Sections 27 and 28 and that portion of Sections 21, 22 and 26 lying within the natural drainage basin of Marys Creek Area. Also, that portion of Sections 26, 33, 34 and 35 lying northerly of the Humboldt River.

MAGGIE CREEK AREA (BASIN 51)

T.33N., R.52 E., M.D.B.&M.

That portion of Sections 21, 22, 23 and 26 lying within the natural drainage basin of the Maggie Creek Area.

SUSIE CREEK AREA (BASIN 50)

T.33N., R.52E., M.D.B.&M.

That portion of Sections 23 and 26 lying within the natural drainage basin of the Susie Creek Area.

ELKO SEGMENT (BASIN 49)

T.33N., R.52E., M.D.B.&M.

That portion of Sections 26, 33, 34 and 35 lying southerly of the Humboldt River.

Most of the available ground water of suitable quality for Municipal, Quasi-municipal and Domestic purposes occurs in the above described areas and ground water pumped from said areas is used by the City of Carlin and residents of the Carlin area for a Municipal, Quasi-municipal and Domestic supply. The safeguarding of the aforementioned limited water supply necessitates and demands that Municipal, Quasi-municipal and Domestic use be declared a preferred use of the ground water resource pursuant to NRS 534.120.

  
Peter G. Morros  
State Engineer

Dated at Carson City, Nevada,  
this 18th day of JULY, 1985.

TAB 19

TAB 19

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

1162

ORDER

ADOPTING RULES FOR WELL SPACING AND MODIFICATION  
OF REGULATIONS FOR WATER WELL AND RELATED DRILLING  
NEVADA ADMINISTRATIVE CODE CHAPTER 534 (JANUARY 1998)  
IN A PORTION OF THE BUFFALO VALLEY GROUNDWATER BASIN  
(10-131) AND IN A PORTION OF THE LOWER REESE RIVER VALLEY  
GROUNDWATER BASIN (4-059) LANDER COUNTY, NEVADA

This Order is issued pursuant to Chapter 534 of the Nevada Revised Statutes, which authorizes the State Engineer to prescribe and adopt rules and regulations for the administration of ground water. In accordance with statutory provisions, the State Engineer gave due notice of a public administrative hearing. The hearing was held on April 13, 2000, in Battle Mountain, Lander County, Nevada, to receive testimony and determine possible spacing requirements for pumping ground water relating to mine dewatering in the eastern portion of the Buffalo Valley Groundwater Basin, Hydrographic Area 10-131 and in the western portion of the Lower Reese River Valley Groundwater Basin, Hydrographic Area 4-059. Upon full consideration of the evidence presented at the hearing, and other relevant facts, the State Engineer finds that conditions warrant the adoption of well spacing requirements and the modification of rules and regulations for water well and related drilling under Chapter 534 of the Nevada Administrative Code (NAC) to accommodate the necessities and unique characteristics of mine dewatering within the following described area in the eastern portion of the Buffalo Valley Groundwater Basin (10-131):

T 31N, R 43E, M.D.B.&M.

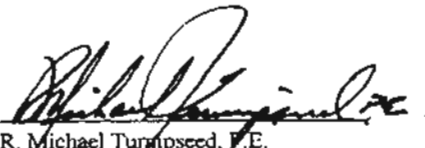
the SE $\frac{1}{4}$  of Section 16, the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 21, the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 22, the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 27, the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 28, the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of Section 33, the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 34, lying within the natural drainage basin of Buffalo Valley,  
and within the following described area in the western portion of the Lower Reese River Valley Groundwater Basin (4-059):

T 31N, R 43E, M.D.B.&M.

the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 22, and the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 27 all lying within the natural drainage basin of the Lower Reese River Valley,  
as delineated on the attached exhibit hereto and fully incorporated herein by this reference.

Within the above-described area, the following rules shall apply:

1. Applications to appropriate underground water for mining, milling and dewatering purposes may be filed describing a point of diversion at or near the center of a block delineated on the attached exhibit, but not to exceed 160 acres. Upon approval of any such application, wells may be located in the respective hydrographic basin and drilled anywhere within said block and respective hydrographic basin as required for mine dewatering purposes without filing for a temporary change of point of diversion prior to any pumping. However, a temporary change application must be filed on or before January 30<sup>th</sup> of each year for the amount of water pumped the preceding year from each well. Each application must specify the exact location for each producing well drilled within the respective hydrographic basin and any such delineated block during that year. If a permanent water right already exists at any well within any block, a temporary change application must only be filed if the pumping for the previous year exceeds the permitted duty under the permanent water right. However, pumping within a specified block area cannot exceed the total water right permitted within that block area.
2. The following sections under Chapter 534 of the Nevada Administrative Code (Regulations for Water Well and Related Drilling January 1998) are modified or waived by this Order for mine dewatering permits within the area described in this Order:
  - a. NAC § 534.300 is modified to allow for the drilling of alternate wells anywhere within a specified block permit which has been approved by the State Engineer, as long as the new well remains within the same hydrographic basin as the delineated block.
  - b. NAC §§ 534.380, 534.420, 534.424, 534.427, and 534.430 are hereby waived except as provided for in Paragraph 3 of this Order.
3. This Order, with the aforementioned waivers or modifications, will apply only during mine dewatering operations. At the time of permanent cessation of mining activity, the requirement for permanent well closure shall apply to all wells drilled pursuant to this Order as provided in NAC § 534.420. Any well, which is not permanently closed, shall be modified as necessary to comply with all applicable statutes, rules and regulations.

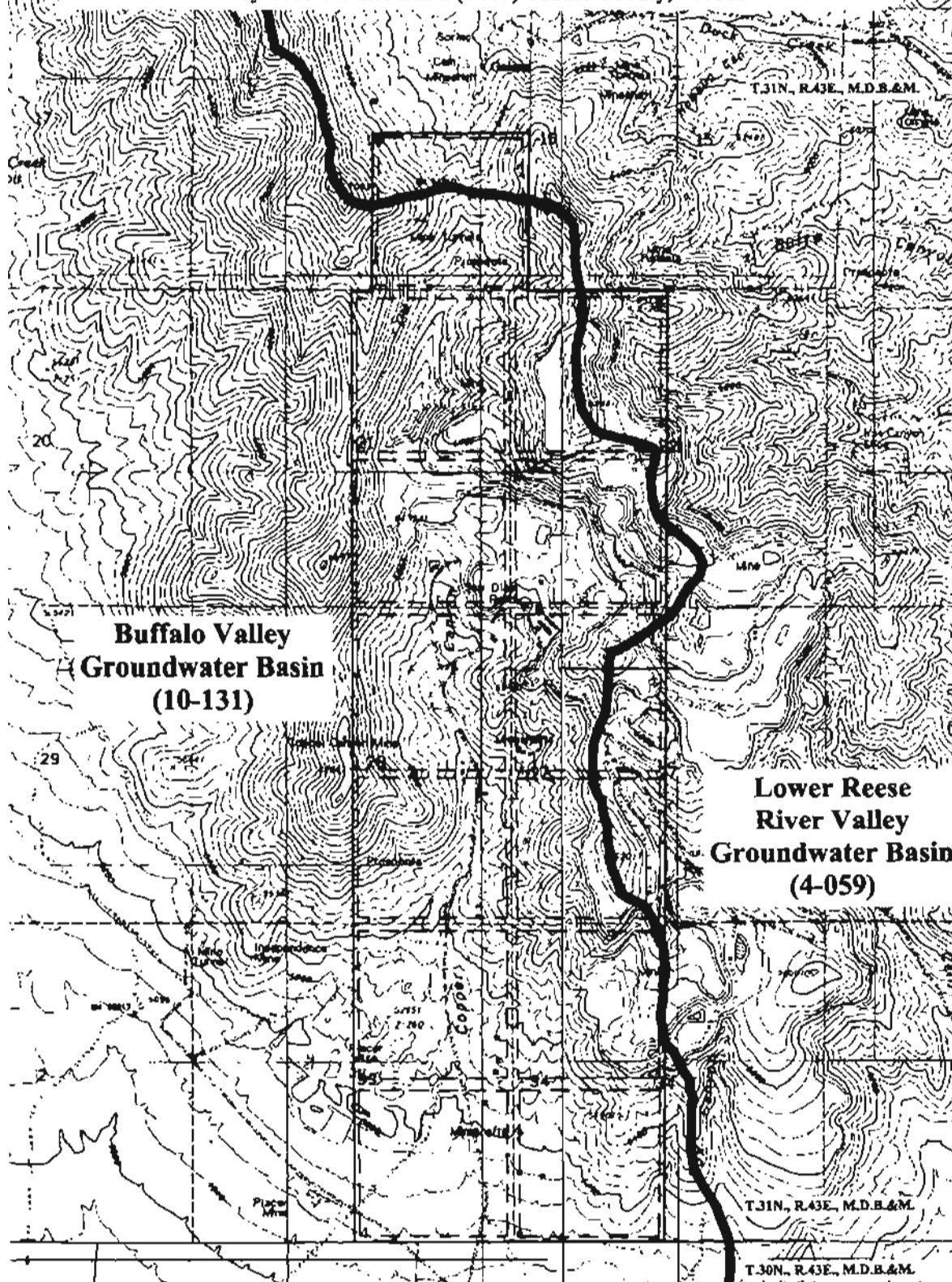
  
R. Michael Turnpseed, P.E.  
State Engineer

Dated at Carson City, Nevada

this 13th day of June, 2000.

## EXHIBIT

Adopting Rules for Well Spacing and Modification of Regulations for Water Well and Related Drilling Nevada Administrative Code Chapter 534 (January 1998) in a portion of Buffalo Valley Groundwater Basin (10-131) and a portion of the Lower Reese River Valley Groundwater Basin (4-059) Lander County, Nevada



TAB 20

TAB 20

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

IN THE MATTER OF THE )  
DETERMINATION OF THE RELATIVE )  
RIGHTS IN AND TO ALL WATERS OF )  
HONEY LAKE VALLEY AND SKEDADDLE )  
CREEK VALLEY, HYDROGRAPHIC BASIN )  
NUMBERS 07-097 AND 07-098, WASHOE )  
COUNTY, STATE OF NEVADA. )

ORDER  
GRANTING PETITION FOR  
ADJUDICATION OF WATER RIGHTS  
ORDER NO.  
1235

TO WHOM IT MAY CONCERN:

On October 20, 2006, Fish Springs Ranch, LLC, appropriator to the waters of Honey Lake Valley, petitioned the State Engineer for the adjudication of water rights in the Honey Lake Valley. The State Engineer, after due consideration and investigation, has decided that facts and conditions warrant the initiation of proceedings for Determination of the Relative Rights in and to all Waters of Honey Lake Valley (Hydrographic Basin No. 07-097) and Skedaddle Creek Valley (Hydrographic Basin No. 07-098) located in Washoe County, Nevada.

By virtue of authority granted him in NRS 533.090, the State Engineer enters this ORDER to proceed with the determination in question.

  
JASON KING, P.E.  
State Engineer

Dated at Carson City, Nevada this

13th day of February, 2014.

TAB 21

TAB 21

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

IN THE MATTER OF THE  
DETERMINATION OF THE RELATIVE  
RIGHTS IN AND TO ALL WATERS OF  
HONEY LAKE VALLEY AND  
SKEDADDLE CREEK VALLEY,  
HYDROGRAPHIC BASIN NUMBERS 07-  
097 AND 07-098, WASHOE COUNTY,  
STATE OF NEVADA.

NOTICE OF ORDER FOR  
TAKING PROOFS TO DETERMINE  
WATER RIGHTS  
ORDER NO.  
1237

TO WHOM IT MAY CONCERN:

Notice is hereby given that the State Engineer will commence taking Proofs of Appropriation for the Determination of the Relative Rights in and to All Waters of Honey Lake Valley (Hydrographic Basin No. 07-097) and Skedaddle Creek Valley (Hydrographic Basin No. 07-098) located in Washoe County, State of Nevada, on the 12<sup>th</sup> day of May, 2014.

All claimants to the waters of said Honey Lake Valley and Skedaddle Creek Valley and tributaries must file their Proofs of Appropriation in the Office of the State Engineer on or before the 18<sup>th</sup> day of July, 2014, as provided for under NRS § 533.110.

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

Dated at Carson City, Nevada this

3rd day of April, 2014.

TAB 22

TAB 22

IN THE OFFICE OF THE STATE ENGINEER

OF THE STATE OF NEVADA

#1251

ORDER

WHEREAS, Nevada Revised Statutes (NRS) § 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

WHEREAS, the State Engineer designated all or a portion of most groundwater basins within the Humboldt River Basin Hydrographic Region (4) as provided under the provisions of NRS § 534.030, by the following State Engineer's Orders:

| <u>Basin</u>                     | <u>No.</u> | <u>S.E. Order</u> | <u>Date</u> |
|----------------------------------|------------|-------------------|-------------|
| Marys River Area                 | 042        | 837               | 02/14/1984  |
| Starr Valley Area                | 043        | 867               | 07/10/1985  |
| North Fork Area                  | 044        | 744               | 05/28/1980  |
| Lamoille Valley                  | 045        | 869               | 07/18/1985  |
| South Fork Area                  | 046        | 870               | 07/18/1985  |
| Huntington Valley                | 047        | 865               | 07/10/1985  |
| Dixie Creek - Tenmile Creek Area | 048        | 848               | 09/06/1984  |
| Elko Segment                     | 049        | 778               | 12/08/1981  |
| Elko Segment                     | 049        | 864               | 07/10/1985  |
| Susie Creek Area                 | 050        | 866               | 07/10/1985  |
| Maggie Creek Area                | 051        | 863               | 07/10/1985  |
| Marys Creek Area                 | 052        | 868               | 07/18/1985  |
| Pine Valley                      | 053        | 862               | 07/10/1985  |
| Crescent Valley                  | 054        | 755               | 03/20/1981  |
| Antelope Valley                  | 057        | 276               | 08/05/1964  |
| Middle Reese River Valley        | 058        | 276               | 08/05/1964  |
| Lower Reese River Valley         | 059        | 739               | 03/27/1980  |
| Whirlwind Valley                 | 060        | 799               | 10/05/1982  |
| Boulder Flat                     | 061        | 799               | 10/05/1982  |
| Clovers Area                     | 064        | 700               | 12/30/1977  |
| Pumpnickel Valley                | 065        | 1241              | 10/03/2014  |
| Kelly Creek Area                 | 066        | 536               | 05/09/1975  |
| Little Humboldt Valley           | 067        | 1242              | 10/03/2014  |
| Paradise Valley                  | 069        | 408               | 10/22/1971  |
| Winnemucca Segment               | 070        | 464               | 07/24/1972  |
| Winnemucca Segment               | 070        | 534               | 05/06/1975  |
| Winnemucca Segment               | 070        | 1246              | 11/24/2014  |
| Grass Valley                     | 071        | 464               | 07/24/1972  |
| Grass Valley                     | 071        | 1247              | 11/24/2014  |
| Imlay Area                       | 072        | 702               | 01/31/1978  |
| Lovelock Valley - Orcana Subarea | 073A       | 369               | 02/25/1969  |
| White Plains                     | 074        | 716               | 07/06/1978  |

**WHEREAS**, the State Engineer finds that it is in the public interest to ensure that the diversions of underground water in those designated groundwater basins comprising the Humboldt River Basin Hydrographic Region (4) are within the limits set forth in each water right permit, certificate or other authorization to divert groundwater.

**WHEREAS**, NRS § 534.110 provides that the State Engineer may require periodic statements of water elevations, water used, and acreage upon which water was used from all holders of permits and claimants of vested rights.

**NOW THEREFORE, IT IS HEREBY ORDERED** that all owners of underground water rights in the above described hydrographic basins, with the following exceptions, shall install and maintain, in accordance with manufacturer's specifications, a totalizing meter in the discharge pipeline near the point of diversion by **February 1, 2016**. Additionally, all wells drilled after **February 1, 2016**, shall be subject to this requirement.

**EXCEPTIONS:**

1. Those wells drilled for domestic purposes as defined by NRS § 534.013.
2. Those wells drilled for stockwater purposes, unless otherwise required by the terms of the permit or certificate.
3. Those wells with a total authorized withdrawal that does not exceed five acre-feet annually, unless otherwise required by the terms of the permit or certificate.

**IT IS FURTHER ORDERED** that within **thirty days** of installation, each owner who installs a totalizing meter in accordance with this order shall file with the State Engineer a report of installation on the form provided by the Nevada Division of Water Resources.

**IT IS FURTHER ORDERED** that once the totalizing meter is installed, monthly records shall be kept of the amount of water pumped from each well subject to this order, and the records shall be submitted to the State Engineer **within 15 days after the end of each calendar quarter**, or more frequently if required by the terms of the permit or certificate.

**IT IS FURTHER ORDERED** that:

1. Each water right owner shall expeditiously correct totalizing meter failure or deficiencies in metering equipment or installations that cause the meter to fail to meet the requirements of this order.
2. The State Engineer may authorize the temporary estimation of the amount of water pumped during the time period required to repair a non-functional totalizing meter. Estimation of the amount of water pumped must be based upon the number of hours the pump was operated, multiplied by the well discharge diversion rate. This estimation must be submitted to the State Engineer in the

form of a sworn affidavit from the water right owner, but is in no way a direct substitute for a totalizing meter installed in the discharge pipeline.

3. Each water right owner shall provide access to the totalizing meter by State Engineer staff without prior notice for reading and inspection.
4. Any tampering with a working totalizing meter, *i.e.*, reprogramming, such that the totalizing meter provides a false measurement is prohibited. If upon inspection, the State Engineer finds discrepancies between the totalizing meter reading and actual discharge from the well, an independent certification of the flow measurement may be required at the expense of the water right holder.

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

Dated at Carson City, Nevada this

5<sup>th</sup> day of February, 2015.

TAB 23

TAB 23

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

**INTERIM ORDER**

**#1308**

**RESERVING A PORTION OF GROUNDWATER IN  
HYDROGRAPHIC BASINS WITH UNCOMMITTED GROUNDWATER  
AS APPLIED TO MULTIPLE COUNTIES WITHIN NEVADA**

**I. PURPOSE**

The purpose of this Interim Order is to establish reserved groundwater quantities for hydrographic basins with unappropriated groundwater, as required by the 2019 Nevada Legislature in Senate Bill 140.

**II. SENATE BILL 140**

Existing law allows any person who wishes to appropriate the waters of the State to apply to the State Engineer for a permit to do so. The State Engineer must reject an application under specific circumstances, including where there is no unappropriated water available in the proposed source of supply.<sup>1</sup> Senate Bill (SB) 140 requires that for each basin in which there is groundwater that has not been committed for use, including, without limitation, pursuant to an application, permit, certificate or by any other water user in the basin, as of March 1, 2019, the State Engineer shall reserve 10 percent of the total remaining groundwater that is not committed for use in the basin (reserve quantity). The groundwater reserved pursuant to SB 140 is not available for any use.

**III. GROUNDWATER AVAILABLE FOR COMMITMENT**

Perennial yield is the primary guideline used by the State Engineer to determine water availability where the source of supply is a groundwater basin. The perennial yield of a groundwater reservoir may be defined as the maximum amount of groundwater that can be withdrawn each year, over the long term, without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural discharge that can be utilized for beneficial use. The perennial yield cannot be more than the natural recharge to a groundwater basin and in some cases is less.

Perennial yields for Nevada basins were initially estimated through cooperative efforts to study groundwater between the State of Nevada and the U.S. Geological Survey, beginning in

<sup>1</sup> NRS 533.325; NRS 533.370; NRS 533.371.

the 1940s. These studies were published as Water Resources Bulletins, Water Resource Reconnaissance Series Reports, Water Supply Papers, and Professional Papers. In 1971, the State Engineer published Water Planning Report 3, which was a statewide inventory of water resources and water availability that included perennial yield estimates for nearly all of the groundwater basins in Nevada. Perennial yield estimates in Report 3 were based on the best data and analyses available at that time, which was most often the Bulletins and Reconnaissance Reports.

The State Engineer revises perennial yield values as new data, scientific methods and water budget studies become available.<sup>2</sup> New studies that are scientifically sound often validate the early USGS studies, despite the limited data that was available at that time.

#### **IV. COMMITTED AND AVAILABLE GROUNDWATER**

Pursuant to NRS 532.167, the State Engineer prepares and maintains water budgets and calculates and maintains an inventory of water that includes, without limitation: the total amount of groundwater committed in the basin; an estimate of the amount of groundwater used by domestic wells in the basin; and an estimate of the amount of all groundwater that is available for appropriation in the basin.

Groundwater committed is the sum of all permitted, certificated, decreed, reserved, relinquished, revocable, and unadjudicated vested claims to groundwater rights. Domestic wells that are exempt from the permitting process represent an additional commitment of 2 acre-feet per year for each well.<sup>3</sup> Groundwater available for appropriation is estimated as the difference between perennial yield and the sum of groundwater committed plus domestic well commitments. This simple estimate of groundwater availability does not account for a wide range of additional variables that the State Engineer considers before approving or rejecting an application to appropriate groundwater.<sup>4</sup>

#### **V. IMPLEMENTATION**

For each basin in which there is groundwater that has not been committed for use, Table 1 shows the perennial yield, the total amount of groundwater committed (total committed), the difference between the perennial yield and total committed, and the reserved quantity of groundwater required by SB 140. The quantity of groundwater committed, as represented in Table 1, includes both permanent and temporary appropriations, domestic wells drilled as of

<sup>2</sup> NRS 533.024(1)(c).

<sup>3</sup> NRS 534.180(1).

<sup>4</sup> NRS 533.370.

March 1, 2019, and pending water right applications filed as of March 1, 2019.<sup>5</sup> For groundwater basins with a combined perennial yield, the sum of commitments for all basins was subtracted from the perennial yield to determine the total amount of groundwater available, and then the 10 percent reserve was equally divided among the basins.

The State Engineer shall withdraw the reserved quantity from the groundwater available for appropriation. The quantity of groundwater reserved in each basin that is subject to this Interim Order may be revised by Final Order due to circumstances including, but not limited to, adjudication of claims of pre-statutory vested groundwater rights, revisions to the perennial yield, or revisions to the groundwater commitments.

  
TIM WILSON, P.E.  
State Engineer

Dated at Carson City, Nevada this

16th day of March, 2020.

<sup>5</sup> Nevada Legislature Senate Committee on Natural Resources, Hearing on Senate Bill 140, April 11, 2019, pp 4-5.

Table 1. Reserved Quantity of Water, by Basin, as Required by SB 140.

| Basin No. | Basin Name                   | Hydrographic Region  | Counties <sup>a</sup> | Perennial Yield<br>(PY) | Total Committed +<br>Pending (TC) <sup>b</sup> | Difference of<br>PY and TC <sup>b</sup> | 10 Percent<br>Reservation |
|-----------|------------------------------|----------------------|-----------------------|-------------------------|------------------------------------------------|-----------------------------------------|---------------------------|
| 002       | Continental Lake Valley      | Northwest            | HU                    | 11,000                  | 10,670.64                                      | 329.36                                  | 32.94                     |
| 004       | Virgin Valley                | Northwest            | HU, WA                | 6,000                   | 35.50                                          | 5,964.50                                | 596.45                    |
| 005       | Sage Hen Valley              | Northwest            | HU                    | 250                     | 0.00                                           | 250.00                                  | 25.00                     |
| 006       | Guano Valley                 | Northwest            | WA, HU                | 2,000                   | 0.00                                           | 2,000.00                                | 200.00                    |
| 008       | Massacre Lake Valley         | Northwest            | WA                    | 3,000                   | 46.15                                          | 2,953.85                                | 295.39                    |
| 010       | Macy Flat                    | Northwest            | WA                    | 250                     | 2.24                                           | 247.76                                  | 24.78                     |
| 011       | Coleman Valley               | Northwest            | WA                    | 1,000                   | 6.60                                           | 993.40                                  | 99.34                     |
| 012       | Mosquito Valley              | Northwest            | WA                    | 1,500                   | 0.00                                           | 1,500.00                                | 150.00                    |
| 013       | Warner Valley                | Northwest            | WA                    | 1,000                   | 28.00                                          | 972.00                                  | 97.20                     |
| 014       | Surprise Valley              | Northwest            | WA                    | 2,000                   | 532.00                                         | 1,468.00                                | 146.80                    |
| 015       | Boulder Valley               | Northwest            | WA                    | 2,000                   | 22.40                                          | 1,977.60                                | 197.76                    |
| 017       | Pilgrim Flat                 | Black Rock Desert    | WA                    | 200                     | 0.00                                           | 200.00                                  | 20.00                     |
| 018       | Painter Flat                 | Black Rock Desert    | WA                    | 1,200                   | 0.00                                           | 1,200.00                                | 120.00                    |
| 019       | Dr. Valley                   | Western              | WA                    | 100                     | 0.00                                           | 100.00                                  | 10.00                     |
| 020       | Sano Valley                  | Black Rock Desert    | WA                    | 25                      | 0.00                                           | 25.00                                   | 2.50                      |
| 023       | Granite Basin                | Black Rock Desert    | WA                    | 200                     | 0.00                                           | 200.00                                  | 20.00                     |
| 025       | High Rock Lake Valley        | Black Rock Desert    | WA, HU                | 5,000                   | 1,346.99                                       | 3,653.01                                | 365.30                    |
| 027       | Summit Lake Valley           | Black Rock Desert    | HU                    | 1,000                   | 614.00                                         | 386.00                                  | 38.60                     |
| 034       | Little Owyhee River Area     | Snake River Basin    | EL, HU                | 1,400                   | 34.04                                          | 1,365.96                                | 136.60                    |
| 035       | South Fork Owyhee River Area | Snake River Basin    | EL                    | 8,000                   | 2,488.52                                       | 5,511.48                                | 551.15                    |
| 036       | Independence Valley          | Snake River Basin    | EL                    | 12,000                  | 11,707.25                                      | 292.75                                  | 29.28                     |
| 037       | Owyhee River Area            | Snake River Basin    | EL                    | 7,000                   | 2,451.62                                       | 4,548.38                                | 454.84                    |
| 038       | Bruneau River Area           | Snake River Basin    | EL                    | 10,000                  | 19.93                                          | 9,980.07                                | 998.01                    |
| 039       | Jarbridge River Area         | Snake River Basin    | EL                    | 12,000                  | 38.30                                          | 11,961.70                               | 1,196.17                  |
| 040       | Salmon Falls Creek Area      | Snake River Basin    | EL                    | 7,400                   | 6,714.60                                       | 685.40                                  | 68.54                     |
| 041       | Goose Creek Area             | Snake River Basin    | EL                    | 1,700                   | 1,237.64                                       | 462.36                                  | 46.24                     |
| 042       | Marys River Area             | Humboldt River Basin | EL                    |                         | 25,258.38                                      |                                         | 737.57                    |
| 043       | Siarr Valley Area            | Humboldt River Basin | EL                    |                         | 3,243.37                                       | 29,502.60                               | 737.57                    |
| 044       | North Fork Area              | Humboldt River Basin | EL                    | 83,000                  | 16,623.24                                      |                                         | 737.57                    |
| 045       | Lamoille Valley              | Humboldt River Basin | EL                    |                         | 8,372.40                                       |                                         | 737.57                    |
| 046       | South Fork Area              | Humboldt River Basin | EL                    | 3,000                   | 155.46                                         | 2,844.54                                | 284.45                    |
| 047       | Huntington Valley            | Humboldt River Basin | EL, WP                | 14,000                  | 9,003.56                                       | 4,996.44                                | 499.64                    |
| 050       | Susie Creek Area             | Humboldt River Basin | EL, EU                | 2,000                   | 639.96                                         | 1,360.04                                | 136.00                    |
| 053       | Pine Valley                  | Humboldt River Basin | EU, EL                | 20,000                  | 19,461.50                                      | 538.50                                  | 53.85                     |

Table 1. Reserved Quantity of Water, by Basin, as Required by SB 140 (continued).

| Basin No. | Basin Name                            | Hydrographic Region  | Counties <sup>a</sup> | Perennial Yield (PY) | Total Committed ~ Pending (TC) <sup>b</sup> | Difference of PY and TC <sup>b</sup> | 10 Percent Reservation |
|-----------|---------------------------------------|----------------------|-----------------------|----------------------|---------------------------------------------|--------------------------------------|------------------------|
| 064       | Clovers Area                          | Humboldt River Basin | HU, LA, EL            |                      | 29,033.48                                   |                                      | 454.51                 |
| 065       | Pumpnickel Valley                     | Humboldt River Basin | HU, PE                | 72,000               | 7,575.47                                    | 13,773.00                            | 454.51                 |
| 066       | Kelly Creek Area                      | Humboldt River Basin | HU, EL                |                      | 21,617.77                                   |                                      | 454.51                 |
| 079       | Kumiva Valley                         | West Central         | PE                    | 500                  | 1.12                                        | 498.88                               | 49.89                  |
| 080       | Winnemucca Lake Valley                | Truckee River Basin  | PE, WA, CH            | 3,300                | 671.85                                      | 2,628.15                             | 262.82                 |
| 081       | Pyramid Lake Valley                   | Truckee River Basin  | WA, CH                | 7,000                | 167.09                                      | 6,832.91                             | 683.29                 |
| 110A      | Walker Lake Valley-Schurz Subarea     | Walker River Basin   | MI, LY, CH            | 1,500                | 747.67                                      | 752.33                               | 75.23                  |
| 111A      | Alkali Valley (Mineral)-Northern Part | Central              | MI                    | 300                  | 0.00                                        | 300.00                               | 30.00                  |
| 111B      | Alkali Valley (Mineral)-Southern Part | Central              | MI                    | 700                  | 0.00                                        | 700.00                               | 70.00                  |
| 112       | Mono Valley                           | Central              | MI                    | 300                  | 0.00                                        | 300.00                               | 30.00                  |
| 113       | Huntoon Valley                        | Central              | MI                    | 150                  | 38.49                                       | 111.51                               | 11.15                  |
| 115       | Adobe Valley                          | Central              | MI                    | 150                  | 0.00                                        | 150.00                               | 15.00                  |
| 119       | Rhodes Salt Marsh Valley              | Central              | MI                    | 1,000                | 545.34                                      | 454.66                               | 45.47                  |
| 120       | Garfield Flats                        | Central              | MI                    | 150                  | 22.40                                       | 127.60                               | 12.76                  |
| 123       | Rawhide Flats                         | Central              | CH, MI, LY            | 500                  | 117.67                                      | 382.33                               | 38.23                  |
| 124       | Fairview Valley                       | Central              | CH, MI                |                      | 39.87                                       |                                      | 47.50                  |
| 125       | Stingaree Valley                      | Central              | CH                    | 6,100                | 417.53                                      | 1,900.00                             | 47.50                  |
| 126       | Cowkick Valley                        | Central              | CH                    |                      | 569.85                                      |                                      | 47.50                  |
| 127       | Eastgate Valley Area                  | Central              | CH                    |                      | 489.99                                      |                                      | 47.50                  |
| 135       | lone Valley                           | Central              | NY, MI                | 2,500                | 201.04                                      | 2,298.96                             | 229.90                 |
| 136       | Monte Cristo Valley                   | Central              | ES, MI                | 400                  | 398.50                                      | 1.50                                 | 0.15                   |
| 140A      | Monitor Valley-Northern Part          | Central              | NY, LA, EU            | 2,000                | 295.58                                      | 1,704.42                             | 170.44                 |
| 140B      | Monitor Valley-Southern Part          | Central              | NY                    | 9,000                | 578.02                                      | 8,421.98                             | 842.20                 |
| 144       | Lida Valley                           | Central              | ES, NY                | 350                  | 194.05                                      | 155.95                               | 15.60                  |
| 145       | Stonewall Flat                        | Central              | NY, ES                | 100                  | 14.02                                       | 85.98                                | 8.60                   |
| 147       | Gold Flat                             | Central              | NY                    | 1,900                | 391.32                                      | 1,508.68                             | 150.87                 |
| 148       | Cactus Flat                           | Central              | NY                    | 300                  | 90.11                                       | 209.89                               | 20.99                  |
| 150       | Little Fish Lake Valley               | Central              | NY                    | 10,000               | 7,895.80                                    | 2,104.20                             | 210.42                 |
| 151       | Amelope Valley (Eureka & Nye)         | Central              | EU, NY                | 4,000                | 3,065.18                                    | 934.82                               | 93.48                  |
| 155B      | Little Smoky Valley-Central Part      | Central              | NY                    | 100                  | 5.07                                        | 94.93                                | 9.49                   |
| 155C      | Little Smoky Valley-Southern Part     | Central              | NY                    | 1,000                | 56.82                                       | 943.18                               | 94.32                  |

Table 1. Reserved Quantity of Water, by Basin, as Required by SB 140 (continued).

| Basin No. | Basin Name                                  | Hydrographic Region   | Counties <sup>a</sup> | Perennial Yield (PY) | Total Committed + Pending (TC) <sup>b</sup> | Difference of PY and TC <sup>b</sup> | 10 Percent Reservation |
|-----------|---------------------------------------------|-----------------------|-----------------------|----------------------|---------------------------------------------|--------------------------------------|------------------------|
| 156       | Hot Creek                                   | Central               | NY                    | 5,500                | 2,605.22                                    | 2,894.78                             | 289.48                 |
| 157       | Kawich Valley                               | Central               | NY                    | 2,200                | 22.74                                       | 2,177.26                             | 217.73                 |
| 158A      | Emigrant Valley-Groom Lake Valley           | Central               | LI, NY                | 2,800                | 12.32                                       | 2,787.68                             | 278.77                 |
| 158B      | Emigrant Valley-Papoose Lake Valley         | Central               | LI, NY                | 10                   | 0.00                                        | 10.00                                | 1.00                   |
| 159       | Yucca Flat                                  | Central               | NY                    | 350                  | 2.00                                        | 348.00                               | 34.80                  |
| 160       | Frenchman Flat                              | Central               | NY, LI, CL            | 100                  | 0.00                                        | 100.00                               | 10.00                  |
| 174       | Jakes Valley                                | Central               | WP                    | 12,000               | 30.85                                       | 11,969.15                            | 1,196.92               |
| 175       | Long Valley                                 | Northwest             | WA                    | 6,000                | 4,300.13                                    | 1,699.87                             | 169.99                 |
| 176       | Ruby Valley                                 | Central               | EL, WP                | 37,000               | 23,338.82                                   | 13,661.18                            | 1,366.12               |
| 178A      | Butte Valley-Northern Part                  | Central               | EL                    | 6,000                | 124.63                                      | 5,875.37                             | 587.54                 |
| 178B      | Butte Valley-Southern Part                  | Central               | WP, EL                | 14,000               | 364.46                                      | 13,635.54                            | 1,363.55               |
| 185       | Tipton Valley                               | Central               | WP                    | 3,500                | 479.96                                      | 3,020.04                             | 302.00                 |
| 189B      | Thousand Springs Valley-Toano-Rock Spr Area | Great Salt Lake Basin | EL                    | 2,600                | 1,587.00                                    | 1,013.00                             | 101.30                 |
| 189C      | Thousand Springs Valley-Rocky Butte Area    | Great Salt Lake Basin | EL                    | 1,400                | 445.53                                      | 954.47                               | 95.45                  |
| 190       | Grouse Creek Valley                         | Great Salt Lake Basin | EL                    | 350                  | 32.56                                       | 317.44                               | 31.74                  |
| 191       | Pilot Creek Valley                          | Great Salt Lake Basin | EL                    | 4,500                | 3,449.04                                    | 1,050.96                             | 105.10                 |
| 192       | Great Salt Lake Desert                      | Great Salt Lake Basin | EL                    | 5,000                | 11.59                                       | 4,988.41                             | 498.84                 |
| 193       | Deep Creek Valley                           | Great Salt Lake Basin | WP, EL                | 2,000                | 2.00                                        | 1,998.00                             | 199.80                 |
| 194       | Pleasant Valley                             | Great Salt Lake Basin | WP                    | 1,500                | 976.29                                      | 523.71                               | 52.37                  |
| 197       | Escalante Desert                            | Escalante Desert      | LI                    | 1,000                | 971.09                                      | 28.91                                | 2.89                   |
| 225       | Gold Butte Area                             | Colorado River Basin  | CL                    | 500                  | 1.12                                        | 498.88                               | 49.89                  |
| 224       | Greasewood Basin                            | Colorado River Basin  | CL                    | 300                  | 4.05                                        | 295.95                               | 29.60                  |
| 231       | Grapevine Canyon                            | Death Valley Basin    | ES, NY                | 400                  | 12.43                                       | 387.57                               | 38.76                  |

a - where CL is Clark, CH is Churchill, EL is Elko, ES is Esmeralda, EU is Eureka, HU is Humboldt, LA is Lander, LI is Lincoln, LY is Lyon, MI is Mineral, NY is Nye, PE is Pershing, WA is Washoe, and WP is White Pine.

b - Accounting for all pending applications, as of March 1, 2019, as being committed pursuant to SB 140.

TAB 24

TAB 24

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

**ORDER**

**#1318**

**ESTABLISH REPORTING REQUIREMENTS OF METER  
INSTALLATION AND MONTHLY METER READINGS WITHIN THE  
SMITH VALLEY HYDROGRAPHIC BASIN (09-107), WITHIN LYON  
AND DOUGLAS COUNTIES, NEVADA AND MASON VALLEY  
HYDROGRAPHIC BASIN (09-108), WITHIN LYON AND MINERAL  
COUNTIES, NEVADA**

**WHEREAS**, Nevada Revised Statutes (NRS) 534.120 provides that within an area that has been designated by the State Engineer where, in his judgment, the groundwater basin is being depleted, the State Engineer in his administrative capacity is empowered to make such rules, regulations, and orders as are deemed essential for the welfare of the area involved.

**WHEREAS**, the State Engineer designated the Smith Valley Hydrographic Basin (107), located within Lyon and Douglas Counties pursuant to NRS 534.030 by Order 245, dated June 27, 1960, designating a portion of the basin, and Order 1177, dated July 8, 2005, extending the designated area.

**WHEREAS**, the State Engineer designated the Mason Valley Hydrographic Basin (108), located within Douglas and Mineral Counties pursuant to NRS 534.030 by Order 627, dated January 20, 1977, designating the entirety of the basin, and Order 691, dated September 7, 1977, amending the area described by Order 627.

**WHEREAS**, the State Engineer finds that it is in the public interest to ensure that the diversions of underground water in those designated basins are within the limits set forth in each water right permit, certificate or other authorization to divert groundwater.

**WHEREAS**, NRS 534.110 provides that the State Engineer may require from all holders of permits and claims of vested rights, periodic statements of water elevations, water used, and acreage on which water was used.

**WHEREAS**, the State Engineer issued Order 253, dated August 2, 1961, directing the installation of suitable measuring devices on all permitted wells by all owners of water rights within the Smith Valley Artesian Basin.

**WHEREAS**, the State Engineer issued Orders 1158 and 1159, dated February 1, 2000, within Mason Valley and Smith Valley Hydrographic Basins, respectively, requiring all owners of underground water rights to install and maintain, in accordance with manufacturer's specifications, a totalizing meter in the discharge pipeline near the point of diversion prior to using the well for the year 2000 irrigation season, or not later than April 1, 2000.

**WHEREAS**, a public hearing was held on June 30, 2020, to provide notice and take public comment on the proposed requirements to report meter installation and monthly meter readings within the Smith Valley and Mason Valley Hydrographic Basins.

**WHEREAS**, the State Engineer has considered the public comment on the proposed requirements to report meter installation and monthly meter readings.

**NOW THEREFORE, IT IS HEREBY ORDERED** that all owners of underground water rights in the Smith Valley and Mason Valley Hydrographic Basins, with the following exceptions, shall submit a report of installation of totalizing meter form by March 1, 2021, to the Division of Water Resources (Division). This form must be submitted within 30 days of installation for any new or replacement totalizing meter installed on any well subject to this order.

**EXCEPTIONS:**

1. Those wells drilled for domestic purposes as defined by NRS 534.013, unless otherwise required by an order of the State Engineer or by NRS 534.180(4).
2. Those wells drilled for stockwater purposes, unless otherwise required by the terms of the permit or certificate.
3. Those wells with a total authorized withdrawal that does not exceed 5.0 acre-feet annually, unless otherwise required by the terms of the permit or certificate.

**IT IS FURTHER ORDERED** that monthly records must be kept of the amount of water pumped from each well subject to this order, and the records shall be submitted to the Division of Water Resources **within 7 days after the beginning of each month**. Existing wells must report their first month of pumping on or before **March 7, 2021**.

**IT IS FURTHER ORDERED** that:

1. Each water right owner is responsible to ensure that their totalizing meter is installed and maintained in accordance with manufacturer's specifications and is accurately reporting. The meter shall have an accuracy of +/- 10% of flow rate, as determined by the State Engineer.
2. Meter installation requirements for new wells will be included in the terms of the water right permit.
3. Each water right owner shall correct totalizing meter failure or deficiencies within 30 days, and shall submit the report of installation of totalizing meter form for any new or replacement totalizing meter installed within 30 days of installation. Failure to comply may result in an assessment of fines and penalties against the water right owner pursuant to NRS 534.193.
4. The State Engineer may authorize the temporary estimation of the amount of water pumped during the time period required to repair a non-functional totalizing meter. Estimation of the amount of water pumped must be based upon the number of hours the pump was operated, multiplied by the well discharge diversion rate. This estimation must be submitted to the Division of Water Resources in the form of a sworn affidavit from the water right owner but is in no way a direct substitute for a totalizing meter installed in the discharge pipeline and required reporting.

5. Each water right owner shall provide access to the totalizing meter by Division staff without prior notice for reading inspection, pursuant to NRS 533.0247 and 534.130. The owner may be required to power up a meter to collect a reading if it has been turned off for any reason.
6. Any tampering with a working totalizing meter, i.e., reprogramming, such that the totalizing meter provides a false measurement is prohibited. If upon inspection, the Division of Water Resources find discrepancies between the totalizing meter reading and actual discharge from the well, an independent certification of the flow measurements may be required at the expense of the water right owner.

  
ADAM SULLIVAN, P.E.  
Acting State Engineer

Dated at Carson City, Nevada this

8<sup>th</sup> day of December, 2020.